

Why governance is gaining traction in Asian families

Business families in Asia are increasingly looking at governance planning as part of efforts to ensure a smooth transition of the company to the next generation, says Zac Lucas of Gowling WLG.

Governance is a key component of succession planning which is gaining traction in Asia.

This, says Zac Lucas, head of private clients with Gowling WLG in Singapore, is happening as more and more patriarchs get serious about ensuring that the businesses they painstakingly founded and nurtured are governed well by their heirs.

“[They are] taking a deliberate view on separating transfer of ownership of the business and transfer of the governance or decision-making of the business,” he adds.

The driving force, explains Lucas, is that this is not only to safeguard the shareholding rights of the next generation, but it is also to manage conflict and disagreements.

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In essence, patriarchs want to install a protection mechanism for the sustainable continuity of the business in the absence of the founder.



ZAC LUCAS
Gowling WLG

PRE-EMPTING CONFLICT

Lucas says Asian business founders are waking up to the fact that politics within the family may, after their

passing, lead to conflict and, ultimately, wealth destruction.

The decisions around running the business are often the trigger, with the family failing to remain unified.

And without a governance structure, Lucas says there's no framework for them to engage appropriately.

"[The founders] are trying to control the politics of a privately-held family business where, if you give four children equal share ownership in the business, you can end up with uncontrolled swings in the practical administration of that company depending on the dynamics of the siblings' relationships," he explains.

"Legacy is a strong aim for many [Asian patriarchs]," says Lucas.

"They don't see the children as the owners of the business, [but] as stewards for their time. That's a key difference," he adds.

There are of course good reasons for this outlook. Often, the family business is the principal source of wealth for an Asian family, adds Lucas.

GUIDANCE ON GOVERNANCE

One of the challenges in helping these clients address their desire for governance planning, however, is that it requires special expertise, yet it is a relatively recent phenomenon and there is a dearth of experience in this area.

"The challenge is to create a legally-enforceable governance mechanism that is perpetual in existence and can actually segregate ownership from the control of the businesses," he says.

Gowling WLG, claims Lucas, is well-placed to offer hybrid legal and business consultancy services.

Consequently, the firm is expanding rapidly in Asia.

It has offices in Guanzhou and Beijing in mainland China, for example, and is expanding in Singapore, with the founding of its affiliated local law firm, Juri-Asia LLC.

"We have traditionally had five personnel in Singapore, [but] we're going to be over 30 people within three months," he explains. "That's going to continue to grow and grow."

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LEGACY PLANNING

Unlike wealthy families in the US and Europe, for instance, Asian families view succession planning from a completely different perspective.

While most business founders in Western countries look at their companies as investments and are more open to cashing out via an IPO or sale, to Asian founders, their business is their legacy.

"The average time in terms of the period during which Asian families have been thinking about governance reform is about a decade," says Lucas.

"The families we see have never really found a complete solution to the governance and succession dilemma – they have considered PTCs, Family Charters and Shareholder Agreements, but without much success; each comes with its own limitations," he adds

DEALING WITH TRANSPARENCY

Another issue that he believes Asian families will face going forward is the impact of the Common Reporting Standard (CRS).

With the prevailing ambiguities about how countries in Asia are going to implement CRS, the wealth management sector is likely to struggle with compliance issues, explains Lucas.

"There's a lot of ambiguity in how CRS is being implemented at the moment," he explains.

People are taking different views on this; and in his view, the recent OECD FAQs, particularly the OECD's apparent endorsement of 'double reporting' has not been well received. ■