

Chapter 80

Law and HRM Challenges in Generational Transition of Family Firms

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ABSTRACT

This chapter examines some of the most relevant HRM problems in generational transition of family firms and proposes a number of legal instruments capable of resolving them. Use of corporations as vehicles to run the family business is examined, also with respect to consequences of this choice in business transition. Definition and “protection” of family roles within the firm are observed. Patrimonial issues are compared to personal issues and their interplay is explained by reference to five different scenarios. Last, the possibility to “select”, so to say, the law applicable to one’s succession under Regulation (EU) no 650/2012 of the European Parliament and of the Council of 4 July 2012 is explored. At the end, it is concluded that even if HRM in family business shows informality along with formality in designing business practices, generational transition of family firms requires structuring and needs be planned, appropriately and in detail, in advance.

INTRODUCTION

There is much literature on family firms and related HRM (Human Resource Management) issues (e.g.: Combs, Jaskiewicz, Shanine & Balkin, 2018; Astrachan Binz & al., 2017; Bammens et al., 2015; Botero & Litchfield, 2013; Barnett, and Kellermanns, 2006; Astrachan, and Kolenko, 1994). Inheritance law is widely studied as well, also with reference to family firms (e.g.: Gallanis, 2019; Fusaro, 2013; Anderson, Arroyo & Amayuelas, 2011; La Porta, 2010; Kerridge & Parry, 2009; De Waal, 2008; Cretney, 1995). However, it is definitely uncommon to find works putting these two areas together. Such a lack prevents scholars from having a wider view of how succession of family firms need take into consideration HRM features and, more in general, the interplay between business needs and strategies, on the one hand, and the law and legal profession, on the other.

DOI: 10.4018/978-1-6684-3873-2.ch080

This chapter is aimed at filling the gap recalled above, adopting the jurist's perspective. To this end, it is built on practical HRM problems emerging within succession of family firms and focuses on presenting legal techniques and strategies capable of facing and solving them. To be explicit, in this chapter HRM aspects will not be dealt with as such; instead, emphasis will be put on legal precautions capable of meeting HRM needs (which are dealt with in much greater detail elsewhere in this book). There appears to be no relevant previous research on the issue carried out following this path of reasoning (problem-based legal analysis appears confined only to works addressed to practitioners, while research tend to be carried out in accordance with systematic reasoning) so that the approach adopted in this chapter appears innovative.

The paper is structured in five sections. In the first part ("background"), family firms and their special features, including their "emotional dimension", are shortly addressed. In the second part, it is highlighted that inheritance default rules applicable to successions are mostly not appropriate to govern family succession of businesses and in particular to address HRM issues, so that planning is always recommended in succession of family firms. In the third part, it is examined how use of a corporation may contribute to ease succession of family firms. In the fourth part, which is the most relevant and original contribution provided by this work, I propose to classify the different HRM exigencies that may arise within succession of family firms into five different scenarios. Each scenario presents a peculiar arrangement of features relevant to HRM (e.g.: how many heirs are in place, their mutual relations, their interest and capability in carrying on management of the family firm etc.) and is examined with reference to its specific problems and opportunities, providing a picture of the main legal techniques available in order to resolve the former and take advantage of the latter. In particular, it is clarified how legislation in different jurisdictions may allow decedents to predetermine roles within the family firm after succession takes place and to reduce conflicts between heirs. Occasionally, personal suggestions and professional hints are also presented. In the fifth part short reference is made to "private international law" and, more in particular, to the possibility to "select" the law applicable to one's succession. At the end of this chapter, a brief set of conclusions is provided.

BACKGROUND

For the purposes of this chapter, family firms are defined as firms owned and run, to a relevant extent, by members of the same family, so that they range from small "mom and pop" businesses to much bigger organizations – such as the U.S. Walmart and Tyson Foods. Even if such a variability may bring about completely different issues and problems, they are all organizations where ownership and business roles overlap with family relations. Such element, which allows to consider all of them as sharing common characteristics, is capable of enriching family firms with peculiar features as concerns many aspects of their activity. In particular, their management may be fostered and enhanced by reason of the relationship existing between members of the same family as regards, among others, vision of the business, definition of goals and loyalty (De Massis, Kotlar, Chua & Chrisman, 2014; De Massis, Sharma, Chua & Chrisman 2012).

The above said peculiar features make family firms unique and characteristic model of business, intrinsically not comparable to other firms (Carlock, de Vries & Florent-Treacy, 2007). In fact, the above recalled "familiar inspiration" may lead to organizational choices and managerial strategies not necessarily consistent with organization and management of other, "common" (to be understood, here,

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