

Family Constitution - Some Key Issues

Family owned businesses in India are not in the habit of having a written family constitution. Constitution creates commitment. It helps in bringing the family to a common view of its relationship to the company and amongst family members.

"A family constitution expresses the will of the family for future generations. Most important, it creates a foundation for maintaining trust within the family and for guiding the distribution of resources. The document helps to clarify everyone's expectations, so that family members do not have to read the tea leaves to understand what Mom or Dad or Uncle Harry has in mind for them. It gives family members the basic security of knowing what they can expect from the business, as well as how they can participate in it and continue to earn rewards from it. While it leaves many uncertainties, such as who will be allowed to enter the business and who will lead it, the document sets out guidelines for making such decisions."¹

Family has an informal setting. **As families grow, family members are overwhelmed by different perceptions, diversity, and complexity. They need common lenses to see through reality, common measures to judge behavior and common value system to abide by.**

Separately drafted family policies, vision and mission statements, family value statements and family creed can also serve the purpose. In fact, families can start by having such separate documents and can later compile them together in the form of a constitution.

Whereas policies are stand-alone documents and are drafted as the need arises, constitutions have proper structure and flow. They have common values cascading all through the document. Properly drafted constitutions are visionary and incorporate provisions for future scenarios too.

Policies have depth to deal with all possible variations of a problem. Constitutions provide width and are more value-based and less issue-based. Some families adopt both - constitutions outlining driving

principles and policies providing details. This may be a good strategy to ensure conciseness of the family constitution.

Constitutions, policies and rules are legacies and gifts that matured families pass on to future generations.

Families have difficulties in sharing and allocating resources and power. They get into trouble when their value system starts getting contaminated by negative influences. Clarity of expectations, accountability, responsibility and authority become necessary for maintaining healthy relationships. Family constitution is one document that can deal with all these important issues. Not that constitution can ensure total elimination of all these problems, but it definitely does no harm and leaves family members better off.

Construction of family constitution

Introduction

- Purpose
- Brief family history
- Special moments
- Importance of family and business continuity

Principles

- Values
- Beliefs
- Guiding Principles

Vision & Mission

- Direction, Goals and Commitments

Guidelines and Policies

- Prescriptions
- Rules

Action Plan

- Governing bodies
- Methods for Monitoring and Modification
- Provision for Arbitration

Systemic Relationships (within legal boundaries)

- Family and Business
- Family and Ownership
- Ownership and Business

Inter-personal Relationships

- Categories and Roles
- Defining expectations and responsibilities
- Establishing accountability
- Outlining authority and limitations
- Rights and duties of family members

The language of the family constitution can range between

tentative to firm and it can have force ranging from moral to totally legal. A 'FAMILY Business' will use flexible language and prefer to put moral obligation. On the other hand, a 'Family BUSINESS' will apply firm and businesslike language ensuring legal binding.

It is very important to lay down governance mechanism for family, family office and family foundations. Guidance should also be provided for the composition of the board and the qualifications for board membership. It should incorporate important policies on such matters as entry into and exit from business, dividends, remunerations and CEO succession.

Family constitution evolves over a period of time. However, if care is taken in drafting, the need for modification can be minimized. **Family constitution should not be like the Indian constitution that has been amended 74 times ever since it was adopted in 1950. It should be akin to the US constitution, which has been amended only 27 times since its adoption in 1789, of which 10 amendments took place simultaneously in 1791 itself.** This doesn't mean that amendments should be avoided. That would make the constitution an antique piece, which is valuable just for being old even if it has no practical utility. Rather the constitution should be driven by such values and principles, which have eternal appeal and relevance. This can be achieved by keeping provisions for volatile and unpredictable situations out of the purview of the constitution. They can be separately dealt with through policies and guidelines.

Moreover, it is more sensible to set guidelines than to form rules. Rules need frequent amendments, guidelines don't. Family constitution should be more like the British constitution with lots of implied and unwritten rules.

Family constitutions should not remain confined to bookshelves and drawers. They should always be referred to when policies are being drawn or modified. Sections like family values should compulsorily be read in each annual assembly.

¹Dennis Jaffe, David Bork, Sam Lane, Leslie Dashew, and Joe Paul, "We the People, to Create a More Perfect Union...", Family Business, Summer 1998