

Governance and management

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1. Introduction

Successful family businesses have one thing in common: they are well governed and managed. Broadly speaking, a family's governance structure comprises the rules and systems under which its business and wealth are held and preserved, and under which the family and its members, fiduciaries and advisers can work together to give the family its own articulated creed and vision. Guidelines will be established for all family members to follow. A good governance structure will look to achieve organised accountability and a clear balance of power among the various interests and bodies that comprise a family and its business. These will include family members, company shareholders and directors, fiduciaries (eg, trustees of family trusts), family advisers and possibly the family office.

Management, in this context, is the way in which a family business is run by its directors on a day-to-day basis and on a strategic level (more along the lines of corporate governance). A good governance and management system will be integrated as one system and will be interlinked at all levels to ensure that all aspects of the family business and family exist harmoniously together.

When a business is first established, the founder or controlling owners could be considered the governance structure, since they are likely to be responsible for most aspects of governance and management of their business. Formal structures tend to be overlooked in favour of informality and highly personalised structures. In future generations it may become increasingly difficult to replicate this arrangement and more formal governance is likely to be required. In order to govern a family business successfully – including the involvement of family members, the transition from one generation to the next and the management of expectations of all family members (whether involved in the business or not) – it is crucial to have a formal, codified system of governance to provide a unique, articulated vision for the family and how it will interact with the family business and its management going forward.

It is important that any system of governance be given the time and space to develop naturally out of family discussions, and be driven by a family's vision and ethos. This will help to ensure that it is tailored to the individual needs of each family. While no single form of governance fits every family business, there are a number of different building blocks which can be utilised, to a lesser or greater degree, in most systems of governance. Some of these are conventional to the corporate way of thinking, while others are less common.

The sheer scale and number of issues involved mean that this chapter cannot

give more than an overview of some of the principal aspects of governance which are available to families, of whatever size or complexity. However, the theory of governance remains the same regardless of the size of the family or type of family business; it will just be incorporated on a different scale and with lesser or greater formality.¹

2. **The family creed or constitution**

The single most important building block for any system of family governance is the family creed or constitution. This is a formal document which sits on top of all other aspects of the governance system. This clearly sets out the family's guiding principles and defines the roles of the family business, the family members and any fiduciaries for all family members to follow.

The importance of the family creed or constitution being a formal written document cannot be understated. The process of getting some initial thoughts down on paper, discussing those thoughts between family members, articulating the main principles for the family and, most crucially, getting buy-in from the whole family is vital. The process enables all relevant issues to come to the surface and to be discussed, which helps to ensure that the system of governance grows organically rather than being imposed on the family. An external and neutral facilitator can play a key role in these discussions and give the family the time and space to develop its governance structure. It is well established that a system of governance will function properly only if it is developed, understood and accepted by all major stakeholders in the business; the process of preparing a family creed will normally serve to fulfil this.

- Once established, a family creed or constitution will usually:
- set out the core values which all family members should follow;
- establish a forum and process for decision making;
- clearly set out what each family member can expect to receive from the family business, in terms of both shares held and salary and other benefits;
- provide a mechanism to introduce younger family members to the family business and its governance structures;
- provide a dispute resolution procedure that avoids family members having to resort to expensive litigation; and
- articulate any philanthropic ambitions of the family.

The family creed is a framework for all aspects of a family's governance system and will have an impact on all other building blocks in the structure which are considered below.

The question may arise as to whether the family creed is legally binding on family members. Some creeds are intended to have moral rather than legal force, but it may be possible to condense all aspects of governance (family, ownership and management) into one document with the intention that this will be legally

1 It is notoriously difficult to fix on an agreed definition of a 'family business'. This chapter aims to provide a general overview of structures that can be applied to most types of family business, particularly those that are family owned and not family run. Where a family business is owner-managed, the governance issues are often less pronounced.

enforceable. A single governance document has the advantage of ensuring that the family creed and its contents are taken into account when construing the intention of the parties in relation to formal aspects of governance. A single document will also help to ensure that there are no gaps in the structure, and is more likely to be accessible to and understood by family members than a number of different governance documents.

3. Family meetings and family councils

The family creed will usually provide for a formalised system of family meetings. These may be held, say, annually, so that all family members can come together to discuss issues, consider how the business is doing and be involved in the family venture.

As a family becomes larger and the number of different family branches and family members increases, the number of family members involved on a day-to-day basis is likely to decrease. A family meeting, which all members are encouraged to attend, provides an excellent forum for discussing strategy. While it is important that all family members have the chance to make their views known and have their say on any issue, this should not be mistaken for running the business. There must be a clearly defined corporate chain of command in relation to the business – namely, the directors – for it to be run successfully. The family meeting is a useful forum for the dissemination of information concerning the business and gives family members an opportunity to discuss all matters pertaining to the family and to resolve any disputes.

The family meeting will usually be the body charged with reviewing the family creed to ensure that it is updated and adapted to reflect changing circumstances. All successful family creeds include an obligation for the family to review the creed – say, every five years – to ensure that it remains relevant. As with the initial preparation of the family creed, it is important that the whole family has a role in reviewing and amending it. The family meeting is an appropriate forum for making such changes. While it is important for a system of governance to be formalised, so that everyone knows exactly where they stand and the interaction between the various bodies is clearly set out, it is crucial that there is flexibility to adapt the family creed. If the family creed is overly rigid, all of the efforts put into creating both it and the systems of governance could be wasted, as the systems may become obsolete.

The family meeting is also an excellent first opportunity to get younger family members involved in the family business. Many families encourage children to start attending such meetings when they reach the age of 18 (sometimes even younger), and some families go further and require all children attending such a meeting for the first time to make a presentation to the meeting. The younger generations will be exposed first hand to the governance of the family (and will often be required to sign the family creed), and it can also provide a useful training ground for them to organise and run aspects of the family wealth and business.

Sometimes, in addition to a family meeting, there will be a family council, comprising just a few family members (with different branches and different generations being represented, if this is important to the family). The family council can provide executive leadership to the family, formulate the issues for discussion at family meetings and generally ensure that there are lines of communication and

information flow between the family and its business. A family council will usually meet on a regular, informal basis and will be the driving force behind calling and running family meetings in accordance with the family creed.

A single family meeting will often suffice where only a small number of family members are involved. When a family becomes more numerous, it may become necessary to supplement the family meeting with another common form or institution of governance: namely, a shareholders' assembly. The shareholders' assembly would exercise the ownership powers over the family business and would be separate from the family meeting. The family meeting would in turn fulfil a more educational or social function, while still retaining certain powers, such as control over the remuneration of family members in the family business.