# Podcast transcript
# HSBC Business Talks – Asia Pacific
# Business Partners: Shared Risks and Rewards

**Sindy Wong:** Hello, and welcome back to *HSBC Business Talks*, Asia Pacific. I am Sindy Wong, Associate Director, Family Governance Advisory of the Global Private Banking at HSBC. I'm very pleased to be hosting this podcast today about navigating partnerships and business. Entrepreneurs with shared visions and goals often come together by pulling the resources, capacity,network, and expertise, whether that's for business expansion or market and product development. For lots of businesses, joint ventures and partnershipsplays a critical role, both as a way of cost-sharing and risk diversification, particularly during crises like the COVID-19 pandemic, and also hopefully as the way to energize growth once crisis ends. On the downside, joint ownership can be complex and it can come with risk ofanother sort. It takes two to tango and build the right relationships. So today, I'm catching up with Carmen, Senior Associate with JonathanMok Legal, and also Amy Lau, Director of Family Governance Advisory from Global Private Banking at HSBC, to talk about what to look out for when coming together with business partners and also key watch-outs.

Welcome, Carmen; and welcome, Amy.

**Carmen Cheng:** Hi, Sindy. Hi, Amy. Thank you for inviting me onto your podcast.

**Amy Lau:** Hello. This is Amy. It's my pleasure to be here.

**Sindy:** Welcome you both.

**Sindy:** So, Amy, what are some of the inherent risks which entrepreneurs need to look out for when working with third-party business partners?

**Amy:** thanks for the question, Sindy. entrepreneurs could work with third-party business partners in many forms. For example, partnerships joint ventures, strategic alliances, et cetera. While businesses of any size can benefit from joint ownership by strengthening the long-term marketing positions or collaborating on short term projects, entering into a joint ownership is no doubt a major decision.And Sindy you're, right. Partnering with third-party business partners can be very complex and it for surerequires excellent communication. And, well, it can be your potential for growth, but on the other hand, problems mayeasily arise if business partners have different objectives, expectations, cultures, or management styles, which could hinderintegration and cooperation. Not to mention the possibilities for business partners to find themselves often in unpleasant tensions. So whatever the aims are, from my experience winners in joint ownerships often have several characteristics. They encourageteamwork and trust.

The arrangement would be fair to all parties. Like, to recognize on what each business partners can contributesets clear accountability and realistic expectations and allow success to be measured. And it is also very important to have transparency and keep everyone involved in the loop.

**Carmen:** Yes, I cannot agree more with Amy. A successful partnership can definitelybe transformational for a business. And as she highlighted, there can be various pitfalls as well. Many might be focusing on the potential upsides, but there needsto be clear and transparency regarding what would happen if things go well, but also when things go downhill. What would the- what would both business partners agree should happen in the event of a conflict and how would theymanage those conflicts? And by setting out these clear guidelines and managing both sides' expectations, it can really help to prevent a breakdown of the business relationship.

**Sindy:** Well, it sounds to me that forming a successful joint ownership requires very careful planning and considerations. So how can entrepreneurs manage the risks that youmentioned and build the right relationships with their business partners?

**Amy:** Successful joint ownership don't just happen. There are a lot of tools available in the markets that are widely adopted by entrepreneursbefore they commit to a joint ownership. And regardless of what tools to be used, it is common for business partners to set out termsand conditions in a written agreement to protect all parties involved and to help prevent any misunderstanding once thejoint ownership is up and running. Simply put, such agreements or commonly known as shareholders' agreements is a contract concluded between various owners which sets out how they would work together to achieve certainbusiness goals. I trust most entrepreneurs would agree that shareholders' agreements is widely used in commercial setting and it's veryimportant as it establishes a solid business foundation for business partners. As the properly draft shareholders'agreement would cover many key areas such as, how important decisions are made, how to raise for the capital in the future, or how business partners would ultimately exit. By having clear agreements in place in advance for these crucial matterscould ensure smooth future cooperation and add protections to your investments. Not to mention some potentialdisputes between parties or partners can be mitigated if shareholders' agreements is draft in line with your holistic business strategy. Carmen,what do you think?

**Carman:** Yes. So, absolutely. It is so important to be on the same page and to have that recorded and to have as, as much agreed as possible about the rights and responsibilities of each party, and of course that might be difficult and somewhat challenging when the parties are just startingtheir business relationship or their joint venture, and you cannot predict each and every possible scenario, especially in those early stages. For example, COVIDwas an unprecedented event for many businesses, but it's best to have as much as possible agreed on paper so that both sides know what will happen, inwhatever scenario.

**Sindy:** It sounds to me that having a written agreement in place is very important. Amy, can you share with us some relevant real-life examples that you have encountered where business risks could bemitigated?

**Amy:** I've seen a Philippine family who was a minority owner of a business. It made such, investments largely due to the trust and confidence on themajority owner. Without having shareholders' agreement in place, the family struggled as they have limited influence over the majordecisions and also inevitably, the returns. And let's imagine if the majority owner sells his stake to thirdparty, such Philippine families would be left with the investment and a business partner that it may not trust at all. So to address thisconcern, it's common to see in shareholders' agreements, some positions that's in the event the majorowner sells the stakes, it also gives the minority owners the right to join in with the transactions to sell their minority stake in the business. So from this example, we can see that having a properly drafted shareholders' agreements in place may lessen some of the pains.

**Carmen:** Yes, and this example from Amy really highlights how shareholders' agreement is a particularly important for minority owners. Apart from thetag-along rights, there's also, items that you can put in the shareholders' agreement, such as the composition of the board and if there's special matters thatrequire, a supermajority voting and that would make sure that the minority partner, would be able to havetheir rights protected and ensure that they know what to expect or be able to exert their influence and, voting decisions at the right time.

**Sindy:** That is a very good example to help us visualize the risk for minority owners. So does it mean that ifentrepreneurs become majority owners in joint ownership arrangements, then they do not have to face any risk?

**Amy:** Well, unfortunately, no. Another story that I can share, it's about a Hong Kong family who is themajority owners of a property leasing venture. While it had control over the business and made all day-to-day decisions, they become worried upon the passing of his business partners as the relevant equityinterest was inherited equally by his three sons, and since then, making majordecisions had to become much more challenging, as the three sons of different generations havedifferent mindsets, plans, and preference, et cetera.

So with properly draft shareholders' agreement, control could be retainedby granting the first right of refusal to the other owners in case the business partners needs to exit for whatever reason. It retainscontrols for the existing owners and provides liquidity for the departed one.

**Sindy:** So, from the example of the Hong Kong family that you just mentioned, it sounds like family businesses are no exception. And as things become more complicatedwhen more family members join, the resulting sort of like a quasi-joint ownership brings unique internal challenges to business operations. So Ihave a question for Carmen. By working with families for more than a decade, if the business is family-owned, could the risk for working withthird-party business partners be mitigated? And why or why not?

**Carmen:**
Well, yes, it can I would say. if a family is united and they have clearvision and goals for their business, it can certainly be transformational for the family enterprise to enter into a third-party jointventure or partnership. But on the flip side, it actually can also pose problems. As, as Amy already pointed out, when you have more familymembers entering and you have different family members of different generations, if there's a disagreement between the family members, it can actually cause issues for the family enterprise itself internally. Business partnerswill, of course, want to see that the business they're entering into a partnership with is-- has acohesive goal or there are no internal issues or as little as possible, of course. And if there is already internal issues or,issues between the family members, it could impact how they function or operate with the third party. So it could become a problem for the family enterprise. They might not be able to have a strong of a stand during negotiations, or they may even have less business opportunities because third parties may understand and will be understandably knowing that the family enterpriseis already in somewhat of a shaky state or facing internal family issues that they do not want to enter into, a partnership with them, eventhough they are quite a successful or a reputable business. Because, of course, family enterprises have a human factor. There maybe emotional undercurrents between the stakeholders of the family enterprise. It might not always be about the business, there mightbe family issues that are causing disagreement or friction between the family members who are running the business, which could causeproblems for them, whether it is at the beginning negotiation stages or during the partnership, that may pose problems.

**Amy:** Kinda agree more with Carmen. So family businesses, on one hand, can benefit from the familial point, and on the other hand, the emotionalvariables may add uncertainty. Thank you, Carmen and Amy. my next question is for Carmen. What are some of the common tools for family-owned enterprises to address these risks?

**Carmen:** Right, so as Amy already mentioned, a share-- a shareholders'agreement is a good first and crucial step because there must always be clear guidelines on how the two partners are going to cooperate andmanage the company and the business. But from a different, angle, I've seen some families also do private agreements amongst themselves todeal with their internal management, which is sometimes known as a family constitution. And this is how, families set out how they want to govern themselves internally. Forexample, setting out what the family values are, or setting out the trajectory and the goal and plan for the family business.  Often times, these may be set down by the patriarch or the- or the founder of the family business. And it helps to manage the family members' expectations of how the business is going to be run or how they want totake the family business. And also, it can also encourage cooperation and cohesion amongst the family members because they are clear of what is expected ofthem and what is expected of the family business. So it's akin to a shareholders' agreement, but rather than agreement with a third party, this is agreement for them,the family internally and by having all the protocols and guidelines set out, it actuallyreally helps for the family members in dealing with themselves internally or dealing with third party,third- outside third parties, whether it be a business partner or-or other business opportunities. Especially, I think, with a- with a familyand the human factor that I mentioned before, when there are more and more family members in a growing family, how do you ensure that everyone's views or views are taken into account or

heard, and if you give a platform for the family members to be able to contribute to the business or to the family itself, it really helps promote family harmony and thenit can help to propel the family enterprise to be able to be successful bothexternally and internally.

**Sindy:** I see. Business longevity can be the goal for many entrepreneurs, especially for those in Asia. Are there any other considerations for business owners in the region, especially in the midst of the pandemic?

**Amy:** The COVID-19 pandemic was unprecedented as, as mentioned by Carmen and the resulting shifts in macro-economic factors and what iscalled new normal, on one hand, have led to different crises situations from cash flow issues to operational breakdowns, and on the other hand have been seen as opportunities for investments or to reinvent business models. So, all in all, the headwindsbrought about by the pandemic have serve as major catalysts and created a sense of urgency for entrepreneurs toreconsider their existing strategies and priorities. And it appears that joint ownership become easy and more commonunder the pandemic mainly for diversification purpose especially in response to market disruption and to drive innovation. Soone very obvious example is for healthcare companies to team up and brings out the COVID vaccine. And I'm of the view that the key forfamily business longevity lies in how entrepreneurs pass on both wealth and values. While I talk a lot about thegeneral importance of having shareholders' agreements in place, its application in the context of holistic succession planning is often overlooked, in particular, when the next generations becomes involved. For business succession planning purpose, such agreement is often only the initialstep. It can provide for expected and unexpected business transition in wide ranging situations such as thedemise, disability, retirement or even a marriage breakdown of the business partners. So from my experience, successful successions is actually a journey and it's not an event. It won't be completedsimply with a legal document.

**Carmen:** Yes, and I would just like to add that, the legal documents are just, just tools thathelp the family along the journey. Many families in Asia are experiencing, the intergenerational wealth transfer for the first or second time, compared to families in Europe who may have maybe several generations down theline in terms of passing on their business legacy. And COVID does pose a lot ofquestions for the family business because it really breaks the status quo and the business partners or the family have to ask themselves new questions such as do we or can we diversify? And I've seen some families where family members are hesitant to actually bring new orinnovative ideas to the table because of fear of rocking the boat or being targeted after, or given negative feedback if their new idea doesn't help orperhaps even causes some business loss to the family business. So it really poses different questions to thefamily to ask themselves, and it might even cause even more conflict with a family business. So these types of tools such as a family constitution or shareholders' agreements can help in the long-term for businesses to deal with any new events and new challenges.

**Sindy:** I'm afraid that's all we have time for today. Thank you, Carmen, and thankyou, Amy. So joint ownerships could be a double-edged sword. Forming them could be challenging, but if done right, it could worth the effort. Today, we have shared the real importance of shareholders' agreement which is only one of the many tools as part of a holistic succession planning. It sets up clear agreement inadvance to help ensure smooth future cooperation between partners and the alignment ofvisions as well as to mitigate future potential disputes. Some commonly seen features in the shareholders' agreement include like tag-along rights, first right of refusal,conflict resolution mechanisms, and so on. Further, a family constitution is another common tool to help family-owned enterprises to mitigate risks and manage familymembers' expectations. It lays out the family blueprints, shared values and missions, and to enhance family cohesion. We also discussed the importance of careful planning and considerations of a potential joint venture with a new business partner, such as whether theyalign with your business values and vision, which is an important and crucial first step. Succession planning is not going to go away, but if you don't do it, your business may, therefore it's important to start planning early and beprepared before the crisis hits. As every family is unique, there is in fact no one size fits all solution. In particular, familydynamics can be complicated. Thank you everyone for listening. To hear more about HSBC experts around Asia Pacific, simplysearch and follow *HSBC Business Talks* on Spotify, Apple Podcast, or Google. We'll be back with the next episode soon.