

Information note

Strengthening the family business: possibilities, strategies and solutions

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1.- The challenges of the family business

It is estimated that more than 85% of all companies in Spain are family businesses, understood as those in which ownership or decision-making power corresponds, totally or partially, to persons with family ties; that is, those in which ownership/management/control is dominated or reserved for the family sphere. In particular, the agri-food sector is one of the most likely to be established.

Flexibility and a more informal attitude in the framework of its processes and management, probably due to the "family factor", are pointed out as the main advantages of the family business. However, for that same factor they endure special problems or inconveniences. In general, some economic studies warn that they do not assume the relevance that the strategic element has in the future of the company, thus compromising their ability to achieve better results. Precisely, the adequate strategic planning of certain elements would alleviate one of the greatest problems of the family business: its continuity and succession to future generations and, in general, would help to improve and strengthen the business objectives.

Among other concrete action measures, the following are optimal:

- Strengthen corporate structures and governance.
- To choose suitable social formulae with more beneficial accounting and tax obligations.
- To ensure the continuity of the family business through succession planning of the company and its members.
- Granting an ad hoc family protocol, coordinated with the individual actions of its members.
- To avoid conflicts between members and to treat them through mediation
- Implement the compliance culture.



2.- How to improve strategy in the family business: succession planning and family protocols

2.1.- Family and succession planning

The stability and good governance of the family business depends to a great extent on the family relationships of its members and on minimizing conflicts between them in particular. Some of these problems may derive precisely from how the family estate (and its participation in the business) is ordered and planned and how its management is structured. Succession planning - in the broad sense of generational succession or transmission to another subject - cannot be successfully carried out outside the rules of succession; moreover, some "succession formulas" in our Law may be accommodated or appropriate to achieve the objectives that the entrepreneur or the family group may wish to pursue.

Each family business poses different problems and may also seek different objectives. The continuity of the business and the removal of obstacles in the generational succession are common goals in businesses; surveys show that for 9 out of 10 businesses it is important to maintain control of the business within the family. But within the framework of family continuity, the options are varied: concentration of power in all family members with the corresponding exclusion of third parties (the family); succession of the business both in management and ownership in favour of one or some of its members; differentiation between management and ownership, where possible, in line with all members participating in the business; or even exclusion of some family members from management/business ownership decisions.

All these options will require different legal mechanisms for their implementation. The choice of the optimal instrument also depends on other coordinates. For example, it superlatively determines who makes the decision on the course of the company (individual entrepreneur or company; in the latter case, the question is complicated by the entry of the limitations of company law and the entry of numerous decision-makers) and, in particular, whether the family business is set up as a community or private business, a qualification that continues to be decisive, even more so in ordinary law, where there are real obstacles to making joint decisions on the transfer of community property. Secondly, the typology of the entrepreneur/founder and the relationship between him and his family are clearly perceived as determining factors. This factor generally determines the entrepreneur's decision about the future of his company; in a significant number of cases the desire to award the company to a single successor or the allocation of the company among the different heirs, with the intention of having a community among them, is justified here. Finally, time also plays a determining role. The solution to conflicts does not arise in the same way in the first stage of the company as in moments of solidity and expansion; nor is the perspective the same for the senior entrepreneur as for the young person with no family responsibilities or successors in sight. The revocability or irrevocability of decisions on succession becomes an essential issue from this perspective, as does the possibility of organising a revisable arrangement, especially at the beginning of the business activity by the founder.

Therefore, it is essential to consider the differences and nuances in order to opt for the use of the multiple succession and/or family instruments that the Civil Code or the various special civil rights offer us.

2.2.- What about family protocols?

They are plurilateral businesses granted by the involved relatives whose objective or function is to establish the main lines of what is the family business and the guidelines that are understood convenient *ad futurum*, with special emphasis in its succession. They are shaped as the maximum expression of the self-regulation of the family business, so their content varies depending on the circumstances of each one and is extremely heterogeneous: mere declarations of good intentions are mixed with pacts or contractual clauses, signed multilaterally by the family members, with real inter-party effectiveness, and agreements that are usually already incorporated into the company's bylaws and opposed to third parties, such as those affecting the system of shares or holdings or agreements on grouping votes, among others.

In addition to the usefulness of the protocol per se, the close relationship between the family protocol and the decisions of the parties themselves should be stressed. In fact, the effectiveness of many of its clauses requires the execution of what have come to be called satellite businesses of the family protocol. Therefore, the lack of coordination between business protocols and the businesses of succession and family planning of the members of the company, reduces the effectiveness of that which is intended to be obtained through the former.

Thus the true role of the family protocol is translated in serving as a complement of the own succession, canalizing in a dynamic way the needs of the company and connecting and subsuming such needs in the gears of the personal succession of the businessman and the other relatives. It should not be forgotten that, especially in the case of family businesses with a corporate structure, the change of ownership that triggers the transmission of *mortis causa* conditions its future in a very significant way, with special importance in the management perspective. In this sense, any instrument of *mortis causa* planning must not only take into account the way in which the successors distribute the patrimony of the businessman but also what must be the best way to achieve a balance between the successors for the purposes of the management of the business. Family protocol plays a decisive role in this openness to the succession planning of the entrepreneur and his environment.

For all the challenges posed by the family business in the agro-food sector, from the personalised design of inheritance and family planning strategies and the drafting of ad hoc family protocols, to the implementation of compliance, or the strengthening of the governance structure or a better tax strategy, or the application of mediation in the event of conflicts that arise, Andersen Tax & Legal has a specialised team for this type of advice, which is also aware of and has a special relationship with the demands of this sector.

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