

Preventing the family feud: Why good governance is the best protection for family wealth

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It is a truth universally acknowledged that the greatest threat to family wealth is rarely investment performance, tax policy or economic uncertainty. More often than not, it's something far closer to home: the storm created by family conflict.

Private wealth disputes seldom arise because the law is uncertain. Rather, they arise because expectations differ:

- a settlor assumes his or her intentions are obvious;
- children remember promises differently;
- someone other than the eldest child takes over the family business in the mistaken belief that they will be rewarded with the lion's share of the profits;
- a trustee exercises its discretion in ways the beneficiaries did not anticipate; or
- successive generations inherit sophisticated structures without understanding why they exist or how they are meant to work.

Suddenly, what begins as a misunderstanding quickly spirals into conflict underpinned by perceived unfairness, competing expectations and mistrust.

The role of good governance in wealth protection

The cruel irony is that oftentimes, many of these high net worth (**HNW**) disputes could either have been avoided or at least reduced substantially, through something as simple as good governance (that is to say, governance as a deliberate framework of independent decision-making rather than simply a bureaucratic exercise), clear communication and regular review.

Indeed, good governance is not simply an administrative exercise; it is one of the most effective forms of wealth protection available and offshore jurisdictions such as Jersey, Guernsey and Cayman offer a range of bespoke and flexible governance tools which not only serve to protect and preserve wealth but can also prevent family disputes from escalating into family feuds.

The value of independent decision-makers for HNW families

One of the simplest and most effective structural ways in which to reduce the risk of conflict is to ensure that key decisions are made by people who are, and are seen to be, independent.

Whilst settlors are often tempted to appoint relatives, close friends or trusted advisers to the role of protector, or even trustee, such appointments are ripe to become problematic as family dynamics evolve. In particular, in blended families, family businesses or even situations where relationships differ as between each beneficiary or beneficiary branch on the one hand and the trustee or protector on the other, the mere perception of bias can prove to be corrosive. It breeds suspicion, undermines confidence in the impartiality of trust administration, and provides fertile ground for family disputes as even the most reasonable decisions may be viewed through the lens of perceived favouritism.

In contrast, the appointment of professional, regulated, independent trustees and protectors provides HNW structures with a degree of insulation. Decisions are underpinned by technical expertise, independence, objectivity and credibility and beneficiaries are far less likely to raise questions when they trust the integrity of the decision-making process.

Alongside the role of trustee, protectors - sometimes referred to as the godparent of a trust - also have an important role to play in the governance framework. A well-drafted protector appointment can function as an important check on trustee power and allows a trusted individual (often a senior family member or experienced professional) to exercise a supervisory function without assuming the full fiduciary obligations of trusteeship.

However, a protector who exercises too much control risks becoming a trustee in all but name, thereby creating additional complexity, expense and grounds for potential dispute. Care must therefore be taken in drafting the scope of protector powers.

Letters of Wishes

A well-drafted Letter of Wishes is often the most important governance document in any trust structure. Non-binding but persuasive, a Letter of Wishes explains the settlor's thinking and provides trustees with valuable guidance when exercising discretion years - or even decades - after a trust has been established. However, the importance of regular review cannot be overstated, as an outdated Letter of Wishes, drafted before the birth of grandchildren, a family divorce, or a fundamental change in the composition of the family's wealth, can cause more harm than good and may lead trustees to exercise their discretion on the basis of outdated assumptions, or provide ammunition to disaffected beneficiaries who argue that the settlor's true (more recent) intentions differed from those recorded in a stale document.

Precision in drafting the Letter of Wishes is equally important, as language that is too prescriptive risks inadvertently fettering trustee discretion. A Letter of Wishes should guide trustees without dictating outcomes and preserve the flexibility that is the hallmark of a properly constituted discretionary trust.

Family Charters: Creating alignment before disagreement

Increasingly, families with substantial wealth, a family business, or multi-generational structures choose to adopt a Family Charter (sometimes called a Family Constitution) which documents and articulates matters such as shared values, decision-making processes, succession plans, philanthropic ambitions and expectations for future generations.

Although generally not legally binding, the process of drafting Family Charter is often just as valuable as the document itself, provided that best practice is followed so as to allow the Family Charter to be developed collaboratively across generations.

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over a period of months, preferably with assistance from multiple experienced advisors. In this way, conversation is encouraged and facilitated before conflict.

The practical authority of a Family Charter derives from the legitimacy conferred by genuine participation and buy-in from all branches and generations of the family. It creates clarity around expectations, provides a common reference point when difficult decisions arise, and evidences shared intent. Further, if specific elements are incorporated into documents such as shareholder agreements or trust instruments, the Family Charter may become legally binding on those discrete points.

Much like Letters of Wishes, the most effective Family Charters are living documents, reviewed periodically and updated as the family evolves. Although enshrined in writing, an effective Family Charter should not simply be treated as a relic of a past generation's vision, but rather, it should be viewed as a continually renewed expression of the family's collective purpose. It is this commitment to the process that gives a Family Charter its authority and ensures that it acts as an effective governance tool capable of quashing disputes long before matters spiral.

Reserved powers: Balancing control and validity

Many offshore trust jurisdictions such as Jersey, Guernsey and Cayman allow settlors to reserve certain powers to themselves, thereby allowing a settlor to maintain meaningful involvement in the stewardship of the family's wealth without abandoning the trust structure entirely. However, although reserved powers can serve as an important governance function, overly broad reserved powers can undermine the validity of the trust itself.

If a settlor is found to have retained so much control that the trust is, in substance, a sham, trust assets may be exposed to creditor claims, forced heirship challenges, or even the very tax liabilities it was designed to mitigate. In addition, excessively broad powers can create operational conflicts between the reserved powers holder and the trustee, or generate disputes with beneficiaries whose expectations of benefit are frustrated by the settlor's continued interference.

The question of what, if any, powers should be reserved is a delicate balancing act.

Powers should be carefully scoped, clearly documented, and periodically reviewed to ensure that the 'irreducible core' of trustee obligations is not compromised in any way. A trust in which the settlor retains the power to direct every material decision is not a trust at all; it is simply a nominee arrangement dressed in trust clothing.

Another important factor that must be considered when considering the issue of reserved powers is the question of how and to whom any reserved powers will pass on the settlor's death or incapacity.

Without clear guidance, disputes between the successor power-holder and the trustees (or between competing branches of the family) are almost inevitable. Thoughtful and proper governance planning should address this transition explicitly, ensuring that the exercise of reserved powers in the second generation is subject to the same discipline and transparency as exists in every other aspect of trust administration.

Decision-making frameworks for trusts: Process as protection

Transparent, documented decision-making processes are among the most underappreciated tools in the governance armoury.

At trustee level, establishing clear protocols such as the requirement for unanimous or majority decisions among co-trustees, documented rationale for major decisions and regular trustee meetings with minuted discussions ensures a culture of deliberation. Equally, sound record-keeping reduces the scope of poor decision-making because:

1. at family level, proper protocols can be put in place to ensure that input can be given on business or investment decisions, without displacing trustee authority. For example, in the context of a family business, advisory boards can be established comprising independent professionals and family members; and
2. in structures involving multiple branches, steps can be taken to create a family council, with clearly defined voting or consensus mechanisms, thereby reducing ambiguity and the risk that decisions are perceived as arbitrary or driven by personal relationships rather than principle.

Even a simple protocol requiring that significant decisions be discussed at a family meeting before implementation can transform the dynamic between trustees and beneficiaries.

Disputes over a trustee's exercise of discretion tend to arise because beneficiaries feel blindsided, either because a decision was made without consultation or explanation, or because a decision appears to have been taken in circumstances where it is suspected that the decision-maker was influenced by irrelevant considerations. Transparency in how decisions are reached significantly reduces the likelihood that beneficiaries will suspect improper motives or feel compelled to seek recourse through the courts.

The discipline of documenting decisions also serves as a protective function for trustees, enabling them to demonstrate that in reaching a decision, a proper process was followed by which they considered all relevant factors, ignored irrelevant factors and took appropriate advice.

Managing expectations: Communication as a governance tool

HNW disputes thrive in an information vacuum. Trustees who operate in silence invite challenge. Conversely, trustees who proactively and regularly communicate with beneficiaries dramatically reduce the risk of conflict. That said, a commitment to communication does not mean trustees should disclose everything.

Discretion and confidentiality are important principles and have their proper place, but beneficiaries who feel informed and respected are far less likely to litigate than those who feel excluded, ignored, or taken by surprise. To that end, managed transparency, delivered proactively and with sensitivity, is one of the most effective dispute-prevention tools available.

In the life cycle of a private wealth structure, it is likely that a variety of potentially difficult conversations will need to be had, such as those surrounding succession, generational transitions, the communication of unwelcome decisions, or the mediation of differences between generations. These topics all have the potential to become emotionally charged interactions, and to avoid matters spiralling, it is essential that these discussions are had at an early stage, preferably whilst the settlor is still able to participate.

Consideration should also be given as to what, if any, advisers ought to be involved. The cost of early engagement is trivial compared to the cost of contested litigation - the best governance is proactive rather than reactive.

Building a safe harbour for multi-generational family wealth

Increasingly, family wealth is multi-generational, multi-jurisdictional, and complex. Structures often hold a proliferation of asset classes and variety of underlying holding structures that would have been unimaginable even a generation ago.

The current geopolitical uncertainty and economic volatility only adds to the complexity surrounding wealth protection. Although not every family wealth dispute can be prevented, the vast majority can be substantially reduced if steps are taken to build a safe harbour around family wealth before the storm arrives, rather than seeking shelter once it has already broken.

Good governance, properly implemented and maintained, directly addresses many of the root causes of family disharmony.

The cost of failing to plan is threefold:

1. Substantial costs

The legal costs of contested litigation will inevitably be substantial and these costs are frequently borne by the trust fund itself, thereby depleting the very wealth that was intended for the benefit of the family.

2. Destruction of the family

Irreparable damage caused to family relationships. Families that litigate rarely recover as a family unit; the process of adversarial proceedings entrenches positions, exposes private grievances, and creates wounds that do not heal.

3. Reputational damage

Public disputes damage the family, the family business, and any professional advisers or institutional trustees involved. Even if such disputes are heard in private, the possibility of a 'leak' still remains, which could prove detrimental to the value of the family business, the family itself or their advisers.

Good governance is not a one-off administrative exercise. It is an ongoing discipline that must evolve as the family evolves, adapting to new relationships, new risks, and new opportunities. Governance, properly designed and maintained, is the most effective and cost-efficient form of dispute prevention mechanism available to families with significant wealth. It is the safe harbour that allows a family's wealth and, just as importantly, its relationships, to weather troubled times intact.

How can we help?

COLLAS CRILL

Collas Crill's Private Client and Trusts team has decades of experience advising trustees, beneficiaries and protectors about the administration of offshore trusts. We frequently assist fiduciaries and UHNW families with the increasing complexity of structures and helping those structures remain fit for purpose.

Where disagreements arise we can also advise on how best to resolve tensions, whether through court or by a negotiated agreement.

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