

HOW INTERNATIONAL FAMILIES CAN USE FAMILY GOVERNANCE TO SAFEGUARD AGAINST UNCERTAINTY



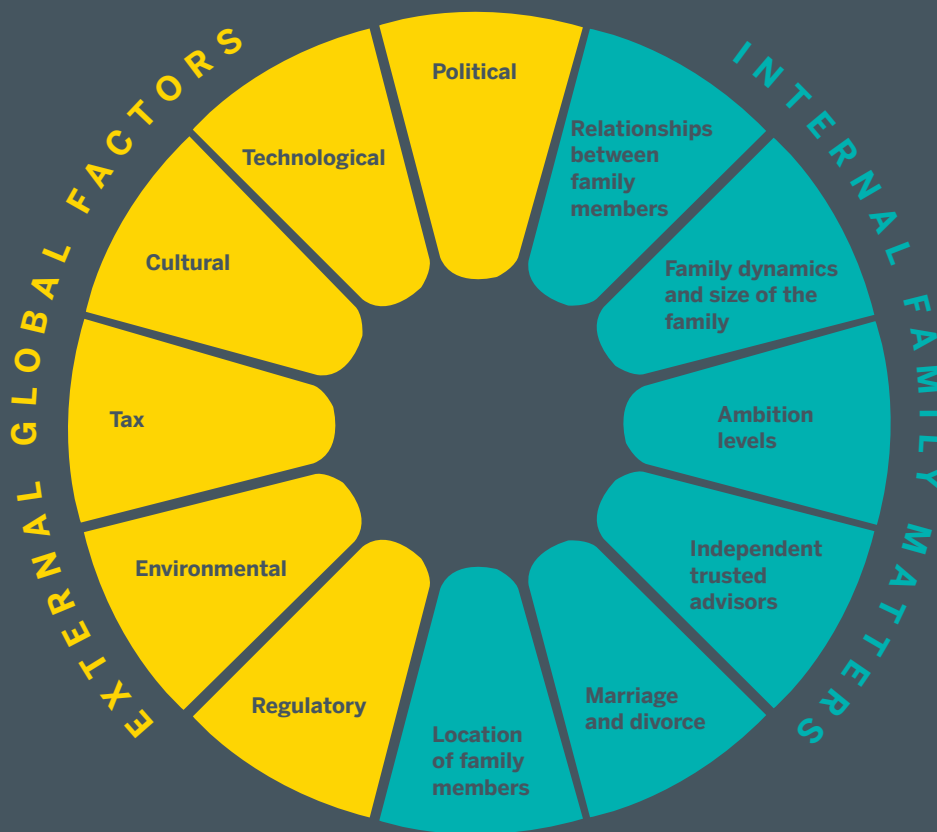
More people are earning more wealth than ever before and that means that they need to think about how they pass on that wealth in the future. You only need to look at the newspaper headlines to see stories where a failure to plan has led to wealthy families battling over money and businesses. Infamous family feuds between the Ambanis and the Hos highlight the importance of transitional planning and the consequences of not having a plan in place.



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Uncertainties

There are many uncertainties and potential changes that a family faces. In addition to global uncertainties, uncertainties specific to a family are numerous:



It is these uncertainties that a family need to plan for and from which to protect their wealth. With the fast changing regulatory environment and the global mobility of family members becoming more diverse, having a robust succession plan is more important than ever. Whilst families can't necessarily anticipate what will happen in the future, they can consider and plan for the things that might happen.

Too often tax and testamentary based planning doesn't take into account

the holistic aspects of the transition of wealth from one generation to another. People react differently depending on how they inherit wealth and the different levels of responsibility involved. Succession planning must consider the effect of that wealth on the recipients.

As both the world and a family changes, so too must a succession plan; it is a long term, dynamic process. It is not a one off plan to be kept in a drawer, it needs to be flexible and be reviewed on a regular basis.

Issues the family need to face

How do you get the patriarch to think about succession? Patriarchs often think they are immortal and that they can rule from the grave. What are the difficult issues that a family need to face when considering succession planning?



The act of preventing future family disagreements from breaking up the business is difficult to do but that is the essence of what is trying to be achieved. Adopting a vision for the future in a world that is so fast moving.

When the head of a household has built up a successful business, have they considered all these issues? Unless they are taken through that process, then most likely no.



Fairness within the family

What does family governance seek to achieve?

How can a family be fair between different family members?
 When you have different generational levels, and different skills within the different family members, a lack of planning makes it very difficult to achieve fairness.

How are you fair to those who work in the business and those who don't work in the business? It's very unlikely that all of the next generations will work in the business. Usually parents want all their children to benefit to some degree from what they've built up but those who work in the business will inevitably want a larger share.

Opportunity
 Often half the battle centres around opportunity. If everyone is given the opportunity to contribute, they can't complain if they later choose not to. Fairness does not necessarily mean equality. Fairness is in the eyes of the holder, and that's why siblings need to understand the reasoning behind their parents' decisions. An annual gathering for the family is invaluable to ensure that everyone in the family has the opportunity to contribute and understands the way the patriarch and/or matriarch is dealing with family assets.



Family governance will deal with many details such as:
How and when control is passed onto family members as they grow up

Controlling the benefits that the next generation receive

Dealing with confidentiality matters regarding trust registers, beneficial ownership registers, CRS and more

Provide a mechanism for family members to exit their shares and/or holdings

Bringing the younger generation into the discussion is also incredibly important so they feel involved with the process and understand their role in the future plan.

What is the process?
So what is the process to get families to deal with all these issues?
 In many ways, the process itself is more important than the end result. Going through the process, getting families talking and discussing these issues, is the most important part. They will agree on many aspects, disagree on other parts, so working out how to deal with the disagreements can help bring into harmony the family members' aims for the future.

It is not, a question of filling in the blanks on a standard family constitution, family charter, or other off the shelf agreement. Every family is different and a succession plan should reflect that. Trusted advisers, need to be empathetic and sensitive, to be able to understand the family dynamics and be trusted by all the family members. Generally speaking, families will buy into one person, whether a lawyer or not, to take the whole family through the whole process in a reasonable amount of time.

Family governance seeks to deal with all these issues and uncertainties; putting in place a framework that protects the family's wealth and business for the future. A mechanism for avoiding family battles; prevention rather than cure of family disagreements. A succession plan provides peace of mind that the uncertain future is not left to chance; protecting the family against the dissipation of wealth from risks such as divorce, creditors, litigation and family disagreement.

It is often only through the process of drawing up a succession plan that the issues a family needs to face come to light.

HOW DO WE DO IT?



A silhouette of a head filled with various letters and numbers, representing thoughts and ideas.

Psychology and tangibility. The majority of the process involves psychology as opposed to the legal or technical aspects. It's spending the time to understand the family members, how they think, what they want, what they do and don't say and how they say it. They'll often speak more honestly during individual discussions as opposed to open family forums.

But, it's not just about talking; finding a resolution that provides constructive solutions in relation to incapacity and death, is crucial, even if these need to be reviewed on a regular basis. Once the document has been put together and agreed, everybody needs to understand what's been done and how it will work for the future, ideally discussed in a family meeting. Then an annual or biannual review for the family as a whole is very important.

There are many ways of dealing with a family constitution. There is nothing sacrosanct about what goes into one, it's what the family wants to go into it and what it will mean to the family afterwards, that is important. It is not always recommended that constitutions are made legally binding, as you can't force a family member to engage in a constitution in which they have not had a part in drawing up but you can help them to buy into it by involving them at a young age.



FAMILY CONSTITUTIONS

Conclusion

Many families have done absolutely no planning or have only considered who might own the shares in the future, but that is hardly sufficient transitional planning. The very exercise of facing up to the issues, of handing over control to the next generation, is incredibly enlightening for family members. Dealing with potential disagreements and facing the difficult issues may be daunting but the consequences of not dealing with them at all is far more dangerous.

Whilst, family governance cannot account for every uncertainty that will ever arise, having a framework in place will help a family to work through uncertainties. The families, undoubtedly, as a result of that exercise will be much more advanced in their thinking about how they can contribute meaningfully to the future generations.

