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Seven Common Faults to Avoid when Formulating an Asian Family Constitution



Christian Stewart, Hong Kong, February 2013

In family firms in Asia today we are seeing:

- Family feuds – especially among siblings;
- Transitions from first to second generation – and at the same time the entry of the third generation;
- Family shareholders who want to exit, but lack an agreed pathway for doing so;
- Family managers who fear engagement with outside family shareholders;
- and

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- Failure to make full use of all that an active Board can help bring to a family firm.

One new “tool” that can provide a process for families to develop their own solutions to these and other problems is the concept of creating a written “**family constitution**”.

A “family constitution” is a written document, developed collaboratively by the key family stakeholders, which defines how the family will make joint decisions together. It will also normally define the purposes of the family in working together, the governance structures the family will establish, how the family will make policies and agreements, and how the family will resolve conflicts.

However it is fair for families to ask, will a family constitution “really work”? At the end of the day, after going through the effort and work to create a family constitution, how do you know that it will not end up as a piece of paper which gets put in the desk draw, gathers dust and is forgotten about?

Seven Common Errors when Formulating a Family Constitution

This is a valid concern and in fact there are common errors or mistakes that some families do make when they attempt to formulate a family constitution. Following are seven common errors to avoid when crafting a family constitution:

1. **A focus on the product, not on the process.** This is the first mistake which is to think of a family constitution as a “product”, in terms of a project to focus on and finish, or a document that you need to get agreement and closure on. Focus on the process. The journey is more important than the destination. Take your time. It will be worth it. It is not uncommon for a family to spend two years on drafting their constitution and related family business policies.
2. **The patriarch imposes the constitution “top down” on the family.** When you make a family constitution, the purpose is to create success as a family that can last for generations. To create a governance system that will pass the test of time, you need the buy in and emotional commitment of the next generation. This means you need to find a way for the adult members of the next generation to have a real voice in the process of creating the constitution.
3. **Too much weight is put on creating a legally binding agreement.** A common question that Asian families ask about family constitutions is “can it be made legally binding?” This is a valid question for families to explore, but the more a family tends to rely on creating a legally binding framework, often

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the less time they are willing to invest in a fair process for creating the constitution. Having honest, respectful, empathetic, conversations with family members is going to have more impact on the effectiveness of your family constitution than whether or not it is legally binding. Legal agreements do not avoid family conflicts.

4. **Trying to do it on your own.** Families always have their own natural way of making decisions and controlling the business. However to move towards an enhanced family governance system for the business, the family need to go back to the drawing board and start with a blank sheet of paper, they need to be able to suspend their own natural family decision making processes [1]. But it is hard for a family to suspend its own natural decision making process without the help of a professional facilitator. It is also hard for family members to be really honest with each other if they try to do it on their own.
5. **Attempting to make too big a change.** Families can get stuck if their constitution refers to a way of working together that is just too far away from the substance of where the family is today. There are two maxims that are always worth keeping in mind. First, “evolution is better than revolution”. Second “form needs to follow function” [2]. It is important to have an awareness of how the family naturally work together today and expect that if you attempt to define terms in your constitution that represent a large change from this starting point, the family may resist the change.
6. **Agreeing to things the family doesn’t have the capacity to make work.** There is no point in a family having a family constitution if the family members do not have the fundamental relational skills to work together collaboratively. Here “skills” refers to listening skills, empathy, respect, the ability to take and respond to feedback, self-awareness, the ability to collaborate together and the ability to have difficult conversations. If family members do not have the ability to listen to each other, respectfully, and with empathy, they may not be able to make a family constitution work for their family.
7. **Trying to be “too democratic”.** When making a family constitution for a family business, a key goal is to help clarify the different roles that are involved in the family business system. Another goal is to ensure that there are separate forums created for family issues, ownership issues, and business issues. These different forums are likely to have different rules for operation. Likely your family forum meetings can be run as a “democracy”, but don’t allow the family council to usurp the CEO role!

Like most things in life, families will find that what they get out of a family constitution process depends on the amount of effort that they put into it.

About the Contributor

Mr. Christian Stewart, Managing Director of Family Legacy Asia, formed Family Legacy Asia in 2008 to provide independent advice to Asian families on family governance. In this role he acts as a process consultant to help family businesses in Asia work together, through facilitating family meetings and helping the family to prepare their own family constitution and family council. From 2002 to 2008, Christian was the Head of the Wealth Advisory Team in Asia for JPMorgan Private Bank. From 1994 to 2002 Christian was with PricewaterhouseCoopers in Hong Kong where he became a Partner in their Tax Practice specializing in estate duty planning structuring. Christian was originally a tax and trust lawyer from Adelaide in South Australia.

[1] "International Family Governance" by Barbara R. Hauser (Messatop Press).

[2] Family Wealth, Keeping it in the Family Family" by James E. Hughes Jr. (Bloomberg Press).

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