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A Ryan LLC Affiliate

The Architecture of Succession

A blueprint for enduring
family enterprises

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From our Chairman & CEO

Every family carries within it a story. A story of sacrifice made in the first generation, of growth consolidated in the second, and of the constant, quiet anxiety about whether all that has been built will endure beyond the third. In over three decades of advising some of India's most distinguished families and enterprises, I have come to one firm conclusion: the greatest threat to a family's wealth is rarely a failed investment or a market downturn. More often, it is the absence of a plan.

India stands today at an extraordinary inflection point. We are witnessing the largest intergenerational transfer of wealth in the country's history. Over the next decade, assets worth more than ₹100 lakh crore will change hands across Indian families. And yet, survey after survey tells us that fewer than one in five family business leaders have a documented succession plan. The gap between what families have built and what they have done to protect it has never been wider nor more consequential.

At Dhruva, succession planning is not a practice area we stumbled into. It is a discipline we have built deliberately, over years of working alongside founding promoters, second-generation inheritors, and the professional managers who bridge the two. We have sat in drawing rooms where siblings have not spoken for years over a contested Will. We have advised families after a patriarch's sudden passing, when the absence of a structure became immediately, painfully apparent. And we have also had the privilege of helping visionary founders build governance frameworks that will serve their great grandchildren's grandchildren. We firmly believe that the families that endure are not those with the most sophisticated structures, they are the ones that started the conversation early enough to shape it.

What we have learned above all else is that succession is not a legal event. It is a human one. Documents matter enormously, structures matter, tax efficiency matters, but underneath every well-designed trust deed or family constitution is a family that chose, consciously, to have a difficult conversation rather than avoid it.

This publication, is our attempt to bring together the breadth of that experience into a single, integrated framework. We cover the traditional instruments with clear-eyed honesty about their limitations. We explore private trusts in depth, because in our experience they remain the most versatile and durable tool in the succession architect's toolkit. We address the



complexities of global families, digital-age assets, business succession, and governance architecture, where tools such as the Family Constitution and the Family Coach help transform good intentions into enduring institutions.

India's family enterprises have built remarkable things. They employ hundreds of millions of people, contribute the lion's share of our GDP, and carry with them values and traditions that are irreplaceable. The question that keeps me awake and I believe should keep every founder awake is whether those enterprises will still be recognisable, still be thriving, three generations from now. The answer depends not on the market, not on policy, but on the choices families make today, in quiet rooms, about structures and conversations they have been putting off.

We at Dhruva are honoured to be trusted with those conversations. We offer this publication in the same spirit in which we approach every client engagement: with technical expertise, genuine care for the families we serve, and an unwavering belief that with the right architecture, legacies can last.

Warm regards,

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Succession Planning

Family businesses are the backbone of the Indian economy as they contribute more than three-fourths of India's GDP and employ more than 60% of India's workforce. From local trading firms to industrial powerhouses, families have driven growth with vision, discipline, and sacrifice. Yet the uncomfortable truth is that while it is hard to build a successful business, sustaining it across generations is even harder.

3 in 10

Family enterprises reach the second generation

1 in 10

Survive to the third generation

~3%

Make it to the fourth generation and beyond

India is on the threshold of its largest ever transfer of wealth between generations. Analysts estimate that over the next decade, assets worth more than INR 100 lakh crore will change hands. At the same time, family offices, a relatively new construct in India, have multiplied almost 6x in the past few years, reflecting both the growth of ultra-high net worth families and their desire to institutionalise wealth management. This convergence of rising wealth and fragile succession planning creates both an opportunity and a risk: an opportunity to embed resilience for decades to come, and a risk of unprecedented value destruction if families fail to prepare, plan and sustain governance across generations.

Despite the urgency, succession remains one of the most neglected conversations in Indian boardrooms and dining rooms. Surveys show that while most family business leaders agree that succession is critical, only around 1/5th have actually documented a formal plan. The consequences of this complacency are visible in high-profile cases where disputes over Wills, contested shareholdings, or unclear control structures have often spilled into courts, sometimes dragging on for years.

“
More family businesses die of neglect in planning than of competition in markets.

– Kavil Ramachandran, Professor,
Indian School of Business

These disputes not only drain financial resources but also erode the very reputation that the founder worked a lifetime to establish.

One of the reasons this cycle persists is that many founders focus almost exclusively on growth, postponing discussions of succession. Ironically, the reluctance to plan for the future often jeopardises the very wealth and institutions that is created. Traditional tools such as Wills or Hindu Undivided Family structures, while familiar, are increasingly inadequate to address the complexities of modern business ownership. Wills can be ambiguous and prone to litigation; HUFs may not provide clarity over control and strategy. Without a well-structured framework that goes beyond mere division of assets, the values, purpose, and identity of the enterprise get lost in translation.

“
Succession is not about leaving something behind. It is about passing something on.

– Ivan Lansberg

Contrast this with examples from other economies. In Europe and Japan, family firms that are two or even three centuries old continue to thrive because their founders treated succession not as a one-time event but as an ongoing process. They embedded governance mechanisms, drafted family constitutions, defined rules for ownership and leadership, and cultivated each generation as custodians of a legacy built on business, wealth and values. These measures ensured continuity not just of capital but of ethos. Governance mechanisms viz. family charters, family constitutions, family protocols enable smooth transition of business and management roles amongst family members.

“

You don't inherit the business from your parents; you borrow it from your children.

– Family business maxim

”

Indian families stand at a similar crossroads today. The question is whether to leave the future to chance — and risk watching hard-earned wealth and reputation dissolve in disputes — or to adopt a proactive, codified approach that secures both financial and cultural legacy. Succession planning, therefore, is not merely about distributing shares or assets; it is about creating continuity with clarity, fairness, and foresight. It is about ensuring that the entrepreneurial grit, values, and purpose of the first generation inspire and guide the third and fourth.

“

Wealth can be inherited, but stewardship must be taught.

– Anonymous

”

Through this publication, we hope to shift the narrative from seeing succession as an uncomfortable end-of-life conversation to recognising it as a strategic journey.

Succession today extends far beyond the distribution of assets. It encompasses leadership continuity, ownership architecture, governance, family alignment, and long-term stewardship. As Indian families expand in wealth, global footprint and complexity, succession planning must address two interconnected pillars i.e. asset succession (who ultimately owns the wealth) and business succession (who leads, who decides, and how the enterprise is governed).

This publication approaches succession as an integrated discipline, covering traditional mechanisms, modern structuring tools, global considerations, and the governance framework required to ensure continuity across generations.





Traditional approaches - Why familiar tools fall short

There is often a misconception that succession planning is relevant only for the ultra-wealthy. Whether one's estate consists of a family business, ancestral property, or modest savings, having a plan can spare loved ones from conflict and confusion.

In India, traditional tools such as Wills, Family Arrangements, and Hindu Undivided Families (HUFs) have long served as vehicles for transmitting wealth. Each of these mechanisms evolved to meet specific

cultural and legal needs, but the realities of modern life i.e. complex asset structures, global families, intergenerational wealth, and the rise of non-traditional family units, now test their limits.

Succession is not merely a legal formality; it is an exercise in foresight and governance. While there is no "one-size-fits-all" approach, understanding the scope and constraints of traditional instruments is essential before designing more contemporary frameworks.



Intestate Succession – When the Law Decides

Where a person dies without a valid Will, assets devolve by law known as 'intestate succession'. In India, this process depends on the deceased's religion and is primarily governed by the Hindu Succession Act, 1956, the Indian Succession Act, 1925, or personal laws for Muslims, Parsis, Christians etc.

Key features

Property devolves strictly as per the succession law applicable to the deceased's religion

Distribution follows a mandatory, predefined hierarchy of heirs

For Hindus, succession proceeds from Class I to Class II heirs, then to agnates and cognates

Rules differ for Hindu males and females, especially based on the source of property

Property vests automatically in legal heirs by operation of law on death



Limitations

Statutory rules may result in unequal or unintended distribution outcomes

Family dynamics, dependency, or contributions are not considered in allocation

Complex rules, especially for Hindu female succession, can create confusion or disputes

Does not ensure succession of wealth across generations

Offers no discretion to distribute the wealth, assets, etc to one heir over another

Ignores the deceased's intent or contribution of family members

Causes fragmentation of ownership, especially in businesses or immovable assets



Wills – The simplest yet the most contested tool

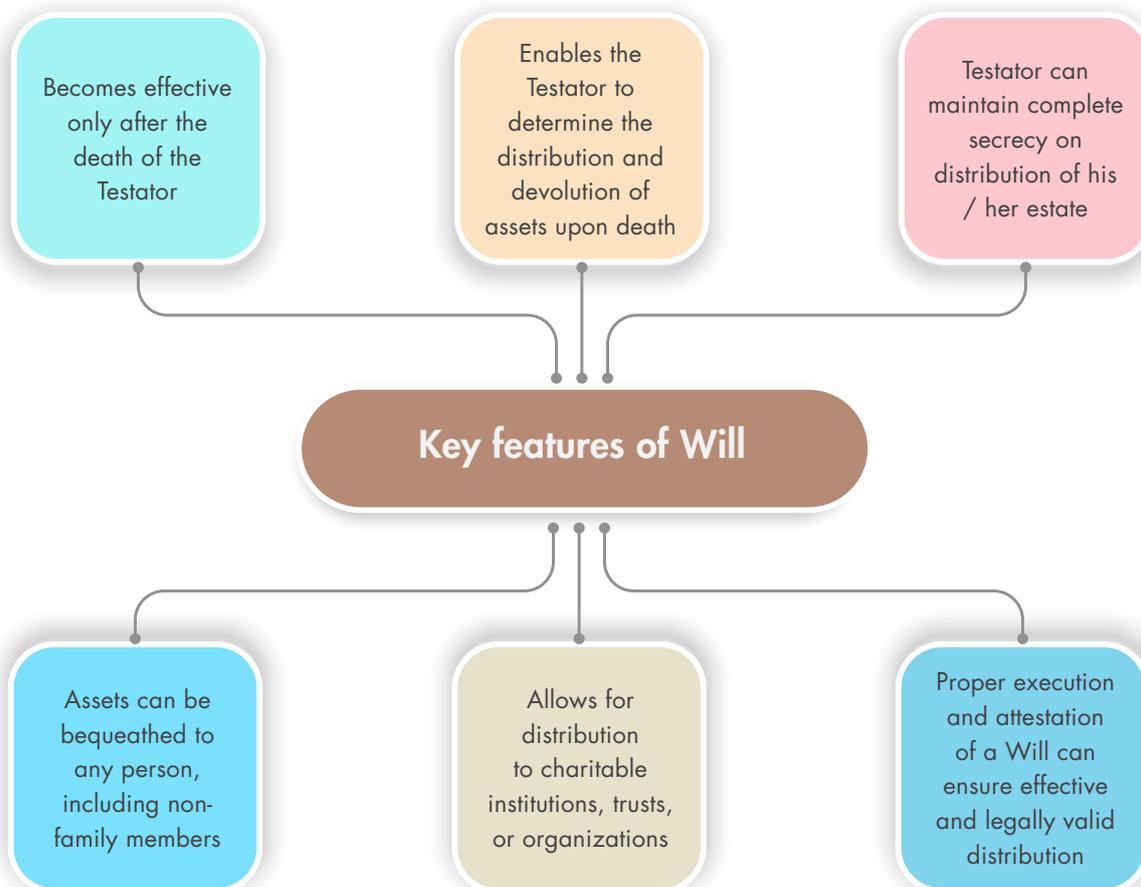
Wills remain the most common method of succession in India. A Will is a legal declaration by which a person (the testator) decides how his / her property should be distributed after testator's death. It allows flexibility – can be revised multiple times and need not be registered. It simply outlines the manner and proportion in which each asset owned by the testator is distributed to the beneficiaries posthumously.

However, simplicity often comes at the cost of certainty. Wills are vulnerable to be challenged on grounds of forgery, undue influence, lack of mental capacity or duplicity. There are number of instances where a Will has been challenged by family members, which

potentially eroded wealth as well as affected businesses and relationships alike, and such instances have been increasing by the day. The number of court cases around Wills across courts in India is eye opening.

While registration of a Will is not mandatory under the Registration Act, 1908, it enhances evidentiary value. Nonetheless, even a registered Will can be revoked by a later unregistered one.

Given that personal and financial circumstances evolve, it's advisable to revisit the Will every 3–5 years or upon key life events such as marriage, birth of a child, sale of business, migration, or acquisition of significant assets to ensure continued relevance and legal effectiveness.



Limitations

Often contested in court questioning legitimacy and validity, leading to uncertainty in succession

Does not ensure preservation of assets across generations

May be subject to inheritance tax exposure, if introduced

Offers no governance framework only a transfer mechanism

Could create rights in estate for minors or beneficiaries who may not have financial or emotional maturity to deal with the distributed estate



Nominations – Temporary custodianship, not a succession tool

Contrary to general belief, nomination does not allow for succession of the assets to the nominee, it merely provides for the nominee to act as a trustee of the asset in precedence to the execution of Will / intestate succession via which the estate devolves upon the legal heirs and beneficiaries. This limited legal standing often leads to confusion — many assume a nominee becomes the owner, which may not be the case. As courts have repeatedly clarified, nomination does not override succession law. Thus, nomination only helps fill the vacuum created on death until the Will is executed and not provide for vesting of rights in the asset to the nominee. Nevertheless, it remains effective when used in combination of other modes of succession.

Nominations are widely used in bank accounts, insurance policies, and demat holdings. They simplify

transfer logistics after death, but legally, a nominee is merely a trustee, not an owner. The ultimate ownership still rests with the legal heirs or beneficiaries under the Will, and if a person dies intestate, then as per succession laws.

Nominations therefore work best when used as interim tools, complementing other succession mechanisms. They prevent administrative disruption but do not ensure long-term continuity.

In nutshell, a mere nomination of the assets without formally placing any tools for succession, doesn't lead to an effective succession of the wealth.

Nomination may transfer possession, but not help achieve succession



Family arrangement – Preserving harmony, not always continuity

A family arrangement or settlement is an agreement among family members to avoid disputes, distribute property, or preserve peace. Indian courts have consistently upheld such arrangements as valid, provided they are bona fide and based on a pre-existing or potential claim. Family arrangement is sometimes used as a binding mechanism in addition to Wills. Family arrangements can help address specific situations to avoid disputes, discord, etc. but may fall short of being structured solutions for family succession.

As Halsbury's Laws of England defines it, it is "an agreement between members of the same family intended to be for the general benefit of the family, either by compromising doubtful rights or by preserving family property or peace."

It is a tool that enables the adjustment of, actual or perceived, imbalance of the wealth among the family members. Such an agreement assumes that there was a pre-existing title of the parties, and the agreement acknowledges and defines what title is or was. Every party to the family arrangement who benefits under it need not necessarily be shown to have a share in the property. All that is necessary to show is that the parties are related to each other and have a possible claim to the property, a claim or even a semblance of a claim on some other ground say affection.

Key features

Minimises litigation and preserves family relationships

Recognised by courts even without formal registration (if oral and bona fide)

Strong jurisprudence that helps defend levy of taxes and stamp duty

Limitations

Works best as a dispute resolution tool, not as a forward-looking plan

Fails to ensure asset preservation across generations

Often time consuming as it is difficult to get all family members on one page seamlessly due to different expectations

Hindu undivided family - Tradition under strain

The Hindu Undivided Family ('HUF') remains a uniquely Indian creation a joint family unit recognized under the Hindu customs and traditions and also under the tax law, where property is owned collectively by coparceners descended from a common ancestor. It historically served as a vehicle for pooling assets and managing ancestral businesses. An HUF comes into existence on marriage of a Hindu and settling of a property thereon. Every person that has a share in HUF is called a coparcener and individuals become co-parceners through

birth. Accordingly, each co-parcener automatically acquires equal rights in the property held by the HUF.

Ownership, possession and enjoyment of the property is conjoint under an HUF, thus it is impossible to earmark share in individual assets to the members of the family.

However, modern dynamics have eroded its practicality. Any coparcener can demand partition, triggering disputes or even business disruption.

Key features

Property can be transferred or acquired and held by the HUF during the lifetime of the family members

Distribution of HUF property upon partition is generally equal, though members may agree otherwise

Acts as a mechanism for pooling and preserving family wealth over generations

Limitations

Consent of every coparcener is required for unequal partition

Any coparcener can demand partition, potentially leading to family disputes or business disruption

Karta, typically the eldest male member, exercises dominant control, which may cause friction if younger members are more active in family business and wealth management

Wealth cannot be distributed to non-coparceners (e.g., daughters-in-law, distant relatives, or trusted outsiders)

Since HUF is not a codified law but a practice recognized by Hindu / Indian customs, its understanding and acceptance lacks clarity commensurate for effective business and asset succession

Why traditional tools may no longer be enough?

Conventional succession tools answer the question of who inherits, but they often fall short of addressing equally critical issues of wealth protection, governance, and continuity across generations.

Limitations

Some of the structural limitations of these conventional succession tools include the following:

Limited Protection Against Contingencies

These instruments primarily operate upon death or in straightforward family settlements. They do not typically shield family wealth from risks that may arise during the lifetime of the asset holder, such as:

- family breakdowns (separation or divorce),
- business distress, and
- operational contingencies

Limited Multi-Generational Structuring

Traditional tools usually facilitate a one-time transfer of ownership, but provide limited mechanisms to manage or preserve wealth across multiple generations or to regulate how assets are subsequently managed

Absence of Asset Protection Mechanisms

In most cases, these instruments do not create protective legal barriers around assets. As a result, the estate may remain exposed to creditor risks, personal liabilities, or financial distress affecting family members

Limited Governance and Control Framework

While they determine who receives assets, traditional instruments generally do not establish frameworks for governance, stewardship of family businesses, or dispute-prevention among beneficiaries

Exposure to Future Fiscal Changes

These arrangements may also offer limited protection against future fiscal policy changes, such as the possible introduction of estate or inheritance taxes

The Need for More Integrated Structures

As family wealth becomes more complex — often involving business holdings, diverse asset classes, and multi-generational participation — succession planning increasingly requires structures that combine ownership, protection, governance, and continuity.

In this context, Private Trusts are often considered a more comprehensive vehicle, as they can integrate succession planning with asset protection, governance mechanisms, and long-term stewardship, while allowing greater flexibility in structuring and retaining control over family assets.



Private trusts – The modern succession
toolkit

Why a trust: Advantages over traditional tools

Unlike a Will, which only operates post-death and can be litigated, irrevocable trust transfers take assets out of the settlor’s direct ownership and can prevent creditors from reaching the trust corpus, subject to anti-avoidance scrutiny (i.e., IBC look-back rules). This ring-fencing is a key reason promoters should place personal wealth into trusts.

Trusts enable seamless, private succession avoiding the procedural delays and possibility of public scrutiny emerging from public court proceedings that often follow Wills. This reduces business disruption at critical times.

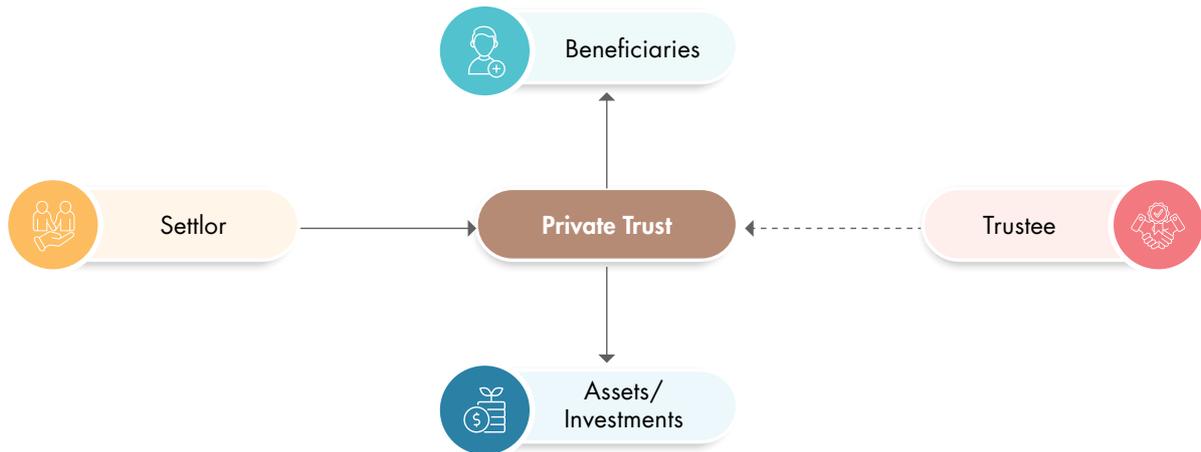
Trust deeds encode distribution policies, voting direction, buy-sell rules, trustee appointment/removal mechanics, and link directly to the Family Constitution so rules are binding and operational unlike informal family arrangements. Trustees, protectors, advisory committees and trust constitutions together form an enforcement and oversight mechanism. Discretionary trusts provide trustee flexibility to respond to beneficiary needs and changing circumstances, while specific trusts provide certainty where fixed shares are preferred. Trusts preserve confidentiality which is critical for families that value private governance.

The following matrix evaluates each succession instrument across eight critical dimensions

| Dimension | Will | HUF | Family Arrangement | Nomination | Private Irrevocable Trust |
|----------------------------------|---------------------|----------------|--------------------|----------------|---------------------------|
| Asset Ownership Transfer | On death only ✓ | During life ✓ | Agreed basis ✓ | No ownership ✗ | Room for flexibility ✓✓ |
| Creditor Protection | None ✗ | Minimal ✗ | None ✗ | None ✗ | Strong ✓✓ |
| Multi-Gen Continuity | One-time event ✗ | Pooling only ✓ | One-time event ✗ | None ✗ | Strong ✓✓ |
| Governance Framework | None ✗ | Very limited ✗ | None ✗ | None ✗ | Comprehensive ✓✓ |
| Tax Efficiency | Moderate ✓ | Moderate ✓ | Good ✓ | Neutral ✓ | Structured ✓ |
| Litigation Risk | High ✗ | Moderate ✗ | Low if bona fide ✓ | Low ✓ | Low ✓ |
| Cross-Border Utility | Limited ✓ | India-only ✗ | Limited ✓ | None ✗ | Strong ✓✓ |
| Privacy / Confidentiality | Can become public ✗ | Private ✓ | Private ✓ | Private ✓ | Fully private ✓✓ |

✓✓ Strong capability ✓ Adequate capability ✗ Absent or insufficient

Trust anatomy



Settlor / Contributor

The person (or entity) who establishes the trust and settles assets. After settlement, assets typically cease to belong to the settlor (in an irrevocable trust). Settlor / Contributors can later top up the corpus



Trustee

Holds legal title and administers assets per trust deed. It's a fiduciary duty backed by law. Trustees can be individuals, family trustee companies, or professional trustee firms



Beneficiaries

The economic beneficiaries entitled to income or capital as prescribed by the deed. Beneficiaries do not have legal ownership; their rights are contractual and equitable



Protector

Optional supervisory role often used in commercially-oriented private trusts to oversee trustees and preserve settlor intent. It's not a statutory role under Indian trust law but common in cross-border/modern private trust designs



Advisory / Investment Committee

Its not compulsory, but best practice for larger trusts, which provides investment guidance and family interface

Basic trust types

Revocable Trusts

Settlor retains power to revoke/control during lifetime; useful for managed handovers but limited creditor protection.

Irrevocable Trusts

Settlor cedes ownership. It provides strong protection and succession clarity but less flexibility.

Specific (Determinate) Trusts

Beneficiaries and their share defined upfront - legal certainty and simpler tax profile in some cases.

Discretionary (Indeterminate) Trusts

Trustee has distribution discretion. This allows flexibility to adapt to changing beneficiary needs, but carries need for careful tax and administration consequences.



Key Indian regulatory & tax considerations

Succession planning through private trusts in India requires a nuanced understanding of tax, regulatory, insolvency, securities, stamp duty, and FEMA rules. The legal and tax consequences operate across three stages i.e. settlement of the trust, accrual of income within the trust, and distribution to beneficiaries.

Income-tax Considerations

At the Time of Settlement

Transfers to a private trust generally constitute a “transfer” for capital gains purposes, though treatment varies by trust type. Transfers to an irrevocable trust created by an individual or HUF are currently exempt and do not trigger capital gains. For revocable trusts, the law does not expressly provide an exemption, but possible to take a view that no “transfer” occurs because the settlor retains control. Separately, under Section 56(2) (x), receipt of assets without consideration is taxable, but transfers to a trust exclusively for the benefit of the settlor’s “relatives” are exempt; inclusion of even one non-relative or even a mere power to include a non-relative could potentially negate the exemption.

Taxation of Trust Income

Taxation depends on whether the trust is revocable or irrevocable, and within irrevocable trusts, whether they are specific or discretionary. In revocable trusts, all income is taxed directly in the hands of the settlor. In irrevocable trusts, trustees are assessed in a representative capacity, mirroring the tax profile of beneficiaries.

Specific trusts (beneficiary shares defined): income is taxed at slab rates if there is no business income; if business income is involved, taxation applies at the Maximum Marginal Rate (MMR) except for certain Will-based trusts for dependent relatives.

Discretionary/indeterminate trusts (beneficiary shares undefined): income is generally taxed at MMR, but slab rates may apply if all beneficiaries fall below the basic exemption. The Supreme Court has upheld Revenue’s ability to tax either trustees or beneficiaries when income is distributed in the same year.

Distribution to Beneficiaries

Though there is no specific exemption under the Income Tax laws, however, it is possible to take view that where income has already suffered tax in the hands of trustees or beneficiaries, subsequent distribution to beneficiaries should not constitute a taxable event. Similarly, it is possible to take view that any distribution of asset to beneficiary should not be taxable either in hands of trustees or beneficiaries, as the trustees are holding such asset in fiduciary capacity for beneficiaries.

However, in case of offshore trusts, while this view can be taken, judicial precedents have held otherwise

Definition of “Relative” & MMR

The scope of “relative” includes the individual’s spouse, siblings (including spouse’s and parents’ siblings), lineal ascendants/descendants of the individual or spouse, and spouses of all such persons.

MMR is the rate applicable to the highest income slab (30% plus surcharge and cess). Judicial precedent clarifies that concessional-rate income (e.g., capital gains, dividends) must retain its special tax rate even when computing MMR, and surcharge applies based on relevant slabs, not automatically at the highest rate.

Insolvency & Bankruptcy Code, 2016 (IBC)

The IBC allows creditors to initiate insolvency proceedings against personal guarantors, making it essential to evaluate the treatment of trust assets where a settlor / contributor has provided guarantees. Properly constituted trust assets are generally insulated from the settlor’s personal insolvency, as ownership vests in trustees. However, the IBC contains robust anti-abuse safeguards. Transfers without consideration including trust settlements made within the two-year lookback period may be scrutinised and set aside if found to defraud creditors or made shortly before insolvency. In such cases, assets may be reversed into the insolvency estate.

Stamp Duty Implications

Stamp duty considerations arise at three stages, i.e., execution of the trust deed, settlement of assets into the trust, and distribution. Stamp duty on settlement of trust is charged based on the market value of assets with immovable property attracting higher conveyance rate (generally 5%-8%, state-specific). Post-settlement transfers also attract duty as independent conveyances. Transfers of securities attract 0.015% central stamp duty when executed for consideration; settlements without consideration may be exempt. Several states provide concessional or nominal duty on distribution from the trust to beneficiaries, but this too varies.

SEBI Regulations

Where the estate includes controlling shares of a listed company, SEBI's Takeover Regulations become critical. An open offer is triggered on breaching thresholds such as acquisition of 25% voting rights, annual acquisitions of 5% post-25%, or indirect control acquisitions. Although exemptions exist for inheritance and certain inter-se promoter or "relative" transfers, transfers to private family trusts are not automatically exempt. Families often seek SEBI exemption, subject to stringent conditions e.g. only individual promoters or their immediate relatives or lineal descendants acting as trustees and beneficiaries, no delegation of trustee powers, no multi-layered trust structures, three years of promoter disclosure history, and non-transferability of beneficial interests. An alternative contentious interpretation is that a SEBI exemption may not be necessary for transfers of shares to a family trust in cases where promoters continue to exercise control as trustees. Since the Takeover Code is activated only when there is a change in control or voting power, and such transfer does not alter either element, the transaction arguably falls outside the charging framework.

Under the ICDR Regulations, shares acquired within 12 months before filing a draft offer document cannot be offered for sale; accordingly shares transferred to a trust within this period are ineligible for OFS.

It is also imperative to evaluate whether any arrangement under the trust deed or the family constitution that imposes any embargo or restriction on the management or operations of a listed company triggers a disclosure requirement under the LODR Regulations.

NBFC Regulations

Under RBI rules, any acquisition or transfer of 26% or more of the equity capital of an NBFC whether directly or through incremental increases requires prior approval. Since trustees become legal owners of shares settled into a trust, such settlement may be viewed as a change in control, even if beneficial ownership within the family remains unchanged. RBI does not distinguish succession-related restructuring from commercial acquisitions, making approval a practical necessity. Recent announcements suggest a possible proactive change in RBI stance on this critical aspect.

Competition Law

Under the Competition Act, acquisitions exceeding prescribed asset/turnover thresholds require prior CCI approval where "control" may be acquired through voting rights or management influence. Succession-related trust settlements usually do not alter control, but the Act contains no explicit exemption, resulting in interpretational risk. To mitigate any uncertainty, it's pertinent to evaluate applicability of the merger-control regime on contributing assets in a private trust.

Exchange Control Regulations (FEMA)

FEMA considerations are critical where assets or beneficiaries are cross-border. FEMA does not treat private trusts as separate legal persons and provides no specific succession-related rules, resulting in divergent interpretations. In practice, RBI approval is needed at the time of distribution, since beneficiaries receive no assets at settlement. For discretionary trusts with both resident and non-resident beneficiaries, some argue FEMA should not apply at settlement because vesting is uncertain; this does not extend to determinate trusts or trusts with exclusively non-resident beneficiaries.

Distribution of assets: There continues to be ambiguity on whether distributions to non-resident beneficiaries should be subject to the USD 250,000 LRS limit, the USD 1 million limit applicable to non-resident individuals, or whether the income received by the non-resident beneficiary should simply retain the character of the income distributed by the Trust and, accordingly, be repatriable from the beneficiary's NRO account depending on whether it constitutes capital income or current income.

Thus, considerations remain manifold and warrant careful evaluation for establishing robust and compliant trust structures.



Practical trust architecture

In practice, families adopt a range of trust structures depending on their size, internal dynamics, long-term objectives, and the extent to which they wish to segregate business interests from personal wealth. These structures are also influenced by regulatory considerations and the need to ensure clarity in management and control. Set out below are some of the commonly adopted models:

Single-Layer Trust Structure

This is the simplest form, where one trust is created with the entire family as beneficiaries. It is most suitable for smaller families or where there is a single child, as it centralises both ownership and control within one vehicle. The structure offers ease of administration, unified governance, and efficient oversight of family assets

Multi-Layer Trust Structure

Under this model, wealth is first consolidated in a primary trust, and the beneficiaries of this trust are multiple downstream private trusts created for individual family branches. While overall ownership remains centralised, each branch retains autonomy to manage its internal affairs through its own trust. This structure is generally preferred when multiple children or family units wish to operate semi-independently while preserving collective control. This structure also provides for multi-generational succession planning

Parallel Trust Structure

Here, two or more independent trusts are established simultaneously, each holding a defined share of the family wealth. It is typically adopted when the family comprises separate branches and there is no common individual who can act as settlor, or when clarity of ownership is a priority. Although each trust functions independently, families may still create joint decision-making mechanisms for matters of shared interest

Cross Trust Structure

In this arrangement, the husband settles a trust for the benefit of his wife and children, and the wife settles another for the husband and children. It allows each spouse to enjoy benefits of some portion of family wealth and also ring-fence and allocate assets in a mutually aligned manner without needing a common settlor



Global families and cross-border succession

In an increasingly globalised world, families often hold assets and maintain personal, business, and residency footprints across multiple jurisdictions. This complexity makes cross-border succession planning an essential component of any robust estate strategy. Determining the applicable law of succession, understanding exposure to foreign inheritance or estate taxes, ensuring recognition of Wills or trusts, and assessing the impact of the citizenship or residency status of beneficiaries all become critical.

A well-designed cross-border succession plan anticipates these challenges, i.e., ensuring that the transition of wealth is legally compliant, tax-efficient, and free from avoidable disputes. It safeguards family assets across generations while maintaining flexibility for evolving family needs.



Key considerations in cross-border succession planning

Exchange Control Regulations

Exchange control rules significantly influence the transfer and inheritance of assets across borders. Many countries impose restrictions on remittances, repatriation of funds, ownership of local assets by non-residents, or transfers to foreign beneficiaries. These limitations directly impact the design and implementation of Wills and trust structures.

For heirs residing outside the home jurisdiction, receiving or repatriating inherited assets may require regulatory approvals or may be bound by monetary caps. Therefore, a thorough analysis of exchange control regulations in each relevant jurisdiction is fundamental to creating an effective and compliant succession plan.

Income Tax Laws

Income tax considerations shape both the legal architecture and financial efficiency of a succession plan. It is important to evaluate the tax implications in the jurisdiction of the donor/testator, the jurisdiction of the recipient or beneficiary, and the jurisdiction where the assets are situated.

Income tax rules influence the choice of jurisdiction for holding structures, the use of trusts, and the mode and timing of transfers. Additionally, planners must evaluate the taxability of income derived from such assets in both source and residence jurisdictions, the availability of foreign tax credits, and the application of tax treaties. For example, what works from an Indian tax standpoint for estate planning in India, may not work in like and same manner in USA, which involves a typical concept of grantor and non-grantor trust.

Inheritance Tax and Estate Duty

While India does not currently levy inheritance tax or estate duty, many advanced economies including the

United States, United Kingdom, France, and Germany continue to do so. Such taxes materially influence the preferred jurisdiction for holding assets, whether assets should be held personally or via trusts, and whether lifetime gifting is preferable to testamentary transfer. This makes early evaluation essential for families with global wealth exposure.

Forced Heirship Rules

Several civil law countries impose forced heirship requirements that reserve statutory shares of a deceased's estate for close family members such as spouses, children, or parents. These mandatory provisions may override foreign Wills or trust arrangements, causing asset fragmentation, litigation, or unintended tax consequences.

For families with assets in forced-heirship jurisdictions, succession strategies must be designed to comply with local laws while aligning with long-term family goals.

Registration and Governance Regulations

Each jurisdiction has its own legal requirements around drafting, registering, and administering Wills and trusts. Key considerations include:

- whether a Will must be locally registered,
- whether multiple Wills (one per jurisdiction) are preferable over a global Will,
- whether trustees must be locally licensed or approved,
- confidentiality and information-sharing obligations, and
- probate timelines and processes.

Hence, families with overseas ties in terms of wealth or family members, should plan around succession planning with all these considerations.



Business succession – Passing the baton

If the transfer of wealth is about preservation, the transfer of business is about perpetuation.

While estate planning seeks to ensure who owns, business succession determines who leads. One concerns assets; the other, the enterprise that creates them. Yet both are inseparable, because a thriving business without a leadership plan can quickly erode, and wealth without continuity of stewardship is often short-lived.

Across India, over 80% of businesses are family-owned, contributing nearly 70% to the GDP, 60% of total employment, and one-third of market capitalisation. Many of these enterprises are now in their second or third generation, and nearly two-thirds are confronting the same pressing question who will carry the legacy forward? Hence, it's paramount to have a robust framework for business succession.

The generational challenge — From founders to custodians

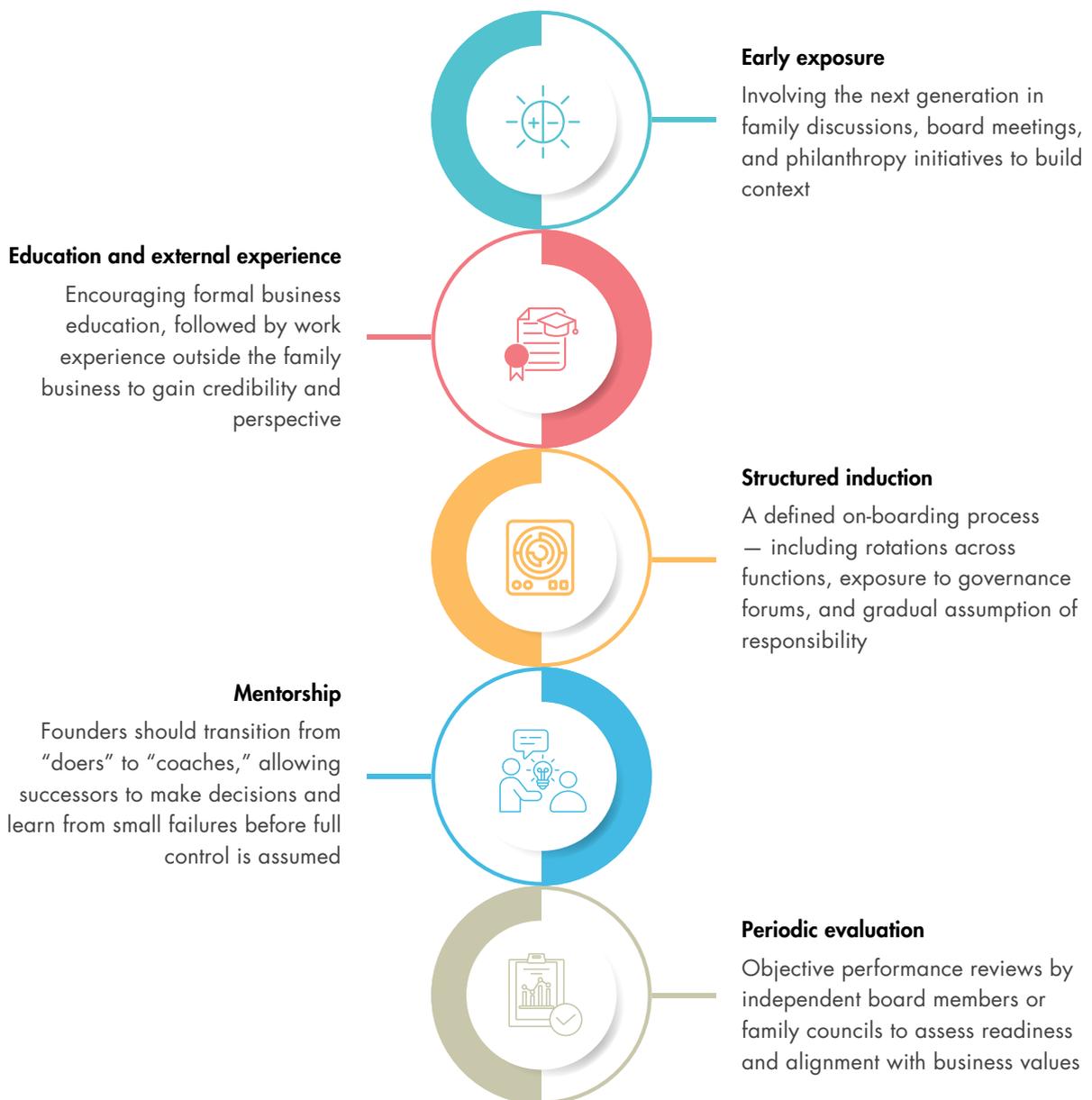
First-generation entrepreneurs typically build businesses through instinct, agility and personal relationships. The next generation, however, inherits not just a company but a context — shaped by scale, regulatory complexity, investor expectations, and digital transformation. The skillset required to preserve entrepreneurial spirit while institutionalising governance is far more nuanced.

Unlike wealth succession, where assets can be distributed, business succession is indivisible. You cannot “bequeath” management wisdom or leadership judgment; they must be cultivated and harnessed. This is where most transitions falter — when founders mistake control for continuity. The emotional reluctance to let go, combined with the younger generation's differing ambitions, often leads to leadership vacuums or fragmentation.



Grooming the next-gen leaders — Building competence, not entitlement

Sustainable family enterprises treat succession as a continuum of development, not an abrupt event. Grooming the next generation requires intentional planning long before transition becomes necessary. Best practices include:



This process ensures that leadership is based on merit, preparedness, and commitment, not simply lineage.

Minimising conflict — Designing structures for harmony

Conflict is inevitable in any multi-generational setup. The key is to design systems that resolve disputes without destabilising the enterprise. Effective mechanisms include:

- Pre-agreed dispute resolution clauses in family charters, with escalation to mediation before litigation
- Independent family business advisory councils to facilitate dialogue and evaluate competing claims
- Buy-sell or exit arrangements — defining the procedure and valuation method if a member wishes to exit ownership or management
- Clear communication and transparency on financial performance, dividends, and decision-making processes
- Periodic family retreats or facilitated dialogues to realign vision and rebuild trust

The goal is not to eliminate disagreement but to institutionalise respect and process around it, so that business continuity is never held hostage to personal conflict.



Setting the criteria — Who should lead?

A fundamental question for every family business is: Should leadership be by right, by rotation, or by merit? Modern family enterprises globally and in India are moving toward criteria-based succession. A few guiding parameters include:

- Capability and contribution: Proven track record in business growth, innovation, or operational excellence
- Alignment with family values and long-term vision
- Emotional maturity and ability to manage conflict.
- Commitment to the enterprise — demonstrated through sustained involvement rather than episodic interest

- Peer and board acceptance — leadership must inspire both family and professional teams

Where multiple family members are equally qualified, structured mechanisms such as succession committees or independent family business boards can help in evaluation and recommendation, thereby reducing bias and personal friction. Families also focus on providing mentorship to inculcate capabilities and fill gaps to groom next gen leaders



Governance, not just ownership — The missing link

Modern family businesses increasingly recognise that ownership without governance is fragile. A well-structured Family Charter or Constitution acts as a moral and operational compass: defining roles of family members, criteria for employment, decision-making protocols, distribution policies, and conflict resolution mechanisms. Global best practices suggest establishing three distinct but interlinked forums:



Family Council

to address family values, roles, and education



Board of Directors

to ensure strategic and fiduciary oversight



Management Team

to run day-to-day operations

This “three-circle model” of Family, Ownership, and Business helps ensure that personal dynamics do not override professional priorities. In India, however, many promoter groups still blur these boundaries — leading to confusion when leadership transition becomes imminent.



Professionalising the family business — Balancing emotion and efficiency

Professionalisation is often mistaken to be synonymous with losing control. When; it is about creating systems that outlive individuals. The most successful Indian family enterprises — from Murugappa Group and Godrej Group to TVS Motor Company Limited and Marico Limited — have institutionalised processes, appointing professional experts, and embraced performance-linked governance while retaining core family stewardship. Key pillars of professionalisation include:

- Clear separation between ownership and management. Family members must qualify to join the business, not inherit roles by default
- Defined succession criteria. Leadership should be merit-based, with clear timelines and mentoring by the outgoing generation
- Independent oversight. Inclusion of external directors and professional CEOs brings objectivity, market credibility, and stability
- Accountability mechanisms — Formal performance reviews and board evaluations ensure transparency

The transition to full or partial professional management must be deliberate — blending emotional continuity with managerial competence. Founders should ideally look to blend professional management with family managers.



Transitioning to external leadership — When legacy meets institutionalisation

For many maturing Indian businesses, the natural evolution is towards external leadership — particularly when the next generation lacks interest or capability, or when investors demand institutionalisation. Transitioning to non-family CEOs, however, requires careful calibration:



Clarity of mandate

The external leader must know the extent of autonomy and the boundaries of promoter influence.



Cultural onboarding

Understanding family values and legacy is as critical as financial or operational performance.



Communication

The transition must be transparently conveyed to employees, investors, and partners to avoid perception of instability.



Alignment

Compensation and incentive structures should tie performance to long-term value, not short-term profit.

Many global family businesses — from Ford Motor Company to Samsung and Hermès — have successfully institutionalised professional CEOs while retaining family control through holding structures or trusts. In India too, groups like Infosys, Wadia, and Mahindra illustrate that professional leadership can coexist with family stewardship when trust, structure, and governance are in balance.



Tax and regulatory dimensions of business succession

Beyond governance, succession planning for a family business requires rigorous tax and legal structuring. The transfer of shares, control, and management rights can trigger implications under the Income-tax Act, Companies Act, FEMA, Competition Act and SEBI regulations (in case of listed entities). Key considerations include:



A well-designed business succession plan should, therefore, integrate tax efficiency, control continuity, and compliance readiness; ensuring that transitions are smooth both within the family and before regulators.

The path ahead — Legacy through leadership

Ultimately, business succession is not an event but a process — one that demands time, transparency, and trust. The most resilient family businesses view succession not as a transfer of power, but as a transfer of purpose.

Whether leadership stays within the family or transitions to external professionals, the foundation must rest on governance, clarity, and continuity. As India's entrepreneurial landscape globalises, the measure of true legacy will no longer be who owns the business — but whether the business can be institutionalized and whether it can thrive beyond its founders.

These leadership and ownership transitions cannot be sustained through informal understandings alone. Families increasingly require a structured governance architecture. A Family Constitution, a Family Office, and where appropriate, a Family Coach is required, to institutionalise decision-making, preserve values, and reduce the risk of fragmentation. These governance tools transform succession from a one-time event into a durable, inter-generational process.



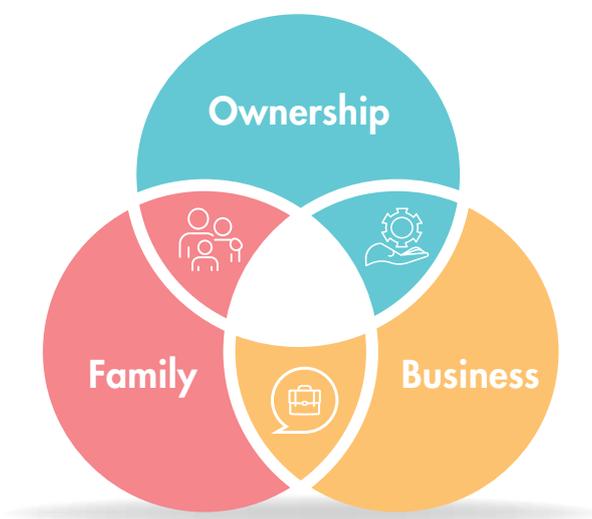


Family Constitution and Governance

As Indian family businesses expanded across sectors, geographies, and generations, the need for structured governance becomes unavoidable. What begins as a founder-driven enterprise soon transforms into a multi-branch, multi-interest ecosystem where alignment cannot be assumed and unity cannot be informal. Experience shows that families rarely break because of external threats, but they fracture from within when expectations

diverge, communication erodes, or decisions lose legitimacy. A Family Constitution, supported by well-designed governance structures, acts as the anchor that preserves cohesion, clarifies roles, and provides a predictable framework for decision-making.

The Family Governance needs to address the context of various members who could be covered under one or more of these circles:



The roles, responsibilities and expectations of people within the different circles can be and are different. Their relationship with and influence over other members in their respective circle as also with others who have different or overlapping roles / multiple roles often form the root of all conflicts. Clarifying the roles, responsibilities, expectations of people in the various circles and managing them sums up the essence of Family Governance.

While wealth succession determines - who gets what, business succession must also address who decides what, who leads, who owns, and how the family behaves as a collective stakeholder.

A Family Constitution is not a legal document in the traditional sense; it is a charter of values, rights, and responsibilities. It transforms unspoken assumptions into explicit agreements and helps ensure that relationships remain stronger than individual ambitions.

The world's most enduring family enterprises — in Europe, the Middle East, and East Asia — uniformly rely on such constitutions. In India too, the most stable multi-generational business groups are those that institutionalised governance early. The absence of such frameworks, on the other hand, has contributed to fragmentation, prolonged disputes, and erosion of business value across many Indian families. A constitution therefore functions not merely as a communication tool, but as an intergenerational blueprint for stewardship.

Why a family constitution matters

At its core, a Family Constitution addresses a simple truth: families evolve faster than businesses. As the family tree expands, the business can no longer rely on oral traditions, founder charisma, or informal balancing of expectations. Differences arise naturally — in capability, involvement, economic needs, and risk appetite. The Constitution becomes the mechanism that transforms these differences from sources of conflict into drivers of clarity.

A well-crafted Constitution offers four critical benefits:

Clarity of Purpose

It articulates the shared vision, mission, and long-term goals of the business and the family's role in it — ensuring that wealth, control, and legacy do not drift at the mercy of circumstances.

Predictability in Decision-Making

Defined rules on leadership succession, ownership transfer, dividend policies, and involvement criteria reduce ambiguity and eliminate ad-hoc responses to sensitive issues.

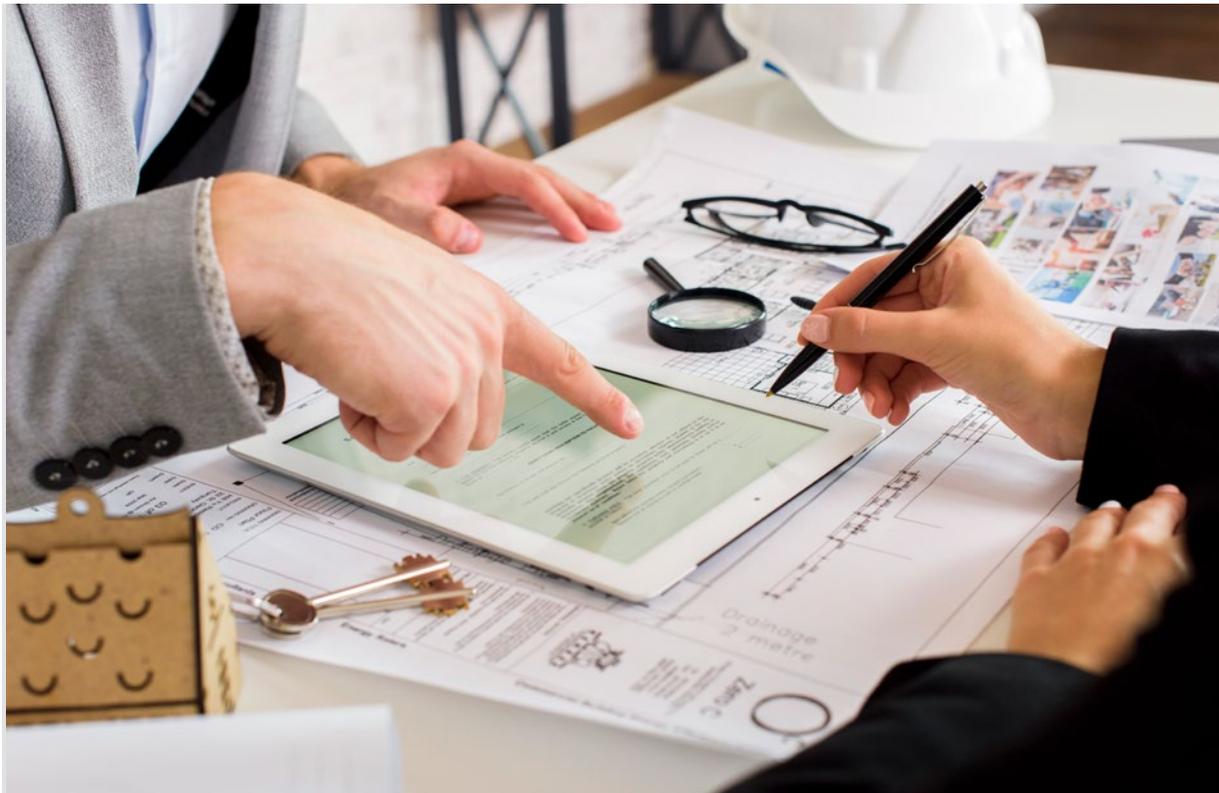
Prevention of Disputes

By specifying rights and obligations, a constitution helps preempt misunderstandings that often escalate into legal conflict.

Continuity Across Generations

It preserves institutional memory — the values, practices, and commitments that built the enterprise — ensuring that each generation receives not only assets but also a governance philosophy.

In short, a Family Constitution creates a bridge between the emotional nature of family relationships and the rational needs of business continuity.



What a family constitution typically covers

Although every family is unique, enduring family constitutions across the world are built on a set of common pillars that convert unspoken expectations into stable, intergenerational governance.

At the foundation lies a clear articulation of the family's values, vision, and purpose — the principles on which the enterprise was created, the ethos the family seeks to preserve, and the aspirations it holds for future generations. This shared philosophy anchors the constitution and distinguishes stewardship from mere ownership.

Equally important are the rules governing ownership and transfer of shares, which protect the business from fragmentation as the family tree expands. Constitutions typically specify who may hold equity, the conditions for transfers, valuation norms for buy-outs, and rules for distinguishing inherited from self-acquired business interests. These guardrails ensure stability of control even as generational complexity increases.

A robust charter also clarifies the roles and responsibilities of family members, recognising that not all will work in the business, but all must act in alignment with the enterprise's interests. Expectations for active and non-active shareholders, entry qualifications, conduct standards, retirement norms, and conflict-of-interest safeguards help prevent entitlement and preserve professionalism.

The constitution's core is its leadership and succession framework, detailing how future leaders are identified, what eligibility and performance benchmarks apply, and how transitions will be managed. Some families explicitly allow for non-family professionals as potential CEOs, reflecting a commitment to competence over birthright. These structured pathways bring predictability and reduce emotional friction around leadership decisions.

To operationalise these principles, constitutions establish governance structures such as the Board of Directors with independent members, a Family Council to address family matters, an Owners' Council for shareholder issues, and a larger Family Assembly for communication and engagement. These bodies help separate business decisions from family dynamics while ensuring every voice is heard through appropriate forums.

Given that economic matters often trigger the sharpest conflicts, charters also spell out clear policies on dividend distribution, liquidity events, and management of family assets — including protocols for joint expenses, access to family office services, and mechanisms for shareholders needing liquidity. Such clarity reduces misunderstanding and builds long-term trust.

Recognising that disputes are inevitable, effective constitutions incorporate pre-agreed dispute resolution mechanisms, including mediation norms, internal grievance processes, and arbitration pathways, often supported by external neutral advisors. These frameworks help resolve conflicts privately and efficiently, protecting both relationships and reputation.

Finally, many families view shared philanthropy and social responsibility as a unifying force. Constitutions often capture long-standing charitable commitments or outline how collective giving will be managed, reinforcing a sense of purpose beyond business or wealth.

Together, these elements form a holistic governance architecture that preserves unity, strengthens stewardship, and provides every generation with clarity on rights, responsibilities, and the family's shared vision for the future.

Governance structures that bring the constitution to life

A constitution is only as effective as the bodies that enforce it. Preparing the Family Constitution is good starting point, living it and evolving it to address family dynamics is the key. Leading family enterprises implement the following structures:



Family Council

A representative body (often 5–9 members) that acts as the interface between family and business. It manages family policies, education and development of next-gen, communication and dispute management



Board of Directors

Including independent directors to ensure professional management, objectivity, and accountability



Owners' Council

Focused on ownership matters such as capital allocation, valuations, shareholding changes, and long-term strategic direction



Family Office

A centralised entity that manages investments, taxation, succession documents, wealth consolidation, and risk oversight

Together, these structures institutionalise what was earlier dependent on informal understandings between the family members.



When should a family create a constitution?

While many assume a constitution is needed only when complexity arises, the best time is early — before friction emerges. Typically, the trigger points include transition from first to second generation, business diversification, multiple family branches entering the business, desire to professionalise management, onset

of early disagreements, creation of a family office or large common assets etc.

A proactive constitution is always more effective than a reactive settlement.



Conclusion — Institutionalising legacy, not just wealth

A Family Constitution is the invisible scaffolding that supports a multi-generational enterprise. It transforms emotional bonds into structured relationships, channels individual aspirations into collective continuity, and prepares the family for the inevitable complexity that comes with scale.

For families that wish to preserve unity, protect enterprise value, and manage succession without conflict, a constitution is not merely an option — it is an imperative.



Self-Assessment Checklist

There are no right or wrong answers. This is designed to surface the questions that families should address, if not done already, and to understand where to focus.

SECTION A — Asset Succession

- I have a private trust structure in place (for at least a portion of my personal wealth)
- My trust structure has been reviewed by a tax advisor against current income-tax, FEMA, and IBC provisions
- I have a documented digital asset inventory with access credentials that my trustee or executor can access
- I have a current Will, reviewed within the last 3 years
- My Will has been reviewed in light of any recent key life events (marriage, birth, sale of business, significant acquisition)
- My nominations across all bank accounts, demat accounts, and insurance policies are current and consistent with my overall plan
- I have addressed succession of cryptocurrency and other digital assets specifically

SECTION B — Business Succession

- I have identified a successor (family or professional) for my primary business leadership role
- My successor is actively being groomed through a structured programme — not assumed to be 'ready'
- There is a formal, independent Board in place for my primary operating company
- The criteria for family members joining the business are documented and agreed — not assumed
- There is a buy-sell agreement in place between promoter families (if applicable), with a funding mechanism
- SEBI Takeover Cosssde implications have been reviewed for any planned transfer of shares to a trust
- The FEMA implications of my family structure (including any non-resident family members) have been mapped

SECTION C — Family Governance

- My family has a written Family Constitution or is in the process of drafting one
- There is a functioning Family Council with defined membership and a regular meeting cadence
- Distribution policy and liquidity mechanisms are documented and understood by all key family members
- There is a pre-agreed dispute resolution mechanism, with escalation steps, in our family governance documents
- The next generation is involved in family governance in some capacity (council membership, observer status, philanthropy committee)
- We have engaged, or considered engaging, a professional Family Coach to facilitate difficult conversations

SECTION D — Global & Future-Proofing

- The succession implications of family members resident outside India have been specifically addressed
- Foreign assets (property, investments, business interests) have been reviewed under the relevant jurisdictions' laws
- My succession plan has been reviewed for potential inheritance/estate tax exposure in countries where family members reside
- My plan has been stress-tested against the possible reintroduction of estate or inheritance tax in India





About Dhruva Advisors

Dhruva Advisors India Pvt. Ltd., a Ryan LLC affiliate, is a leading tax and regulatory advisory firm delivering high-impact solutions across India and key global markets. In a rapidly evolving tax environment, we help clients navigate complexity with clear, practical, and insight-driven guidance.

Founded in 2014, Dhruva has grown into one of India's most respected tax firms, operating from 12 offices across India and international locations in Dubai, Abu Dhabi, Saudi Arabia, and Singapore. Our leadership team includes 24 Partners, 8 Senior Advisors, 15 Associate Partners, and 50 Principals, supported by nearly 500 professionals with deep technical expertise and a strong commitment to client outcomes.

Dhruva Advisors has been consistently recognized by International Tax Review, earning the 'India Tax Firm of the Year' award for five consecutive years (2017–2021) and maintaining a 'Tier 1' ranking through 2026. These accolades reflect our focus on accountability, innovation, and a client-first mindset.

Our expertise spans tax disputes, global structuring, advisory, and regulatory strategy. We support clients across industries including Aerospace & Defense, Agro & Chemicals, Automotive, Conglomerates, Education, Energy & Resources, Financial Services, Healthcare, IT & ITeS, Manufacturing, Pharma & Life Sciences, Private Equity, Real Estate, Transportation, Telecom, and Media.

Wherever tax complexity exists, Dhruva delivers clarity.

Our recognitions

Dhruva Advisors has consistently been ranked as 'Tier 1' firm in General Corporate Tax, Indirect Tax, and Transfer Pricing, maintaining top-tier rankings through 2026.

Awarded 'India Tax Firm of the Year' at the ITR Asia Tax Awards for five consecutive years (2017–2021).

Recognized as the 'India Disputes and Litigation Firm of the Year' at the ITR Asia Tax Awards in 2018 and 2020.

Dhruva Consultants achieved ITR World Tax Ranking 2026:

- Tier 1 – Indirect Tax
- Tier 2 – General Corporate Tax, Transfer Pricing, Transactional Tax
- Other Notable: Tax Controversy

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