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Family business advising: the Asian angle

With the inaugural launch of the STEP Advanced Certificate in Family Business Advising in Singapore, Nigel Race, STEP Director of CPD, asks Zac Lucas and Ken McCracken what the certificate offers practitioners working in the family business field.

Are there specific challenges in working with Asian families, as compared with families in other regions?

Zac: Asian family businesses, particularly in south-east Asia, are experiencing significant changes, with the transition of the third generation into the business and the gradual withdrawal of the first or founding generation. China is the exception, due to its relatively early (founding generation) stage of family business development.

Culturally, the generations are different. Members of the founding generation are usually culturally conservative and have, in many cases, had to adapt and survive in jurisdictions where personal, and in most cases, closed business networks were the norm, and legalistic relationships, with a reliance on local courts to arbitrate in disputes and agreements, would not have been common. By contrast, members of the third generation, due in no small part to their mainly Western education, are less culturally conservative, and can be expected to rely on a more legalistic approach to business and family affairs. The second generation is usually somewhere between the two.

The practical implications and challenges for practitioners advising Asian business families, which are perhaps different from the challenges in more established markets, include anticipating and managing the following:

- Different cultural norms and expectations within one business family. For example, a legally constituted family council, with fully expressed family governance guidelines, may be acceptable to, and indeed desired by, the second and third generations, but totally perplexing to a founder generation, where personal relationships are core – not institutions or rules.
- Founder-generation governance, which tends to be hierarchical (later generations, particularly the third generation, generally expect a 'flatter' environment). For the practitioner, this can pose a number of traps, particularly where succession is seen as a process of appointing a new 'head of the business and family', and where this is not widely accepted by succeeding generations.
- There will be an increasingly equal succession to ownership of the business, although in some families this may be limited to male heirs. This creates an expectation that, with each generation, ownership of the business will become more diffuse, which may in time result in a governance imbalance, whereby oversight of family director performance and control is gradually eroded. For the practitioner, this can pose unique challenges when advising Asian business families, as it requires a greater emphasis on agreed family governance rules and procedures to compensate for loss of concentrated shareholder control.

Ken: Yes, there are particular challenges, but it is the same type of challenge faced by business families the world over.

Our experience of working internationally is that many families are striving to balance the importance of values that reflect where the family comes from – their culture of origin – with other influences, and

I would say the main influences are those introduced through international trade, and through where family members are educated and then choose to live their lives. In Asia, for example, this means balancing the value attributed to family bonds and respect for elders with Western-type individualism.

The impact of social media is a more general cultural phenomenon that also matters. While it might cause moral panic among some in the senior generation, the next generation's involvement in social networks enables them to access new information and opportunities.

What is very important, of course, is for advisors to tune into a family's culture and never advise based on the advisor's own cultural background, choices and biases.

In terms of governance, either corporate or family, can you identify particular approaches that suit Asian families? What are the contextual considerations that impact the models that might be appropriate?
Zac: Listing family businesses has become popular in Asia, particularly in south-east Asia. Most regional exchanges subject their listed companies to 'best practice' corporate governance codes, in many cases modelled on corresponding codes applied in the UK and US.

However, it is still uncommon in south-east Asia for more than a minority stake in a subsidiary company to be listed. Unlike their Western counterparts, Asian business families do not generally dispose of their entire holdings, whether by IPO or otherwise. As such, concentrated ownership of the business, post-IPO, generally remains with the family.

In these circumstances, best-practice corporate governance codes may have a limited impact on governance of the wider family business. Asian business families, particularly at or including the third generation, will probably require more sophisticated family governance rules, to adequately accommodate and manage wider involvement in and ownership of the business.

For most Asian business families, formal family governance rules will be a new concept. Therefore, an evolutionary approach to governance planning is generally more suitable. For example, a family may be encouraged to first consider a family charter, and then later perhaps a formal shareholders' agreement, evolving into a legally constituted family council. Most Asian business families will not have the services of a dedicated family office, and therefore will tend to rely on professional fiduciary service providers to offer the necessary support and administration to their constitutional arrangements.

For Asian business families, formal family governance rules will tend to democratise over time, starting from a hierarchical and ending with a fully participatory democratic approach. Any constitutional document, whether a charter, shareholders' agreement or trust deed, will need to anticipate and adequately provide for this. For example, it is not uncommon, where a trust structure is used, for the founder to reserve wide powers in the trust deed, with this later giving way in the event of the founder's death to 'protector committee' provisions that ensure wider family involvement in the administration of the trust.

I think that it important to note here that competent business succession planning is different from estate planning. Business families require careful governance plans, tied to the family and business needs. Succession to ownership of the business is part of the picture but not all that is required. Members will need to learn new business consulting skills in order to competently advise business family clients.

Ken: I want to pick up here on the influence exerted by conventional corporate governance. We need to remember that this is not a perfect model. Indeed, the corporate scandals that have emerged since the 2008 financial meltdown have led to a lot of discussion about how much it needs to change.

Conventional corporate governance is concerned with the development and regulation of capital markets. It focuses on issues that arise when the relationship between owners and a board is purely financial, and it is also likely to be transitory because success is mainly about short-term returns.

In contrast, the vast majority of family businesses are not public companies. Their underlying relationships are based on kinship, love and trust, rather than financial expediency, and many of them want to develop a legacy that will continue across generations, rather than maximise returns in the next quarter.

While conventional corporate governance has some good ideas and models that can be borrowed by family businesses, we must not treat it as a best practice that everyone must follow.

The best-practice approach for all families and their advisors, whether in Asia or other parts of the world, is to create governance structures and policies that balance the distinct interests of the family and the business in a way that helps the family to achieve its unique vision of success.

In broad terms, what does best-practice family business advising look like? What are the core components, and do these hold equally true for Asia, the US and Europe?
Zac: Family business advising takes in a wide field of expertise. For STEP members engaged in business succession planning in Asia, three core competencies will be necessary: comparative corporate law; trust and estate law; and broad business consulting practices.

In the Asian market, it is not uncommon for successful family businesses to include an element of foreign ownership. This might include an ultimate holding company incorporated in the British Virgin Islands or Cayman Islands, or an equivalent trust arrangement. Therefore, best practice will need to anticipate cross-border elements and their domestic and private international law implications.

Ken: The range of technical specialisms that families in business together need from their advisors is well known. Sometimes it is suggested that the way forward is for these advisors to add some soft skills to their professional specialism, which is usually thought to comprise the hard skills.

However, families know that the so-called ‘soft stuff’ is actually the hard stuff. The new standard for family business advisors the world over involves understanding the challenges that arise in a complex family business as these change over time, and how these changes affect the vested self-interests of a number of stakeholders.

This type of advising is emerging as a distinct specialism across professions, and advisors need to decide if it is an area that they want to invest in.

I think the other change that is happening is that clients expect their different specialists to collaborate as an effective team. This is easy to say, but it in fact raises interesting questions about how a group of ambitious, self-motivated advisors from different organisations can collaborate. Can they collaborate better, for example, by sharing information across professional boundaries, by not competing with each other and by even having their remuneration based on overall team performance?

Considering the above, why is STEP's course invaluable for those working in the context of advising Asian family businesses?
Ken: Family businesses represent a vast market in Asia for advisors from various professions, including law, accounting, wealth advising, banking and management consulting. The certificate will provide them with new ideas from the family business body of knowledge that will help them to provide a superior service to clients, including:

- understanding the family business client as a complex system of interacting and often competing self-interests;
- how these interests develop and change in predictable ways;
- how to use this knowledge to articulate the choices facing a family at crucial times, such as during succession planning;
- understanding that family governance is a critical part of any strategy that seeks to optimise all forms of a family's wealth;
- why conflict in a family enterprise is natural, rather than unusual, and how to advise effectively in this context;
- how to navigate clients through the essential stages of succession planning so that the plan is implemented.

This knowledge will enable advisors with different specialisms to push the boundaries of their professions and create innovative strategies for developing, managing and preserving the family business.

Zac Lucas TEP is a practitioner based in Singapore and leads the STEP Singapore Business Families Special Interest Group, STEP Singapore's main initiative (along with the Business Family Certificate) to help members learn and prepare to advise business family clients, a new and complex client segment that members will increasingly encounter

Ken McCracken is the lead author and trainer on the STEP Advanced Certificate in Family Business Advising and will be delivering the courses in Singapore and Hong Kong this December

STEP Advanced Certificate in Family Business Advising

The STEP Advanced Certificate in Family Business Advising is being run in Singapore and Hong Kong this year. The courses are now open for enrolment at www.cltint.com/stepcertfamilybusiness Workshops will take place in Singapore on 1–2 December 2014 and Hong Kong on 4–5 December 2014.