Intergenerational Succession in SMEs Transition
INSIST

Module 3

Financial and legal questions

Dr. Ilyés Csaba

Budapest Business School

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Razaq Raj

Leeds Beckett University

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Brief Module Description

This module helps to develop the financial and legal operative perspective of a family business and provide the basis for advancement and application of operative working level skills, competencies, and decision-making capability. It will focus on family business practitioners and how they do their business, the practices they adopt and the activities they take part in to create an effective enterprise. The module helps family businesses to achieve success and profitable operation during and after transformation.

Module Aims

The aim of the module is to provide students with an understanding of the nature of the financial and legal area from a theoretical and practical perspective. The focus is to give the students such legal and financial knowledge and tasks, which are necessary to support a sustainable family business.

Learning Outcomes

On successful completion of this module, students should be able to the following:

1.

Critically evaluate and apply concepts, tools and techniques which are useful for family businesses to become sustainable operating enterprises.

2.

- Determine the future goals of family businesses (different options of transformation); and then determine the short-term vision, future tasks, and the adequate planning techniques; and then
- Prepare the corporate business plan, and employ the methods which are useful during the implementation of transformation;
- Prepare a concrete business plan for a specific case study.

3.

- Develop an accounting and reporting system for the monitoring of business processes and operation focusing on the transformation;
- Monitor the deviation of actual data from the budget, make or support decision(s) and control the consequences.

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4.

Understand, critically evaluate and apply concepts, tools and techniques in the legal-business area:

- Legal environment, legal matters relating to the operation and the ownership transfer;
- Legal difficulties during generation change of ownership and minimizing the legal disadvantages;
- Legal obligations between shareholders, possibilities for sharing of management responsibilities.
- Choosing the suitable legal form – if it is necessary - for the transformation goals.

Content

(Week (Lecture) /Workshop / Self Study references)

Week 1: Introduction to accounting
Work in team to discuss the main points of view based on the theoretical presentation or discussion

Ability to understand basic definitions and features

Week 2: Ownership Interests
Work in team to discuss the basic elements of it based on the theoretical presentation or discussion

Ability to understand ownership interests

Week 3: Reporting Corporate Performance
Work in team to discuss how to get information from the given financial reports. (It would be based on the financial statement of case studies.)

Ability to understand and to use the different financial reports

Week 4: General overview of the main features of family business focusing on the legal and financial area
Work in team to discuss how to determine the main features of FB. (It would be based on the different case studies.)

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Ability to understand the definitions, differences between the FB and other business

Week 5: Social wealth.
Work in team to discuss that which is the relationship between the Social wealth and the FB. How can be determined the main features of FB?

Ability to understand the definition of social wealth, the effect of FB for the national economy

Week 6: Task 1: How should the management role be transferred to the relatives?
Work in team to discuss WAMECH Company Case Study (PL)

Ability to understand and manage this case based on case study

Week 7: Task 2: How should be the management role delegated to a non-family person?
Work in team to discuss BI-KA Logistics Ltd. Case Study (HU)

Ability to understand and manage this case based on case study

Week 8: Task 3: Merger with another business and either retiring; or stepping aside
Work in team to discuss Szentkirályi Case Study (HU)

Ability to understand and manage this case based on case study

Week 9: Task 4: Exiting the family business (Selling the ownership)?
Work in team to discuss <?> case study

Ability to understand and manage this case based on case study

Week 10: Task 5: Closing the family business?
Work in team to discuss <?> case study

Ability to understand and manage this case based on case study

Week 11-12: Summary and Revision Planning I - II.

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Week 1: Introduction to accounting

Work in team to discuss the main points of view based on the theoretical presentation or discussion.

Ability to understand basic definitions, features.

Accounting is a service activity. Its function is to provide quantitative information about economic entities. The information is primary financial in nature and is intended to be useful in making economic decisions. If the entity for which the information is provided is a business, e.g. the information is used by its management (in case FB mainly the owner–manager) in answering questions such as:

- What are the resources of the business?
- What debts does it owe?
- Does it have earnings?
- Are expenses too large in relation to sales?
- Is too little too much merchandise being kept?
- Are amounts owed by customers being collected rapidly?
- Will the business be able to meet its own debts as they mature?
- Should the plant be expanded?
- Should a new product or service be introduced?
- Should selling prices be increased?

Furthermore grantors of credit such as banks, relatives of family, partners, customers, competitors use accounting information in answering such questions as:

- Are the customer's earning prospects good?
- What is its debt-paying ability?
- Has it paid debts promptly in the past?
- Should it be granted additional credit?

In addition

- Governmental units use accounting information in regulating business and collecting taxes.
- Labour unions use it in negotiating working conditions and wage agreements.
- Investors make wide use of accounting data in investment decisions.

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So the accounting system begins by collecting and processing financial information. This financial information is organized into reports that are distributed to decision-makers. The decision-makers may rely on the reports to make certain important determinations about the future.

The accounting system collects and processes financial information about an organization and reports that information to decision makers. The accounting system provides financial accounting reports which include periodic financial statements and related disclosures to external decision makers. These decision-makers include investors, creditors, suppliers, customers, union representatives, and all other interested parties. The accounting system also provides managerial accounting reports including detailed plans and continuous performance reports. These reports are used by internal decision makers throughout the organization to make decisions about pricing, production, quality, and numerous other day-to-day activities.

Economic entities (so FB) usually publish four basic financial statements, as follows:

1. BALANCE SHEET – reports the amount of assets, liabilities, and stockholders' equity of an accounting entity at a point in time.
2. INCOME STATEMENT – reports the revenues less the expenses of the accounting period.
3. STATEMENT OF RETAINED EARNINGS – reports the way that net income and distribution of dividends affected the financial position of the company during the accounting period.
4. STATEMENT OF CASH FLOWS – reports inflows and outflows of cash during the accounting period in the categories of operating, investing, and financing.

If an owner-manager of FB is to use these reports effectively, he or she must have some understanding of how their data were gathered and the figures were put together. He or she must appreciate the limitations of data and extent to which portions are based on estimates rather than precise measurements.

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Week 2: Ownership Interests

Work in team to discuss the basic elements of it based on the theoretical presentation or discussion.

Ability to understand ownership interests.

Organizational structure and regulation, questions of operation

Personal relations:

In theory the structure of family businesses does not differ from that of non-family run businesses. But many questions arise in relation to family-run businesses. The questions of in-organization accounting and accountability, competences, and assessment are not always clarified. Let's pose a simple question! Who is the substantive owner of a family-run business? We frequently see scenarios where the head of the family (in terms of personal relations) might not be the substantive or rightful owner of the business. Perhaps a parent's or family member's (real or putative) authority might influence the executives of the business even after the succession. For example: the father has a say in the management of the business after his son had succeeded the leadership. In relation this set of issues the question of the assessment of the substantive and lawful owners: whose performance creates the actual value of the business?

Legal regulations:

A great virtue? Of family-run businesses is that the members are usually very loyal and committed to the enterprise. This is an undeniably present positive effect in these enterprises. Measuring this could be a separate task when looking at the potential power of a business or when comparing it with other similar enterprises. But this effect also contains dangers in itself. In a committed situation like that it is not strictly necessary to specify the scope of activities for employees individually, as it is reasonable to assume that they (as family member employees) will act and think proactively. So, legal regulations concerning other enterprises (eg. labour contracts) are not seen as necessary or important by family businesses. Inter-business contracts often exist only as formalities. This can become a problem when an outsider takes over from family member as part of the enterprise, when the existence of a regulating contract previously deemed unnecessary becomes an exigency. Another relevant question is that of accounting and accountability. Presupposing proactive behaviour, in a situation where one is looking to hold persons responsible (not necessarily in relation to punishment, more in terms of error exploration),

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a contractually not well-regulated environment is not helpful. Neither is it obvious whose responsibility the process in which the error occurred was. Many times this is the error itself: no one is really responsible for it. Employees from outside the family may experience bias toward those part of the family, if relations are not properly regulated. It is important to bring the students' attention to the importance of the regulation of contractual and personal relations.

Assessing family-run enterprises:

Family-run businesses enter the competition against other "usual" enterprises with many benefits and reserves that establish their deserved place on the market. Family businesses differ in many aspects from their counterparts functioning in usual interested situations. We can talk about hidden reserves/fallbacks and resources, potentials and benefits that get carried over to the enterprise from the inner structures and relations of families. The loyalty and faith family members have for each other comes naturally in these enterprises, there is no need to spend money or time on acquiring them. Business culture is instantly present and needs no formalising. This has advantages like:

1. A family member is willing to do the same task for a smaller sum, a cost advantage for the business, even if the phenomena may not be healthy in the long run.
2. Family members partaking in the business are usually more resolute and determined to solve a problem than eg. an outsider (although this can be dangerous if they stick to their guns even when it is not beneficial from a commercial standpoint).
3. The general loyalty and faith family members have for each other warrants that commercial secrets and interests remain in the company's sphere.
4. Family members are typically partial to the benefit of the family (and so the enterprise) over their own momentary interests, which secures long-term sustainability.
5. A family member will spare more time for a task, and will do a more thorough job than an outsider work force.
6. The question of monetary laxity could also be brought up, as a well-intended stock withdrawal.
7. The merging of family and company budget.
8. Placing too much trust in a family member who is not well equipped for a position but no one's willing (or able) to tell them that.
9. There could be more advantages and dangers listed here, maybe the SWOT analysis of a family enterprise?

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Income and projected yield of family businesses

As we have seen in the above passage, the commercial tolerance and flexibility of a family enterprise is much greater than that of its competition. Students' attention must be brought to the fact that they must be able to evaluate profitability objectively, even in the case of family businesses. Let us disregard the cases that have non-monetary significance. Like more independent time scheduling, or the joy of autonomous work and value creation with its attached moral value. So, if we only evaluate the profitability of family businesses from a monetary point of view, we have to differentiate between two important incomes, and we need to teach this to the students too. A common problem for family enterprises (also typical of the SMSC sector) is that the owner and the management are closely intertwined, so the stock investors and the worker cannot be easily separated. The contractor must be warned that, just because they only get one sum of payment to one account for seemingly one activity, they are realising two kinds of income. One is stock income, which must mean the income of an investment with the same venture/hazard, and the second the salary, what the contractor gets for their work. We can often see enterprises where (still disregarding the joy of autonomous work and value creation with its attached moral value) the owner-executive boasts about how much more he earns than his friends working at a multinational corporation! But does he really earn more? Someone working at a multinational corporation does not invest in an enterprise, so only earns a salary. If we took away the stock income from said owner-executive, would he still earn more? More simply, the family should be able to make as much money from the enterprise as they would from working at another company in a scope of activities corresponding to their education and experience, and the stock they invest in their enterprise should be the same amount. If the family gets less from this, then the enterprise is commercially not worth starting and operating.

Another important question arises! Is the family member's salary the income or the expense of the business? Is it the income of the individual or the family? From an economic and accounting perspective, this can be determined by comparing it to a scenario where the position is filled up by an outsider. Frist, it must be determined whether the salary paid out to the family member is the expense of the enterprise, and (in my opinion) not the family's but the individual's income, so the business has nothing further to account for, unless an outsider would earn a different sum for the same scope of activities. If the family member earns more than it is customary in their line of work, then the enterprise operates with extra expenses but the family receives extra income. If the family member does the job for less money, one of the positive potentials concerning family-run businesses, then the enterprise gains a cost advantage over its competition but the family income is reduced, as the individual takes home less money than it would be possible for them because of the enterprise.

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Statements of financial performance:

The question of profitability poses even more questions, for example in the case of mixed (family-run and not family-run) enterprises, how can we separate the performance of the family from the business as a whole in analytics and statements. The significance of this is that the positive synergies of family can only prevail on these performances, so, for example the previously mentioned advantages of expense and work scheduling can only appear on this part of the enterprise, as loyalty beyond necessity cannot be expected from "outsiders". Public accountancy provides numerous opportunities to exhibit these performances, eg. in the 5th accounting group classify family members as quasi-project codes, so their performances can be set apart on a statement. However, the procuration system has to be prepared for it and led consistently. Another good solution could be the use of accounting groups 6 and 7, these allow for keeping record of the cost bearers.

I can imagine the introduction of a process based record, which may be attached to the topics of project planning and project control, which does not differ from regular recording in terms of the foundations of accounting, and it examines the tasks completed by individuals, as a kind of project. So the previously mentioned objectivity is realized in a way where a task oriented record reflects the real personal competencies and added values, mathematically covers the whole activity of the enterprise just as well but picked apart for each person. The accounting solution for this is a simple modification of the accounting mirror.

Monetary records:

A constant phenomena and potential problem is the intertwining of the family and business finances. This can cause tremendous damage in the family and/or enterprise. Students must be warned that in family-run businesses financial discipline is even more important than in other businesses. Remittance of cheques or not well documented money transfers must not be permitted, because the real financial situation of the enterprise will not stay transparent.

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Week 3: Reporting Corporate Performance

Work in team to discuss how would they get information from the given financial reports. (It would be based on the financial statement of case studies.)

Ability to understand and to use the different financial reports.

In this lecture all financial reports will be discussed in detail.

BALANCE SHEET

The purpose of the balance sheet is to report the financial position (assets, liabilities and stockholders' equity) of an entity at a particular point in time. The categories on the balance sheet, also known as elements, are assets, liabilities, and stockholders' equity.

Assets are economic resources owned by the company. The exact list of assets depends on the individual company, but this is a representative list. All assets are expected to provide future benefits to the company.

Liabilities are the company's debts or obligations.

Stockholders' equity generally consists of two parts. First, contributed capital indicates the amount of financing provided by owners of the business. Retained earnings are the amount of income that has been earned by the company that has been reinvested in the business. Portion of income is typically distributed to stockholders in the form of dividends and the remainder is retained by the business.

INCOME STATEMENT

The income statement reports the revenues less the expenses of the accounting period.

The first category, or element, is revenues. Companies earn revenues from the sale of goods and services to customers. A few examples of revenues include sales revenue, interest revenue and rent revenue.

Expenses represent the Euro or Hungarian Forint amount of resources used to earn revenues during the period. Examples are wages expense, rent expense, and advertising expense.

When revenues exceed expenses for the period, the company has earned net income. If expenses are greater than revenues in the period, the company incurred a net loss.

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STATEMENT OF RETAINED EARNINGS

The purpose of the statement of retained earnings is to report the reinvestment of earnings from the company gained during the current period less the dividends paid to shareholders of the company.

The statement begins with last period's ending retained earnings, and then adds net income reported on the income statement for this year. Any dividends declared during the period are subtracted to arrive at ending retained earnings.

STATEMENT OF CASH FLOWS

The Statement of Cash Flows reports inflows and outflows of cash during the accounting period using three categories: operating, investing, and financing activities.

On the statement of cash flows, operating activities involve the cash provided and used in the normal business operations of the company. This section of the statement includes cash collected from the sale of products to customers, cash paid to suppliers for materials and to employees for the labor to manufacture and distribute the product. In addition, this section shows cash paid for interest and taxes.

Investing activities involve the purchase or sale of long-term productive assets, the lending of monies to others, and the receiving principal payments back from those loans. When PB purchases a long-term productive asset, it's a cash outflow; when FB sells a productive asset, it's a cash inflow. When FB loans funds to others, it's a cash outflow; when FB receives principal payments on those loans, it's a cash inflow.

Financing activities involve borrowing and repaying amounts from financial institutions and the sale or repurchase of the company's stock. In addition, the payment of a cash dividend is classified as a financing activity. When FB borrows money from a financial institution, it's a cash inflow; repaying the principal amount is a cash outflow. When the company sells stock, it's a cash inflow; if the company repurchases its own stock, it's a cash outflow. The payment of cash dividends is always a cash outflow.

Several relationships exist among the individual financial statements. First, net income reported on the income statement flows to the statement of retained earnings and increases the retained earnings account balance. So net income reported on the income statement increases retained earnings on the statement of retained earnings. Another relationship that exists among the financial statements is that ending retained earnings from the statement of retained earnings is one of the two components of stockholders' equity on the balance sheet. So ending retained earnings from the statement of retained earnings also appears on the Balance Sheet. On the Statement of Cash Flows, the total

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increase or decrease in cash from the three categories of activities is added to the beginning of the year cash balance to arrive at the end of the year cash balance. this amount also appears on the Balance Sheet.

All financial statements should be accompanied by notes which provide the reader with supplemental information about the financial condition and results of operations of the company. These notes provide supplemental information about the financial condition of a company, without which the financial statements cannot be fully understood.

There are three basic types of notes. The first type provides descriptions of the accounting rules applied in the company's financial statements. The second presents additional detail about a line on the financial statement. For example, it is common to find a note that describes the details of a long-term debt agreement. The last type of note provides additional financial disclosures about items not listed in the financial statements. For example, a company may lease, rather than purchase, major pieces of machinery and equipment.

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Week 4: General overview of the main features of family business focusing on the legal and financial area

This lecture gives a general overview of the main features of family business. It is focusing on the legal and financial area. Evaluating the family business and measure the performance of the family business. Company valuation (book value/market value etc.)

How should the accounting and reporting system be used and developed? How should the owners be supported with useful and accurate information?

Finance

- The main features of family businesses focusing the financial point of view. (It may only be the remembering their knowledge.)
- Evaluation methods, evaluating family business, measuring the performance of the family business.
- Developing and using accounting and reporting system(s).
- Financial flows and the possible problems.
- Introduction to accounting:
  - Show the book value calculation: from accounting books: exercises to show the difference outcomes depending on the company decisions (increase capital by paying in or from other elements of capital, withdraw capital, fair valuation, contributions in case of loss).
  - Show the market value calculation: based on business plans or fair valuation of assets and liabilities, present these through case studies.
  - What is the accounting information which shall be controlled and understood before transfer it to a relative or an outsider?
- Ownership Interests.
- Reporting Corporate Performance:
  - What are the information data and information to the owners and why these are the important ones?
  - How the performance of a family business can be calculated (income-expense, cash in-cash out)?
  - Set KPIs: example on KPIs and explain them.
  - How the owner can get this information in the financial and management accounting system?

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Legal

Based on the Hungarian regulations

- The main features of family businesses focusing the legal point of view. (It may only be the remembering their knowledge.)
- Rules, Acts for family businesses:
    - I. Rights of corporations

      Company foundation, changing the articles of incorporation, management and representation of the company, the main body of company, the supervisory board, audit, corporate forms, capital increase in the corporation. Transformation to the new corporate form by family or not family succession. Succession by business share transfer contract. Succession by conferring the right of representation. Transfer of shares to non-family members.
    - II. The right of Non-governmental organizations (NGOs)

      Endowment foundation, Endowment foundation by final provision, the rights of founder, organizations, representative(s) of foundation, legal regulation to operate a foundation. (Succession by endowment foundation).
    - III. The rights of succession, succession by final provision, contract for succession or inheritance. Succession by inheritance.
    - IV. Trusteeship. If there is no suitable successor: new legal institute to preserve the property.
    - V. Settlement or life annuity contract. Succession by using settlement and annuity contracts.
    - VI. The definition of small and medium enterprises according to law, the definition of family business from legal point of view.
    - VII. Rules of duty

      Payable taxes in case of inheritance or gift agreement, as well as the allowance of the duty in case of inheritance or gift agreement for small business assets. Tax liability in the context of the trust property management acquisition. The property transfer tax.

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Week 5: Social wealth

Work in teams to discuss and critically analyse the relationship between social wealth and the family business (FB). How can industry determine the main features of an FB?

Ability to understand the definition of social wealth, the effect of family business for the national economy.

Areas:

- The concept of social wealth with in national economy.
- The definition and use of Social Wealth Economic Indicators (SWEI).
- The advantages or disadvantages of the different ways of raising funds.
- The compliance with legal rules.
- Impact of Family business on macroeconomic processes and finally macroeconomic indicators.

Social Wealth Indicators (SWEIs)

SWEIs measure economic health and quality of life, recognizing that both are prerequisites for robust businesses, economic competitiveness, and fulfilling lives. They show how quality of life and economic health and competitiveness interrelate to ensure human capacity development. They demonstrate how seemingly intractable problems, including the suffering caused by chronic poverty, lack of support/care for children and the elderly, and racial and gender inequities, can be solved.

Types of indicators that measure Social Wealth:

Social Wealth focuses on the condition of human infrastructure, and includes progress in:

- Human capacity development (both capacity for economic productivity and capacity for caring and creativity);
- Guiding values system (especially whether caring for people, starting in early childhood and throughout the lifespan, is valued socially and economically); and
- Implementing values through government and business investments in care.

Social Wealth cuts across other domains and links three major sub-domains:

1. <u>Human Capacity</u>: Measures the degree of human capacity development for economic success and for healthy and meaningful lives.

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2. Social Equity: Measures guiding values as addressing inequity makes for a more productive, harmonious, and healthy society.
3. Care Investment: Measures the national investment (government, business, and non-profit sectors) in caring for people through unpaid household and community sectors as well as paid sectors.

Human Capacity Indicators

1. Caregiving measures
2. Education measures, Health measures
3. Social connectivity and cohesion measures
4. Environmental measures affecting human capacity

Social Equity Indicators

1. Human rights measures
2. Wealth and income disparity measures
3. The poverty line
4. Number of women and children living below quality of life and long-term economic growth within household.
5. Political and legal measures

Care Investment Indicators

1. Government investment in care work
2. Business investment in caring business policies/practices
3. Correlations between investment in care work (unpaid and paid) and human capacity development and economic
4. Military budgets compared to education budgets
5. Investment in caring for and protecting our natural environment

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Week 6: Task 1: How should be the management role transferred to the relatives?

Work in team to discuss WAMECH Company Case Study (PL).

Ability to understand and manage this case based on case study.

Legal point of view: Transformation to the new corporate form by family or not family succession. Succession by business share transfer contract. Succession by conferring the right of representation. Transfer of shares to non-family members. Amendment of the articles of association, legal matters connected with the delegation of responsibility.

Financial point of view: How should the transformation be financed? Overview of the management requirements, modifying the reporting systems etc. Financing the necessary tasks, update functions related with the transformation. Payable taxes in case of inheritance or gift agreement, as well as the allowance of the duty in case of inheritance or gift agreement for small business assets. Tax liability in the context of the trust property management acquisition. The property transfer tax.

Finance

1. Subject
    - Ownership structure of family business(es).
    - Company form: particularly the level of liability – limited liability or full and unconditional liability; advantages and disadvantages of current company form.
    - If there are more companies: number of the companies, relation of companies (ownership relations, business relations).
    - Responsibilities of family members in the family business.
    - Incomes of family members:
        - a) Investment income (based on ownership);
        - b) Earnings;
        - c) Fringe benefits;
        - d) Other benefits.
2. Evaluation
    - Evaluation of the results of mapping, after transferring the management what should be changed, what are the needed modifications?
3. Planning
    - Planning of the new: ownership structure (the old generation transfers everything to the new generation or keeps some ownership; who can have

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ownership: every family member or only those who are working for the family business; group structure (if relevant), incomes of family members (active and passive members income).
- Is there ownership transfer or not?
- Ownership transfer with
    - a) Buy-sell agreement;
    - b) Gifting.

4. Financial needs and their possible source

Based on the Polish regulations

Required qualifications

As a general rule, the freedom of economic activity applicable in Poland does not put any requirements for the competence of persons taking over the management of the company. The owners may entrust all or part of the management of the family business using all types of contracts available in the legal system. There are exceptions from this rule. The situation depends on the legal form of the business entity. For example, you cannot entrust the entire management of a civil partnership, general partnership or limited partnership to persons who are not partners. It is then necessary to make a transformation of the legal form beforehand (which entails the necessity of expenses) or transfer the ownership to relatives.

There are also branches that require specific qualifications from the managers (e.g. Audit Company). A transfer of company management to persons without appropriate permissions can in some cases entail the need to employ additional managers.

Taxes

The transfer of management itself to the relatives, without transferring the ownership, in Poland is no different from the transfer of management to an unrelated third party, and does not entail a fiscal burden.

The transfer of property in the form of a gift or inheritance depends on the degree of kinship. The legal system provides for an exemption for certain amounts of tax – the more distant kinship, the lower the exemption amount. The tax rate is progressive and depends on the degree of kinship and the value of assets – it is within the range of 3-20% of the transferred assets.

In the case of inheritance or gift to the immediate family (defined as including spouse, children, stepchildren, grandchildren, great-grandchildren, siblings, parents, step-parents, grandparents), the buyer can benefit from a total exemption from tax provided that the notification to the tax office is reported within 6 months from the acquisition of the

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inheritance or gift receipt and the necessary documentation is submitted. The inheritance tax is a personal tax and cannot be treated as an expense of the company.

The sale of shares or an enterprise by individuals is subject to the general rules of the Personal Income Tax Act. The tax is charged on the taxable income, which is the difference between the tax revenue and the taxable expenses. Depending on the circumstances, a flat tax rate of 19% or an Income based tax rate of 18% for income 556.02 - 85,528.00 and 32% of excess over 85,528.00 may be applicable. With this type of transaction the tax on civil law transactions (1% of the market value) may apply. It is charged to the buyer. The sale of shares or an enterprise is not subject to VAT. The tax system provides for a number of special situations; each transaction must be examined in this regard.

Enterprise valuation and monitoring of performance

The transfer of management of the company may require an analysis of its ownership structure, of its financial condition, estimating its value, and conducting an audit. These activities can be financed from the current assets of the company. An assessment of the company's situation may be difficult in the case of absence of equivalent financial reports.

In Poland, there are two accounting systems. The books are maintained on the basis of the Polish Accounting Act or the International Financial Reporting Standards. For small and medium size businesses balance sheets and profit and loss accounts are available to public and in the case of larger companies, cash flows and statements of changes in owners' equity are also available to public. The second system is a simplified tax record based on the tax law. As a rule, this system may be used by an enterprise whose annual turnover does not exceed EUR 1,200,000, and which conducts business as a sole proprietorship, civil partnership or general partnership – most small and medium-sized family businesses operate in this form. In this case, only the information needed to determine the taxable income which differs from book income is usually collected. It is not obligatory to collect information about accounts payable, accounts receivable, cash flows, and many adjustments required on a general basis are not made. In the case of simplified forms of records, the valuation of enterprises may be much more difficult due to the lack of data with which to carry out its valuation and monitoring of its performance.

One should also pay attention to the possible major differences between the book value and the market value of companies – the Polish Accounting Act is largely based on the historical cost principle.

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Incomes of the family members

The possibility of family members collecting revenues from the company depends to a large extent on the legal form of the business entity. For example, in the case of a limited liability company and a joint stock company, it is possible to collect the revenues only in the form of remuneration for functions performed or dividends paid. If a family member is not involved in the management, in this case they can collect the remuneration only in the case of achievement of the company profit and after the end of the financial year. In the case of a sale, the price should be clearly defined, its spreading in instalments can be a source of income for the owner. For other types of companies, it is possible to withdraw the capital during the financial year, however, you should check the regulations of The Commercial Companies Code and the articles of association. Polish law does not recognize common fiduciary funds providing a steady income to the owner.

Based on the French regulations

Required qualifications

In France, except for some specific professions, there are no specific competence requirements for taking over the management of a company. The owners have to prepare to entrust all or part of the management of the family business, using all types of contracts available in the legal system.

The partners can transmit their parts or shares within the framework of a donation. The donation *inter vivos* (between living people) is thus an act by which the donor is deprived immediately and irrevocably of the given thing, in favour of the donor who accepts it. Parents or other older family members can arrange the distribution and the division of their properties between their children or younger relatives. This act can be made in the form of settlement or will shares. This technique is characterized by a real flexibility: the founders can distribute their inheritance in their own lifetime and at their own discretion, which can help to avoid later disputes between the heirs.

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Legal

<u>Based on the Hungarian regulations</u>

Change of legal form (Transformation)

Initiation of the transformation (members' decision)

↓

the management draws up a transformation plan also including a transformation draft balance sheet

↓

this is communicated to the members

↓

within 30 days from this communication the members can make a statement whether they wish to be members in the transformed legal entity

↓

(if any members quit the company , the transformation plan must be amended)

↓

the members decide on the transformation by passing the transformation plan by a majority of at least three quarters of the votes

↓

decision and the publication of the transformation plan (for the creditors)

↓

Before completing the transformation, the shares of the planned subscribed capital of the members of the legal successor entity, the asset ratio of those not wishing to participate as members in the legal successor and the way of distributing the latter must be determined.

↓

The asset ratio of members not wishing to join the legal successor after the transformation shall be distributed within sixty days after the registration of the legal successor entity except if otherwise provided in an agreement between the legal successor and the members concerned.

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Changing the legal form of companies (transformation);

- Transfer of business shares (sale, gift-giving);
- Taxation;
- Main rules related to senior officials (management).

A) Changing the legal form of companies (transformation)

'Transformation' as a collective term pursuant to the current effective Civil Code (Act V of 2013) ceases to be a collective term, and from now on it is to be used exclusively for changes related to the legal form of a company, with a predecessor becoming a legal successor.

In cases where from one predecessor several legal successors are created there is now a separate legal act to apply called 'division', while in the applicable law the term used for the process of several predecessors becoming one legal successor is 'merger'.

With the transformation of the legal form of a company, the changing legal entity ceases to exist, and its rights and obligations are transferred to the newly created legal person as a general successor resulting from the process of transformation.

The decision on initiating the change of a legal entity is made by the members or founders of the particular legal person, determining the method of transformation and the legal form of the resulting successor entity. Following the decision on initiating transformation, the management of the legal entity is obliged to prepare a transformation plan also including a balance sheet plan, which is to be communicated to all members and founders.

The members of the legal entity will have thirty days from the announcement of the transformation plan to declare if they do not wish to be members of the newly created legal entity resulting from the transformation. The membership of any member making such a legal declaration will cease to exist at the time of transformation, the member being entitled to an equity ratio of the changing legal entity which would have been due if the company ceased to exist without a legal successor. The transformation plan must be changed in accordance with the exit statements of the concerned members.

The members or the founders make a decision with regard to transformation by approving the transformation plan; the relevant decision will be based on minimum three-quarter majority of the decision making body.

The approved transformation plan must be announced along with the relevant decision adopted on transformation. Any creditor with receivables incurred before the announcement may demand an appropriate security from the changing legal entity within a limitation period of thirty days if the transformation could endanger recovery.

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Before the transformation is completed the proportion of the planned share capital due to the members of the legal entity and the equity ratio due to anyone not wishing to be a member of the successor legal entity, and the method of such payments must be determined. Unless otherwise provided in the relevant agreements established between the successor and the concerned members, the equity ratios of the members leaving the company during the transformation process must be paid within sixty days of the registration of the legal successor entity.

Any member leaving the company during transformation will be liable for any unsettled obligation of the legal successor resulting from the transformation process in accordance with the rules applicable to the cessation of companies without legal successor. If a member with unlimited liability becomes a member with limited liability as a result of transformation, such member will be jointly and severally liable for any obligations of the predecessor legal entity with other members of the newly created legal entity having unlimited liability within a limitation period of five years of the registration of the successor legal entity.

Simultaneously with the registration of the legal entity resulting from the transformation the company ceasing to exist must be removed from the register. Until the registration takes place, the newly established legal entity will continue activity according to its registered legal form.

In addition to the Civil Code, another important legislation applicable to the transformation of companies is Act V of 2006. Pursuant to the Act the court of registration according to the seat of the predecessor company must be notified of the transformation within sixty days of signing (approving) the memorandum of association. The removal from the register of the predecessor company must be requested simultaneously.

Decision with regard to transformation is made by the court of registration according to the seat of the predecessor company. The court of registration removes the predecessor company from the register with reference to its legal successor, simultaneously registering the successor company.

During the procedure legal representation is mandatory. The company data are registered upon request. The request must be submitted by the representative of the company via a legal representative. In accordance with the main rule the transformation will become effective with the registration of the company.

B) Transfer of business shares (sale, gift-giving) and the relevant taxes and dues

General rules of transferring business shares in relation to the individual types of legal entities

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With regard to ***limited and unlimited partnerships,*** *the members of such partnerships may transfer their business shares representing rights and obligations based on their corporate membership fully or in part to any other member or third party. The relevant transfer agreement must be drawn up in a written document. The transfer agreement will become effective if the memorandum of association of the particular company is modified in accordance the transformation.*

The business shares of ***limited liability companies*** *may be transferred freely among the members of the company. In the memorandum of association the members may secure in favour of each other the right to acquire business shares before others in case business shares are transferred against payment. Business shares to external parties may be transferred only if the capital contribution of the relevant member has been fully provided.*

Other members of the company, the company itself or a person appointed by the company, in this order, may acquire the business shares to be transferred against payment in accordance with the appropriate provisions related to the right of pre-emption, before all others. If the memorandum of association requires the company's agreement with regard to transferring business shares to external parties, decision on granting approval will be made at the members' meeting.

The transfer of business shares must be drawn up in a written document. The transfer of business shares requires no modification of the memorandum of association. The party acquiring business shares must notify the company of the change with regard to the eligible party and the relevant date within eight days of acquisition in order to be registered in the membership list. The notification must be submitted in a public document or in a private document representing conclusive evidence, also attaching the transfer agreement. In addition to the fact of acquisition, the person acquiring business shares must provide a statement acknowledging the binding nature of the provisions of the memorandum of association.

In case of transferring business shares the rights and obligations resulting from the membership status of the transferring party will be transferred to the acquiring party. Any change in membership resulting from the transfer of business shares will be effective against the company from the date of notification; the acquiring party will be entitled to the rights and bear the obligations resulting from the membership status from the date of notification, irrespective of the date of registration.

In the event of a member's death its heir, while in the event of transformation, merger or division of a member legal entity or in case of legal succession based on legislation the successor may request the general manager to be registered in the membership list, certifying the relevant status as heir or successor.

The general manager may refuse to register an heir or successor if the person(s) entitled by the memorandum of association provide a statement to redeem the concerned

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business shares in accordance with the specified terms and conditions within a limitation period of thirty days from the date of the heir's or successor's request for registration becoming effective if the sale value of the business shares is duly paid to the concerned heir or successor.

In respect of ***companies limited by shares,*** *the shares are registered negotiable securities with nominal value representing membership rights to be exercised in the issuing company. If the company restricts the transfer of shares in its articles of association or makes it subject to the company's approval, such restrictions in relation to third parties will be effective if the restriction and its contents are apparent from the shares, or in the case of dematerialised shares from the details of the securities account. If there is an agreement stipulating right of pre-emption or right to repurchase, sell or buy shares, it will be effective in relation to the company or any third party if that stipulation is apparent from the shares, or in the case of dematerialised shares from the details of the securities account. If the articles of association require the company's consent to transferring shares, any reason potentially giving rise to refuse such consent must also be determined in the articles of association. The decision on granting consent will be made by the Board of Directors. If the Board of Directors issues no statement within thirty days of the declaration of intent to transfer shares, the relevant consent will be deemed granted.*

C) Taxation

Taxes and dues related to transfer of business shares

In case of transferring business shares against a countervalue the obligation to pay duty on quid pro quo transfer of property, personal income tax and health care contribution in accordance with Act XCIII of 1990 on duties should be examined.

The duty on quid pro quo transfer of property will be based on the market value of the acquired property.

The general rate of duty on quid pro quo transfer of property will be 4 per cent, for the acquisition of real estate property or the capital contribution in a company with holdings in real estate properties located in Hungary it will be 4 per cent of the market value of each real estate property acquired up to 1 billion forints, without any deduction of encumbrances, plus 2 per cent of the portion of the market value above 1 billion forints, not to exceed 200 million forints per property.

Exemption from the duty on quid pro quo transfer of property

In case of transferring property among lineal relatives, a lineal relative acquiring property (including relationships based on adoption) will be exempted from the duty on quid pro quo transfer of property.

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In case of transferring property among married partners, exemption from the duty on quid pro quo transfer of property will apply to such acquisition of property. Exemption from payment of duty will be applicable only to persons living in marriage, with no exemption applied to unmarried partners.

Personal income tax and health care contribution payable in case of transferring business shares against a countervalue

According to the effective regulations no exemption from personal income tax or income tax benefit will be applied to the sale and purchase of business shares among relatives, therefore tax will be payable in accordance with the general rules.

Tax payable by persons transferring business shares

In case of selling business shares by a private person, from the aspect of the Act on personal income tax business shares in limited liability companies or limited and unlimited partnerships are considered securities (based on the main rules, i.e. Hungarian private individual tax residents in relation to domestic shares). Based on Article 67 of Act CXVIII of 1995 on personal income tax 'Income from capital gains realized' shall mean the proceeds received upon the transfer of securities (not including lending arrangements), less the purchase price of the securities and any incidental costs associated with the acquisition of the securities.

Any income from capital gains realised as described above will be subject to payment of 16% personal income tax.

In addition to personal income tax there is an obligation to pay 14% health contribution as well, the extent of which however, is maximised. The upper limit of health contribution payable in the specific year is 450 000 forints, which includes in-kind and monetary health insurance contribution paid by a private individual, any potential health service contribution, or 14% health contribution paid on any other income. (For example, if the amount of health insurance contribution paid by a private individual on wages from an employment relationship reaches 450 000 forints in a specific year, no health care contribution will be paid.)

Taxes and dues related to transfer of business shares as a gift among family members

In accordance with Act XCIII of 1990 on duties gift duty will be payable on giving movable property or right representing assets on the day of signing the relevant document.

In case of gift-giving the gift duty will be based on the pure value of the acquired property.

The general rate of gift duty will be 18% of the pure value of the gift given to a donee. *The following will be exempt from gift duty:*

1. Gift acquired by a lineal relative of the donor (including relationships based on adoption). Lineal relatives are natural persons descending from one another. Relatives in the direct

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ascending line are one's ancestors, such as parents, grandparents and great grandparents, while relatives in the direct descending lines include one's children, grandchildren and great grandchildren, i.e. descendants. Exemption from the payment of gift duty is extended also to relationships resulting from adoption.

2. Gift acquired by the spouse of the donor during the existence of marriage. Exemption from payment of duty will be applicable only to persons living in marriage, with no exemption applied to unmarried partners.

3. Acquisition of property through termination of marital community property.

4. Acquisition of gift subject to personal income tax, social security contribution or health contribution payable by the donor or the donee.

D) Rules related to senior officials (management)

Meaning of management: decision making related to the management of a legal entity beyond the power of its members or founders within the competence of a body consisting of one or more senior officials.

The liability of a general manager will correspond to the liability for breach of agreement. Accordingly, anyone causing damage to another party through breach of agreement will be liable to provide compensation. Exemption from such liability will apply if the breach of agreement occurred due to unforeseeable circumstances unknown at the time of contract conclusion beyond the control of the concerned person, and the prevention of such circumstance or damage could not be reasonably expected.

The position of senior official may be taken by any individual of minimum 18 years of age whose capacity to perform such activity has not been limited. A senior official must perform its management duties in person. An individual sentenced to a punishment of confinement in a final order due to a committed crime may not hold the position of senior official until exempted from the relevant adverse legal consequences. No individual banned from such activity in a final order may take the position of senior official. An individual banned from a particular activity in a final court order may not be a senior official of a legal entity engaged in such activity during the period of prohibition. An individual banned from the position of senior official may not take such position during the period established in the order imposing the prohibition.

The members of a legal entity, or in case of a legal entity without membership its founders may recall the senior official at any time without explanation.

A senior official may resign at any time with a statement addressed to the concerned legal entity or to another senior official or decision making body of that legal entity. If so required by the operability of the concerned legal entity the resignation will become effective with

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the appointment or election of a new senior official, or in the absence of such appointment or election no later than on the sixtieth day from the date of announcement.

Based on the French regulations

Simple donation and settlement

The partners can transmit their rights within the framework of a simple donation, which can either favour the donor, or be made as an advance on the future inheritance share of the donor. The owner distributes the inheritance in their lifetime and under their authority, which helps prevent later disputes.

The simple donation, as well as the settlement, allows the transmission of properties without waiting for the death of the founder. But with a settlement, which has to be declared before a notary, the price of shares are fixed at the date of registration, whereas in the case of the simple donation, the value will be those when the initial owner dies.

Manual Gift

The manual gift is a donation which is made by the delivery from hand to hand of the movable property. This manual gift does not require legal paperwork. So, the transmission of shares seems to be possible. Indeed, the Court of Appeal of Paris judged that a manual gift is possible for the transmission of shares, by means of a transfer from account to account on the written instruction of the contractor. (Position that the Court of Cassation confirmed in a judgement of May 19th, 1998).

Taxes

Donations of full property (as well as the donations of usufruct or distantly usufruct of parts or shares of companies) are exempted from transfer taxes on up to three-quarters of their value, if the donor take the commitment to keep parts or shares. The shares of a company involved in an industrial, commercial, craft, agricultural or liberal activity, are exempted from transfer taxes on up to 75% of their value, when they are the object of a donation.

To benefit from the partial exemption, these social rights have to be the object of two commitments:

- Collective commitment to preservation taken by the donor
    - This commitment is taken by the donor and its family targeted recipient for free, with at least one of the other partners.
    - The retention time is for 2 years minimum from the recording of the commitment or the pact, and has to be in progress at the time of the donation.
    - The recording is made in the takings of the place of residence of one of the parties, and gives rise to the pay ability of a fixed registration cost (125€).

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 - The collective commitment has to concern at least 20% of the shares for listed companies (in stock exchange) or at least 34% for unlisted companies. These percentages must be respected throughout the duration of the collective commitment of preservation.

- Individual commitment taken by each of the donors
    - A commitment is included in the deed of donation by the donor and their relatives to keep parts or shares passed on, for a duration of four years from the expiration of the deadline of collective commitment of preservation of the social rights.
    - One or several beneficiaries of the titles have to exercise an effective managerial function during 5 years that is on the 2 years of the collective commitment and on the 3 years which follow the transmission.

For donations granted from July 31st, 2011 onwards, new partners can subscribe to an already concluded pact. The collective commitment must be renewed for a minimal duration of two years.

Enterprise valuation and monitoring the performance

The management transfer of the company requires an analysis of its ownership structure, its financial condition, and estimating its value; all these issues may be conducted by an external audit specialist, which could be financed from the current assets of the company.

An assessment of the company's situation is evaluated through balance sheets and profit and loss accounts available, and in the case of larger companies, also cash flows and statements of changes in owners' equity.

The determination of the market value of the constituent elements of certain balance sheet items. The balance sheet is established according to rules which are not always compatible with economic and financial reality, in particular:
- absence of posting of certain immaterial elements (trade value, industry created),
- evolution of the market,
- currency depreciation.

A preliminary approach is essential

Even a summary financial analysis (highlight and/or in perspective of certain ratios, as those of the debts, the cash flow etc.) as well as the main economic data of the company and the sector in which it evolves, can strongly influence the various parameters of the evaluation, prefiguring even the choice of the methods which will be retained. Elements below to illustrate the impact of ratios, to avoid the error in determining the various values of the company.

- Intrinsic elements to the company

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- The market value of the elements of the fixed assets
- The capacity to produce profits
- The human resources (number of employees

- The possible risks connected to a strong dependence on the company
    - To the owner, or a member of the team, whose expertise contributes to the company's reputation
    - To the financial structure
    - Debts
    - Commitments on balance sheet assessment

- External elements
    - The activity (dynamic of the sector),
    - The competition in the sector,
    - The general economic situation,
    - The regulations appropriate to the business sector, for example legislation on the environment and pollution.

Naturally, this list is not restrictive.

Incomes of the family members

Family members collecting revenues from the company depends to a large extent on the legal form of the business entity. For example, in the case of a limited liability company and a joint stock company, it is possible to collect the revenues only in the form of remuneration for functions performed or dividends paid. If a family member is not involved in the management, they can collect the remuneration only when the company is profitable, and only after the end of the financial year when official accounts are published.

Based on the Polish regulations

Legal point of view

Legal matters connected with the delegation of responsibility:

- Transformation to the new corporate form by family or non-family succession.
- Succession by business share transfer contract.
- Succession by conferring the right of representation.
- Transfer of shares to non-family members.
- Amendment of the tickles of association/partnership?

Depending on the legal form of the business, the models and options for acting are different.

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Sole proprietorship is a form of running a business that is hard to transfer to successors. To share a business like that with children, it is crucial to change the legal form, or for the successors to set up a new business and then buy the whole of the old company's assets (or the original company donates them). This option is connected with setting up a new business and transferring the whole potential of the company to the new one. The new owner must obtain their own credit, gather the money for continuing the business, and take over the know-how of the first company. It's a lengthy process to transfer the company to the completely new owner. It's crucial to predict the tax issues in advance.

Sole proprietorship can be sold to a member of the family, which is one of the possibilities for transferring the company. The new owner must pay the market price for the company. The consequence of such a solution is a lack of legal and tax continuity of the company. The owner needs the creditors' acceptance to sell the company, especially the banks, contracting parties, etc. Moreover, the company loses its European contracts, licences, concessions and permissions. The new owner must gain the above from the very beginning.

The other option to take over the company is inheritance; however that is possible only after the founder's death and brings problems to the successors, who have to change all the documents of the company, sort out the legal issues connected with credits, employers, licences, concessions, permissions, etc. The problems of such solution are very similar to indicated above.

Some founders are providing changes that entail alteration of the company's structure. The solution is connected with setting up a new company – Limited Liability Company or Joint-Stock Company and changing the sole proprietorship in one of the companies. This saves the continuity of the company, and the owner gains 100 % shares for their company. That is the only solution to keep the continuity of the company without the necessity of gaining new credits, licences, concessions, etc. Using this solution we must still remember that, with the creation of a new company, the banks and contractors can terminate our agreements, and we are obliged to renegotiate the contracts from the very beginning.

Civil law partnership is a form of business model where all partners are equivalently important, and can act for the company together. Their responsibility for the company is equal and full. The lack of one of the owners is a cause to cease existence of the company, and transferring the company to the new owners is a complicated process. The end of a civil law partnership might be caused by the death of one of the owners, which complicates the existence and continuity of the company.

A Joint- stock company, a Limited liability company, or other forms of companies, are legal structures that bring fewer problems to their owners. The owner of the company can prepare their successors for the final takeover of the company. This model of running a business assumes a board (group of people) who decide about all transactions and activities connected with the company. The lack of one person does not cause a huge

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problem for the company as it does with a one-man business; however it's crucial to have appropriate statements in the company's status or agreement that will help in taking over the company via family members.

The legal form of a company is chosen by members of the family. There are so many of them that it's hard to indicate the best one. The family structure and financial situation of the company have a great impact on the chosen legal form.

Irrespective to the legal form of the company, founders indicate the key issues concerning the transmission of the company, like preparing the successor for the boss role.

A crucial element for an easy takeover of the company is teaching successors how the company works, what is its mission, what is the employment policy, etc. Without that knowledge it's hard to take over a business and keep it on the market. We should focus here on the socio-cultural aspects of the problem. The most popular form of succession in Poland is transferring the company to the members of the immediate family (daughters, sons); however, one of the forms of transferring the responsibility for a company is employing a manager, who is running the business for the owners. The manager is an employee and receives a regular salary for the job. The case of a manager taking over the family company is possible, but not very frequent in Poland.

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Week 7: Task 2: How should be the management role delegated to a non-family person?

Work in team to discuss BI-KA Logistics Ltd. Case Study (HU).

Ability to understand and manage this case based on case study.

Legal point of view: Transformation to the new corporate form by family or not family succession. Succession by business share transfer contract. Succession by conferring the right of representation. Transfer of shares to non-family members. Amendment of the articles of association, legal matters connected with the delegation of responsibility.

Financial point of view: How should the transformation be financed? Overview of the management requirements, modifying the reporting systems etc. Financing the necessary tasks, update functions related with the transformation. Payable taxes in different cases, as well as the allowance of the duty in case of inheritance or gift agreement for small business assets. Tax liability in the context of the trust property management acquisition. The property transfer tax.

If it is a non-family transfer, how the inheritance rules can be applied? Usually in this case, different fees, royalty and other long term benefits are paid to the old owner for defined period.

Finance

1. Subjects
   - Ownership structure of family business(es).
   - Company form: particularly the level of liability – limited liability or full and unconditional liability; advantages and disadvantages of current company form.
   - If there are more companies: number of the companies, relation of companies (ownership relations, business relations).
   - Responsibilities of family members in the family business.
   - Incomes of family members:
     - a) Investment income (based on ownership);
     - b) Earnings;
     - c) Fringe benefits;
     - d) Other benefits.

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2. Evaluation
   - Is the current organisational structure suitable for the new management structure (non-family CEO)? Decreasing family involvement in the daily operation of the family business requires more rigorous control.
3. Planning
   - New ownership structure whether the non-family manager will have a minimal ownership or not?
   - Two possible scenarios:
     - 1). ownership structure doesn't change, management structure changes.
     - 2). ownership structure changes, management structure changes.
   - What needs to have to control the new structure: improved reporting system, implementation of IT systems, internal auditor, internal audit department, quality assurance, financial audit, new employees (an owner can have multiple tasks, but when an employee is responsible you may have to split responsibilities to make effective control), advisers? What is the financial need the set up of the new control system? Is the family business is able to finance all the requirements? (In case of a micro or small company has to finance the following: salary of non-family manager, internal control system, ownership income.
   - Tasks of ownership control: owners may need education
4. Financial needs and their possible source

<u>Based on Polish regulations</u>

In the case of the transfer of management to persons outside the family, more attention must be paid establishing an effective reporting system for the owners. The use of a thorough system of accounting and the employment of independent auditors will encourage better control.

For other issues related to taxation and financing, see section 2.1.

Legal

<u>Based on the Hungarian regulations</u>

See the first task! (Task 1: How should be the management role transferred to the relatives?)

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Based on French regulations

In the case of the transfer of management to persons outside the family, the use of a thorough system of accounting and the employment of independent auditors is encouraged for better control, whenever it may be implemented, for a sustainable development of the organisation.

As regards the partnership shares, an article of the commercial law stipulates that these can be sold to third parties only with the consent of a majority of the partners (representing at least half of the partnership shares) unless the statutes require a stronger majority.

On the other hand, the shares are freely negotiable in principle. However, the statutes can require an approval clause which restricts this freedom. Consequently, an attentive reading of the statutes should be recommended, to determine the existence and the importance of limitations on any transfers.

Except in special cases, the existence of shareholders' pacts, or a collective commitment of preservation which are a matter of a personal contract, have effect only between the parties and do not justify the application of an additional allowance to the value. You should not lose sight indeed of the interests in these pacts of the shareholders who sign them.

Therefore, the argument for "locking" of the capital must be put in perspective - because it is specially designed in the interest of the family members, for example to protect itself from unfriendly takeovers or, as regards the collective commitments of preservation, to benefit from favourable tax measures.

Based on the Polish regulations

Legal point of view: The understanding of delegating the management role to a non-family person might be different considering different legal forms of the company.

Firstly, we can entrust the management of the company to the external managers, who will be employed by the company. The management contract is a document that indicates the role and obligations of the manager. The contract must involve all expectations and obligations of the manager, who is getting the regular salary for their job. In this model we have an employee who is working for the company as a third person.

The contract may provide for gaining shares in a company, or gaining a part of its earnings. The conditions of acquisition of the shares in the company must be indicated in the contract. After share acquisition, the manager becomes one of the owners and his role in the company changes greatly. In Poland, changes in ownership of the company requires some actions in the register's court. Changes in the articles of association are not always obligatory.

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Considering the role of management in the company, the crucial thing is different responsibility for the company. The external manager employed in a company has different responsibilities, and scope to act, than its owner or shareholder.

Shareholders accrue benefits as a group, and are monitoring the managers and their job. Shareholders are the owners of the company's assets. Normally, ownership of an asset entails a number of rights: the right to determine how the asset is to be managed, the right to receive the residual income from the asset, and the right to transfer the ownership of the asset to the others. Transferring shares means transferring responsibility for the company and its financial effects as well.

We can observe different dimensions of managing the company depending on the legal form of acting. The responsibility for the company differs between one-person businesses and in companies with a structure like joint-stock or limited liability under law.

The management contract is a kind of hybrid in Polish law. We combine labour and civil law to gain a structure that helps managing in the best way.

The member of the family is usually acting as a successor and the only one owner in company – considering sole proprietorship. In companies like Ltd or Joint stock Company, the members of the family join boards, buy shares, and support the company by being involved in regular managing and taking decisions.

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Week 8: Task 3: Merger with another business and either retiring; or stepping aside

Work in team to discuss <?> case study.

Ability to understand and manage this case based on case study.

Legal point of view: Amendment of the articles of association, legal matters connected with the merger.

Financial point of view: How should the transformation be financed? Overview of the management requirements focusing on the merger process, etc. Financing the necessary tasks, the update functions related with the transformation. Payable taxes in case of merger. Tax liability in the context of acquisition of the trust property management. Property transfer tax.

Finance

1. Company evaluation

What is the value of the company how it can be improved? What is the value of the family business without the family?

2. Special attention to the financial statements, what they say to a potential investor? Improvement of the reporting system. Disassociation of company and family property.
3. Finance the transformation:
    a. Cash;
    b. Shares (the owner of the family business will get shares in the merged company, in this case the rights of the family in the new company should be clarified: supervisory board membership, board membership, family members employment);
    c. Property.
4. Planning the monthly income: cash, fringe benefits: car, services, education, etc...
5. Financial needs and their possible source

Based on Polish regulations

Enterprise valuation

The key issue is to determine the value of the assets transferred to the new company. The owners are free to choose the methods of valuation for combined shares. It is possible to

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use, for example, the market valuation, or methods based on discounted cash flows. Fair value may differ significantly from the book value. Many intangible items, such as brand, human capital, and customer loyalty are not included in the book value. An important and difficult issue is the valuation of how traits and organizational culture of the family business affect the value of the new entity. According to the Polish Commercial Companies Code, you must produce a detailed merger plan, which must be examined by an independent auditor. Due to the fact that you can merge only companies having a legal personality, a prior transformation may be required, the costs of which may be borne by both companies.

Management and Control

An important issue is to determine the shares and voting rights in the new company. The institution of preference shares as to voting rights (maximum of two votes), or as to the dividend (up to 150% of the dividend on ordinary shares), as provided for in the Polish law, can permit the maintenance of economic and operational control in the new entity. Having family representatives on the supervisory board may also be useful to maintain control over the company.

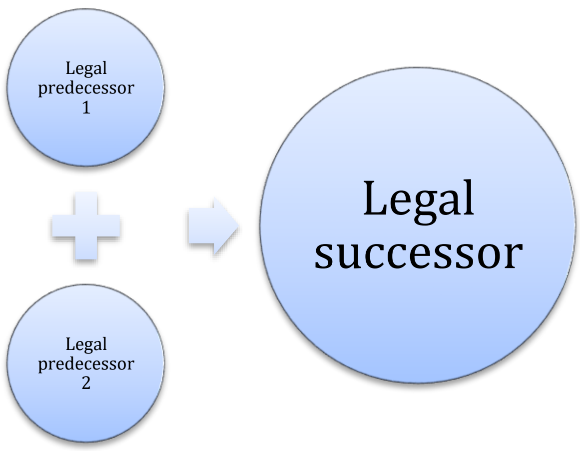
Taxation

The merger of companies is neutral in terms of income tax (i.e. the company resulting from the merger does not pay the tax in respect of the assets transferred). There are exceptions to this rule (for example, if one of the companies involved in the merger is a company outside the European Economic Area). The new company is generally the tax successor of the companies which have ceased to exist, although they could not carry forward the tax losses of their predecessors. The rule is that the merger does not result in a need to pay the tax on civil law transactions.

Legal

<u>Based on the Hungarian regulations</u>

The merger of legal entities



Merger

Decision-making organs must estimate which of the members of the legal predecessor legal entity wish to become members of the legal successor entity and by what financial contribution.

Decsion-making organs determine the draft balance sheet date, designate the auditor and commission the management of the legal entities concerned to draw up the draft terms of merger and the other documents required.

As part of the draft terms of merger, the senior officials of the merging legal entities work out the draft merger agerement as well. The draft terms of merger must be communicated to the members in writing.

Members may make a written statement within thirty days from the date the draft terms of merger are communicated if they do not wish to become members of the successor legal entity.

If a member does not wish to become a member of the successor legal entity, they way of settlement must be agreed on.

The decision making organs of the legal entities concerned decide on approving the draft merger plan and its annexes at the session where the final decision on the merger is passed. (A maximum of three months may pass between the draft balance sheet date and the date the decision is made.)

The merger agreement is signed based on the authorisation of the decision making organs approving it by the senior officials of the legal entities participating in the merger.

Thereafter, the decision-making organs make a final decision on the merger and the members of the successor legal entity sign the articles of association of the legal successor.

The legal entities involved in the merger shall, after the final decision on the merger in the case of all legal entities, initiate, within eight days after the date of the last decision, the publication of a communiqué on this in the Company Gazette, to be published in two subsequent issues.

The application for the registration of the merger must be filed with the competent court of registry according to the legal successor company within sixty days from signing or passing the amendment of the articles of association of the successor company or, lacking that, from approving (signing) the merger agreement. Simultaneously, the cancellation of the legal predecessor acquired company shall also be requested.

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Merger with another company

The process of merger

As a first step the decision making bodies of the legal entities wishing to merge establish if the members of the concerned legal entities agree to the intended merger and decide on the relevant method (takeover/merger by acquisition or merger).

The decision making bodies need to assess which members of the predecessor legal entities and with how much capital contribution intend to be members of the successor legal entity.

The decision making bodies establish the accounting date of the balance sheet plans, decide on the auditor and appoint the management of the concerned legal entities to draw up a merger plan and any other required documents.

The merger plan includes the balance sheet plans and the supporting property inventory plans of the predecessor legal entities, the (opening) balance sheet plan and property inventory plan of the successor legal entity, its draft memorandum of association, as well as the planned method of settlement with the individuals not wishing to be members of the successor legal entity. Furthermore, the merger plan may include any other circumstance or aspect that may be required in order to facilitate the adoption of the merger decision and the better preparation of the meeting of the concerned decision making body.

The merger plan is signed by the senior officials of the predecessor legal entities.

As part of the merger plan, the senior officials of the merging legal entities also prepare a draft merger agreement. The merger plan must be communicated to all members in writing.

The members may submit a written statement in thirty days of the announcement of the merger plan if they do not wish to be members of the successor legal entity. After such statement an agreement with the concerned member regarding settlement must be established.

The decision making bodies of the concerned legal entities decide on the adoption of the merger plan and its annexes at a final meeting. The period between the accounting date of the balance sheet plan and the date of decision may not be longer than three months.

The merger agreement is signed by the senior officials of the legal entities involved in the merger, based on the authorisation of the decision making bodies adopting the agreement.

The decision making bodies then make a final decision on merger, and the members of the successor legal entity sign the memorandum of association of the successor company.

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Following the final decision of all legal entities involved in the merger, the concerned legal entities must initiate the publication of the relevant announcement in the Company Bulletin within eight days of adopting the final decision, to be published in two consecutive issues.

The registration of the merger must be requested at the court of registration according to the seat of the successor legal entity within sixty days of adopting and signing the modified memorandum of association of the successor legal entity, or in the absence of such memorandum within sixty days of adopting (signing) the approved merger agreement. At the same time the removal from the register of the predecessor legal entity which ceased to exist due to takeover must also be requested.

Based on French regulations

Enterprise valuation

The key issue is to determine the value of the assets to be merged. The owners are free to choose the methods of valuation of combined shares as mentioned above (use of the market valuation or methods based on discounted cash flows). Fair value may differ significantly from the book value. Many intangible items, such as brand, human capital, and customer loyalty are not included in the book value.

Due to the complexity and discussions of appreciations, a detailed merging plan should be produced and must be examined by an independent auditor. Many times, a legal transformation is required beforehand to allow effectiveness of future perspectives. The associated costs may be charged to both companies.

Management and Control

First, a key issue to cover from the very beginning is allocation of voting rights and shares in the expected new company. If the family representatives would like to be involved in future decision, they may be included in the supervisory board. All these issues are included in the complete process negotiation regarding the expected future industrial project targeted by the parties.

Taxation

Merging companies is generally neutral in terms of income tax. The new company is generally the tax successor of the companies which have ceased to exist, although they could not carry forward the tax losses of their predecessors. The rule is that the merger does not result in a necessity to pay the tax on civil law transactions.

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Based on the Polish regulations

Amendment of the articles of association and legal matters connected with the merger:

A *merger* takes place when one company is absorbed into another company. Where company X is merged into company Y, company Y is the acquiring company and survives, while company X is the acquired company and disappears. In a *consolidation,* both company X and company Y disappear and a new company Z is formed.

The succession via merger is often not possible, unless we assume a consolidation process between companies that belongs to the members of the same family. Such a version is very close to selling the company.

A merger is possible if the articles of the company agreement allow the possibility. Specifically, it is necessary to allow for such a possibility in LTD or Joint stock companies. Sole proprietorship can be changed to Ltd or Joint Stock Company only when the owner gets 100 % of shares in a new company. The status of the new company can ease transmission of the company to the members of the family via its articles of association.

Changing from a one-person business to an Ltd or Joint Stock company has been possible in Poland since 2011. The great advantage of such a solution is maintaining the continuity of the company. The owner of the company becomes the 100% shareholder and keeps all contracts, credits, agreements, etc. There is no need to change the whole company's activity. Changing a one-person business into one of the mentioned forms of company always requires new documents, acts and registration. While you can run your own business without any formal structures, articles, etc., running any kind of partnership requires special regulations like a company agreement or articles of association that states the main activity of the company, its board, structure, the process of taking decisions, and so on.

A merger with another company usually also results in changes to the articles of association, especially when joining two different forms of business. Creating a new company requires new documents and agreement between the new owners about the form of acting, taking decisions, etc.

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Week 9: Task 4: Exiting the family business (Selling the ownership)?

Work in team to discuss <?> case study.

Ability to understand and manage this case based on case study.

Legal point of view: Amendment of the articles of association, legal matters connected with selling the ownership.

Financial point of view: How should the transformation be financed? Payable taxes in case of a sale. Financing the necessary tasks, the development of the changed functions.

Finance

1. Company evaluation
   What is the value of the company how it can be improved? What is the value of the family business without the family?
2. Define the price and the payment method:
   a. Onetime payment;
   b. Instalment;
   c. Combination of onetime payment and instalments.
   d. Contingent payments
3. Define cash and non-cash elements ratio.
4. Following the payment: wealth management.
5. Role of family business members, especially the predecessor acting as an advisor, helping the company operation after the transaction.
6. Financial needs and their possible source

Legal

Based on the Hungarian regulations

See the aforementioned.

Based on French regulations

When the owner sells the shares of a company subject to the Corporate Tax (IS), the increase in value are imposed on the progressive scale of the income tax after application, where necessary, after an allowance for duration of detention. For the disposal gains on

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titles of company realized since 1st January 2014, the allowance for duration of detention can be:

- The general allowance for duration of detention which applies to all the transfers of shares,
- or an increased proportional allowance equal to 50 % for a duration of detention of one year up to four years, 65 % for a duration of detention of four years up to eight years, then 85 % after eight years. This allowance applies to the transfers of shares of SMEs created for less than 10 years, to the transfers within the family group (when members of the family hold more than 25 % of the rights in the company as well as in the transfers of shares of SME by retiring managers.

The increases in value realized by the owners of retiring SME benefit, before the application of the increased proportional allowance, the specific fixed 500 000€ allowance. Social charges (at the 15.5 % rate) remain calculated on the amount of the disposal gain before allowance. In return of the taxation of the capital gains in the progressive scale of the income tax, 5,1 % of the CSG (Supplementary Social Security Contribution) supported by these increases in value is tax-deductible of the year of its payment.

Standard legal conditions	Particular situations Retirement / Family Group / SME < 10 years
Progressive rules (45% Tax) + from 3 to 4% (CEHR – tax for higher revenue over 500K€/ for a couple or 250K€ for an individual).	• Progressive rules (45% Tax) + from 3 to 4% (CEHR – tax for higher revenue over 500K€/ for a couple or 250K€ for an individual) • Fix Allowance of 500000€ for retirement • Progressive allowance
Proportional dejection increased for duration of detention <1 year = 0 >= 1 year and < 4 years = 50% >= 4 years and < 8 years = 65%	Proportional dejection increased for duration of detention <1 year = 0 >= 1 year and < 4 years = 50% >= 4 years and < 8 years = 65% **<= 8 years = 85%**
Social charges 15,5%	Social charges 15,5%
Total: 31.25% (over 8 years)	Total : 22.25% (over 8 years)

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Based on the Polish regulations

Price and sales financing

The financial aspects of the sale depend on the legal form of the company. The simplest form is the sale of shares in companies which have them. The price and payment options can be shaped freely by the parties to the contract; in case of a sale between family members for tax purposes, it could be tested whether the price is market-based. A more complicated form is the sale of the assets only, and the subsequent liquidation of the company after their sale.

Legal point of view:

Amendment of the articles of association, legal matters connected with selling the ownership:

Selling the ownership might be considered a form of succession only if it takes place between members of the family. Usually this form is used in companies like joint- stock, limited liability, etc. The son or daughter of the owner can buy shares in the company and take charge of the company. A change like this causes a situation in which the founder gives up their obligations, retires, and the children continue the business.

From a legal point of view, the whole company is being taken over by a new owner, who has to go through the whole process appropriate to the legal form of the business. Buying shares in a company requires changes to the court register, in the company's structural documents, etc.

Depending on the legal form of acting, selling the company might be different: one has to take different actions when selling a one-person business, and different actions again when selling shares in a joint-stock company.

Taking over a joint-stock company means less disruption than selling a one-person company. In companies managed by boards, a change of ownership is not a huge revolution. The board acts as a sort of guarantee for the company's continuity. By contrast, taking over a one-person company frequently entails winding up the company, incorporating it into another company, or changing the general direction and concept for the company.

In sole proprietorship and civil law companies, all legal aspects of acting are connected with the owner: the company is legally linked with the person and can't exist without them. This can cause many problems with giving up a business or delegating it to other members of the family. When considering these two legal forms, the death of the owner causes the legal end of the business and lots of problems for a family who want to continue the business.

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The will of the owner may help, but it is not enough to save the family from the succession problems. A clear inheritance plan must be supported by financial and legal plans for transferring the business.

The best way of ensuring the easiest possible transmission process is running Ltd or Joint stock company. The articles of association help with running the business in a clear way. Each partner can individually decide how to pass on their shares. We cannot forget that the process of sharing the inheritance between members of the family, but having shares in the company instead of running business and legally being the company, helps provide for future personal and financial changes in the company.

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Week 10: Task 5: Closing the family business?

Work in team to discuss the case study.

Ability to understand and manage this case based on case study.

Legal point of view: Amendment of the articles of association, legal matters connected with ceasing to operate the family business.

Financial point of view: How should the transformation be financed? Overview of the management requirements, modifying the reporting systems etc. Financing the necessary tasks, the development of the changed functions.

Finance

1. Planning the close, stopping the activity.
2. Making reserve for the payment of liabilities.
3. Planning of the dismissal of employees.
4. Making reserve for the severance pay.
5. Settling obligations.
6. Sale of total assets (real estate, cars, stock, securities, collect receivables, etc.
7. Wealth management.
8. Financial needs and their possible source.

Based on Polish regulations

The course of liquidation

The liquidation of a company in the Polish context can be a lengthy process and depends on the organizational and legal form. The liquidation of companies operating based on the Polish Companies Code provides for the appointment of a liquidator (among the owners or the management board). The articles of association might be important to the course of the liquidation. In the first place, it is important to compensate the liabilities, and the remaining property is divided between the owners. The liquidation is covered by the company funds. In the case of an absence of sufficient value of the property, the owners could not receive any funds. The key issue is an appropriate choice of liquidators who will fairly represent the interests of all owners. In the case of sole and civil proprietorship, the process of liquidation is simpler and not subject to such strict legal supervision.

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Taxation

The tax consequences of liquidation depend on the legal form of the business entity. In the case of companies having legal personality, the principle is to tax the difference between the income obtained from the liquidation and the previously invested amounts. The tax rate on this is 19%. For other types of business activity, the situation is different and the law provides exemptions from taxation of the obtained income (for example, the value of fixed assets withdrawn from the activity is not taxed).

Based on French regulations

The course of liquidation

Closing a company is a lengthy process which depends on the organizational and legal form of the company. The liquidation of an operating company is based on the appointment of a liquidator (from among the owners or the management board).

The liabilities must be compensated and the remaining property is divided between the owners. The liquidation is covered by the company funds. In the case of an absence of sufficient value of the property, the owners could not receive any funds. The key issue is an appropriate choice of liquidators who will fairly represent the interests of all owners.

Taxation

The tax consequences of the liquidation depend on the legal form. The principle is to tax the difference between the income obtained from the liquidation and the previously invested amounts.

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Legal

<u>Based on the Hungarian regulations</u>

The winding up proceedings of enterprises

The supreme body decides on launching the windig up proceedings (specifying the starting date and the receiver)

For the registration of the winding up, the receiver shall, via a legal representative, file an application for the registration of the change with the competent court according to the company seat within 15 days and inform the tax authority as well about this.

Concurrently with registering the winding up , the Company Court shall publish a notice to the creditors according to which they should report their outstanding claims to the receiver within forty days following the publication. The company court shall with no delay inform the state tax authority of the registration of the winding up electronically.

The receiver shall make an opening balance sheet from the data of the activity closing balance sheet made by the previous official.

Considering the creditors' reports, an adjusted opening balance sheet shall be made within 75 days and presented to the supreme body.

If the company's assets are insufficient to cover the creditors' claims , the members shall either supply the missing funds within 30 days or, lacking that, the receiver shall file a request for liquidation proceedings with the court, while informing the supreme body about this.

The receiver shall submit to the tax authority the closing tax returns of the winding up proceedings within 45 days following drawing up the report concluding the winding up proceedings.

Upon the conclusion of the winding up proceedings, the receiver shall present to the supreme body for approval the tax returns, the accounting report, the distribution of assets and the summary report (closing statement).

The supreme body shall adopt a resolution concerning the approval of these documents, the receiver's fee and costs, the costs of the selection and storage of the documents and the donation of those of a historic value to an archives.

The winding up proceedings shall be performed by the company within 3 years; in the case of a failure to do so, the court of registry shall order forced liquidation.

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Voluntary liquidation of companies

The process of voluntary liquidation

The initiation of voluntary liquidation proceedings is decided by the main body. In the case of limited and unlimited partnerships a unanimous vote of all members, while in the case of limited liability companies minimum three-quarter majority secured by the members' meeting would be required. The members will have to establish the start date of voluntary liquidation, which may not precede the date of decision making. A liquidator must be elected that can be a former senior official of the company, or any natural person, legal entity or economic enterprise without legal personality. The liquidator will be responsible for requesting the registration of change with the involvement of a legal representative at the court of registration according to the registered seat of the company within 15 days to ensure the registration of voluntary liquidation, also notifying the tax authority.

Simultaneously with the registration of voluntary liquidation the court of registration will publish a notice in the Company Bulleting to the company's creditors requesting them to report any claim to the liquidator within forty days of publication. The court of registration will notify the state tax administration of the registration of voluntary liquidation electronically without any delay.

The liquidator will prepare a liquidation opening balance sheet based on the data of the closing balance sheet drawn by the former official. Based on the creditors' notices a corrected liquidation opening balance sheet will have to be prepared in no more than 75 days and presented to the main body. If the company's assets are inadequate to satisfy the demands of its creditors the members of the company will have to provide the missing amount within 30 days, or in the absence of such an amount the liquidator will have to request the court for the conduct of liquidation proceedings, simultaneously notifying the company's main body. The voluntary liquidation procedure may not be terminated while official or court proceedings against the company are in progress and until such proceedings are completed, or if there is any debt not provided for in the decision made on the distribution of assets. The liquidator will have to submit the final declaration of voluntary liquidation to the tax authority within 45 days of preparing the final report closing the voluntary liquidation process.

At the closure of voluntary liquidation the liquidator will have to present the tax declaration, the accounting report, the distribution of assets and the final report to the main body for approval. The main body will decide on the approval of such documents, the costs and remuneration payable to the liquidator, the retention and disposal of documents and the handover of documents of historical value to the archives. The company must complete the voluntary liquidation process in 3 years, beyond which the court of registration will order a forced liquidation. The company may decide to terminate the voluntary liquidation and provide for the continued operation of the company before the request for the removal of

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the company from the register is submitted to the court of registration. The liquidator will have to submit the request for the removal of the company from the register via a legal representative. The company will cease to exist upon removal from the company register.

Based on the Polish regulations

Legal point of view: Amendment of the articles of association, legal matters connected with ceasing to operate the family business:

Closing the family business is a process by which the life of a company is brought to an end. We can divide it into compulsory winding-up and voluntary liquidation.

Compulsory winding-up is ordered by a court when the company is insolvent. Conversely, voluntary liquidation refers to a process which can be instigated by the members of the company where the company is solvent.

For a course that includes gaining knowledge about forms and process of succession in companies, we can't assume that closing the business is a form of succession. Ceasing the family business is something that does not involve succession. Closing the company means the end of its whole activities.

Compulsory winding-up means a process of ceasing the companies life via legal means, usually in court. Voluntary liquidation is a form of getting rid of a business and all of its assets. This form of closing the company means selling all rights and assets of the company, and the owner keeps the money after the whole process.

Compulsory winding-up might be precipitated by losses for the owner and a lack of funds not only for a new business, but also for retirement.

French Conclusion

In France, the transmission of an SME when the value is over 1.5K€ may be difficult due to the taxation, when the owner only reflect on net value of the company. Then the global taxation could be very high for the new owner. That is one key reason in case of retirement to organise and prepare the transmission a long time before, using various tools and taxations to phase the process in over several years.

English regulations

Taxation

As a sole trader you will have to pay income tax on any profits from your business. You must fill in a self-assessment tax return each year, detailing your income and expenses.

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Make sure you register as self-employed with the Inland Revenue as soon as you start up in business on your own. If you fail to do this within the first three full months of becoming self-employed, you may have to pay a penalty of £100.

National Insurance

You'll have to make flat-rate Class 2 National Insurance contributions (NICs) throughout the year. Setting up a monthly direct debit is a good way to ensure you pay in time. You pay these along with your income tax - the amount you have to pay is calculated from your self-assessment tax return.

Class 1A and Class 1B rates

Employers pay Class 1A and 1B National Insurance once a year on expenses and benefits they give to their employees. The rate for the tax year 2015 to 2016 is 13.8%.

Employee National Insurance rates

This table shows how much employers deduct from employees' pay for the 2015 to 2016 tax year.

Category letter	£112 to £155 a week (£486 to £672 a month)	£155.01 to £770 a week (£672 to £3,337 a month)	£770.01 to £815 a week (£3,337 to £3,532 a month)	Over £815 a week (£3,532 a month)
A	0%	12%	12%	2%
B	0%	5.85%	5.85%	2%
C	N/A	N/A	N/A	N/A
D	1.4% rebate	10.6%	12%	2%
E	0%	5.85%	5.85%	2%
J	0%	2%	2%	2%
L	1.4% rebate	2%	2%	2%

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Employer National Insurance rates

This table shows how much employers pay towards employees' National Insurance for the 2015 to 2016 tax year.

Category letter	£112 to £156 a week (£486 to £676 a month)	£156.01 to £770 a week (£676 to £3,337 a month)	Over £770 a week (£3,337 a month)
A	0%	13.8%	13.8%
B	0%	13.8%	13.8%
C	0%	13.8%	13.8%
D	3.4% rebate	10.4%	13.8%
E	3.4% rebate	10.4%	13.8%
J	0%	13.8%	13.8%
L	3.4% rebate	10.4%	13.8%

Source: https://www.gov.uk/national-insurance-rates-letters/contribution-rates

VAT

If your business has (or you expect it to have) a turnover of more than £82,000 a year, you must charge your customers VAT and send it to Customs and Excise.

VAT thresholds

Circumstance	Threshold
VAT registration	More than £82,000
Registration for distance selling into the UK	More than £70,000
Registration for bringing goods into the UK from the EU	More than £82,000
Completing simplified EC Sales List	£106,500 or less and supplies to EU countries of £11,000 or less

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VAT accounting scheme thresholds

VAT accounting scheme	Threshold to join scheme	Threshold to leave scheme
Flat Rate Scheme	£150,000 or less	More than £230,000
Cash Accounting Scheme	£1.35 million or less	More than £1.6 million
Annual Accounting Scheme	£1.35 million or less	More than £1.6 million

Employees

Sole traders can take on employees just like any other business. If you do, you will need to collect income tax and NICs from them and pay these to the Inland Revenue. You will therefore need to operate a Pay As You Earn (PAYE) payroll.

Keeping records

You must keep all the financial records you will need to fill in your tax returns. For a list of the requirements.

Income tax

Income tax is the single largest source of government revenue, making up about 30% of the total, followed by National Insurance contributions at around 20%.

Each person has an income tax personal allowance, and income up to this amount in each tax year is free of tax. For the 2015/16 tax year, the tax-free allowance for under-65s with income less than £100,000 is £10,600.

Any income above the personal allowance is taxed using a number of bands:

Tax Rate for 2015/16				
Rate	Dividend income	Savings income	Other income (inc employment)	Tax Bracket (of income above tax-free allowance)
Basic rate	10%	20%	20%	£0–£31,785
Higher rate	32.5%	40%	40%	£31,785–£150,000
Additional rate	37.5%	45%	45%	Over £150,000

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This table reflects the removal of the 10% starting rate from April 2008, which also saw the 22% income tax rate drop to 20%. Alistair Darling announced in the 2009 budget (22 April 2009) that, from April 2010 there would be a new 50% income tax rate for those earning more than £150,000. Income threshold for high taxation rate on income was decreased to 32,011 in 2013.

The taxpayer's income is assessed for tax according to a prescribed order, with income from employment using up the personal allowance and being taxed first, followed by savings income (from interest or otherwise unearned) and then dividends.

Foreign income of United Kingdom residents is taxed as United Kingdom income, but to prevent double taxation the United Kingdom has agreements with many countries to allow offset against United Kingdom tax what is deemed paid abroad. These deemed amounts paid abroad are not necessarily as much as actually paid.

Rental income on a property investment business (such as a buy to let property) is taxed as other savings income, after allowing deductions including mortgage interest. The mortgage does not need to be secured against the property receiving the rent, subject to a maximum of the purchase prices of the property investment business properties (or the market value at the time they transferred into the business). Joint owners can decide how they divide income and expenses,[24] as long as one does not make a profit and the other a loss. Losses can be brought forward to subsequent years

Self Assessment

Self assessment is a system for working out and paying tax.

You must complete a **tax return** every year if you:

- are self-employed, either as a sole trader or in a partnership
- are a company director
- are earning enough to pay higher-rate tax
- have complicated tax affairs (for example, if you earn income abroad)
- have made significant capital gains (for example, from selling shares)
- are asked to by the Inland Revenue

Self assessment tax returns are issued in April each year and cover the year from the previous 6 April to 5 April. For example, the 2014-15 tax year covers the period from 6 April 2014 to 5 April 2015.

The Inland Revenue uses the information you fill in on the tax return forms to work out how much tax you have to pay as an individual.

This guide explains the basics of the self assessment system for people who are self-employed, company directors or partners in a partnership.

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Corporation Tax

Corporation tax rates and bands are as follows:

The rate you pay on profits from before 1 April 2015 depends on the size of the profits. Work out your profits when you prepare your Company Tax Return.

Your profits	Rate	From 1 April 2014	From 1 April 2013	From 1 April 2012
£300,000 or less	Small profits rate	20%	20%	20%
Above £300,000	Main rate	21%	23%	24%

If you had profits between £300,000 and £1.5 million before 1 April 2015, you may be able to claim Marginal Relief to reduce your Corporation Tax

From 1 April 2015, a minimum tax rate of 20% is charged when profits are distributed to individual shareholders by a company or group. Lower tax rates will continue to apply where profits are retained or distributed to other companies.

Income tax self assessment for self employed people

Essential deadlines for self assessment

The tax year runs from 6 April to 5 April the following year.

Sending in your return

You can complete and file your tax return online or on paper.

If you fill in your return on paper, you need to send it back to the Inland Revenue by 30 September if you want the Inland Revenue to work out how much tax and National Insurance contributions you owe.

If you send your paper tax return after 30 September and it is processed by 30 December, the Inland Revenue will still calculate your tax - but can't guarantee to tell you what to pay before the 31 January payment deadline. You'll need to do your own calculation to make sure you can make a payment before the deadline.

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If you choose to fill in and file your return online, the system will work out and immediately show you how much tax you owe or are owed.

In any case, your return must reach the Inland Revenue by 31 January. If you miss this deadline, you will be liable to an automatic penalty of £100. You may also be charged additional penalties and interest on any overdue tax payments.

If you need any help, contact your local Inland Revenue office. You can find your local office by using the search facility on the Inland Revenue website. You can also call the Inland Revenue Self Assessment Helpline on Tel 0845 9000 444, or read the guidance leaflets on self-assessment at the Inland Revenue website.

Paying tax

If you're self-employed, you normally pay your tax in three stages:

- a first payment on account by 31 January during the tax year. This is normally half your previous year's tax bill
- a second payment on account - which is the same amount as the first instalment - by 31 July after the end of the tax year
- a final balancing payment (or you get a repayment) by the next 31 January - this is the bill calculated on the actual income returned for the tax year less the payments you have made on account

There are automatic penalties if you send in your return after 31 January or fail to pay your tax on time. You'll also be charged interest on overdue tax.

Income tax self assessment for self-employed people

What you have to pay tax on

You have to pay tax on business profits and other income. If you have more than one business you have to complete separate self-employment pages in the tax return for each one.

Business profits

If you're self-employed, which includes sole traders and partners in a partnership, you pay tax on your business's profits or share of them.

1. The first step is to add up all your business income.
2. Then deduct all the ordinary business expenses that you are allowed to set against tax. For example:

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- the cost of supplies
- rent on business premises
- business travel costs
- administrative expenses such as postage
- the cost of any employees you have

3. Take into account purchases of equipment and vehicles. These are treated differently. Instead of deducting the whole cost straight away, the cost is usually spread over several years.

Other income

As well as your business income, you will be taxed on any other income. For example:

- any salary or wages you are paid as an employee of another business
- interest and dividends from any savings and investments
- rental income from property
- gains on disposals of assets

For more information, see the guidance notes and help sheets at the Inland Revenue website.

Tax rates and allowances

Your total business profit plus any other income is taxable. However the amount of income and profits chargeable to tax will be reduced by any allowances you can claim. You can find the current rates and allowances on the Inland Revenue website.

Keeping the right records

As you are taxed on your **business profits**, it's essential to keep accurate records. By law, you must keep business records for at least five years and ten months after the end of the tax year the records relate to. A penalty of up to £3,000 can be charged for each failure to maintain or retain adequate records to back up a tax return.

You need to keep your business records and personal records separate. Most businesses find that it helps to have a separate business bank account.

Your basic records will normally include:

- a record of all your **sales**, with copies of any invoices you have issued
- a record of all your business **purchases** and expenses
- **invoices** for all your business purchases and expenses, unless they are for very small amounts

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- details of any amounts you **personally** pay into or take from the business
- copies of business **bank statements**

You use these records to create a profit and loss account - which shows the sales revenue you have received and the costs you have paid, leaving you with a profit or loss figure for the period the records cover.

It's helpful to keep a separate record of purchases and sales of assets that you use in the business, such as equipment. These need to be treated differently in your tax return. You can claim capital allowances for what you spend on assets, which means that rather than claiming the whole cost at the time you buy, you reclaim the cost over time.

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11-12. hét: Összefoglalás és a tervezés áttekintése I-II.

Csoportban dolgozva a családi vállalkozások tervezésének áttekintése, megvitatása.

AZ ÜZLETI STRATÉGIA TERVEZÉS SAJÁTOS KÉRDÉSEI A CSALÁDI VÁLLALKOZÁSOK ESETÉBEN

1. ***Bevezetés – Miért érdekes az üzleti tervezés kérdéseivel foglalkoznunk? (bemelegítő beszélgetés)***

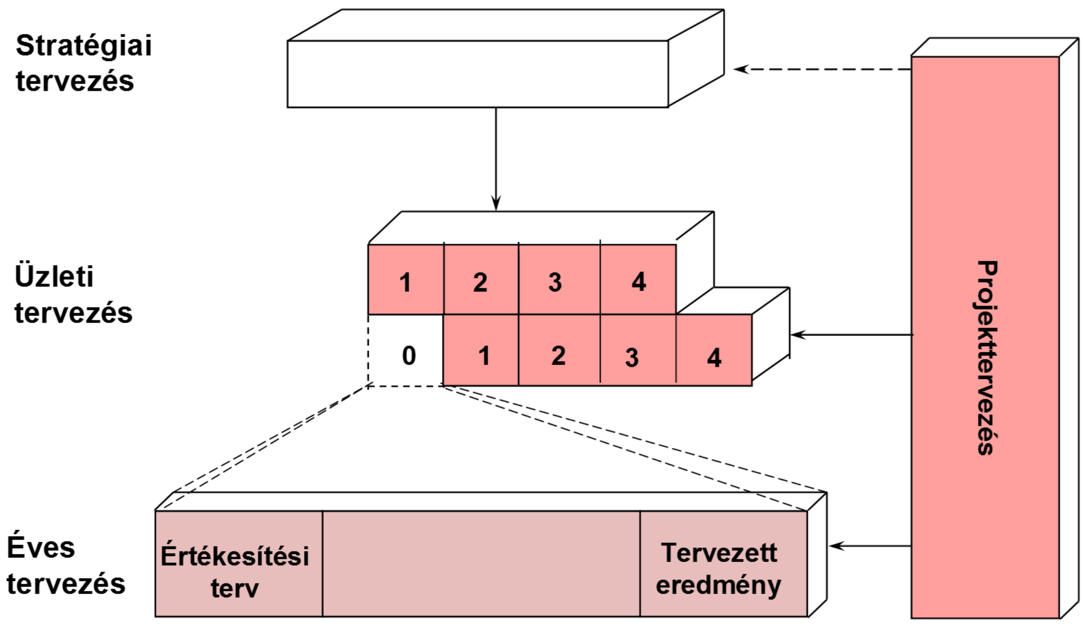
2. ***Az integrált tervezési rendszer***

Alapfogalmak:

A tervezés olyan irányítási folyamat, amely felvázolja a vállalat jövőbeni működési pályáját, ezen pályát jellemző állapotokat és pozíciókat, valamint azt az akcióprogramot, amelynek végrehajtásával a kívánt állapotok és pozíciók elérhetőek.

A terv a jövőre vonatkozó döntési folyamat eredménye, amely a vállalatvezetés jövőre vonatkozó szándékait tartalmazza írásbeli dokumentum formájában, számszaki és szöveges módon.

A tervezési rendszer elemei:



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- A stratégiai tervezés lényegét tekintve a vállalkozás jövőjét érintő alapvető, lényeges és nagyléptékű változások, valamint a követendő irányok meghatározása – a környezethez való alkalmazkodás és a vállalkozás képességeinek kifejlesztése és kiaknázása érdekében.
- A taktikai tervezés a stratégiában foglaltak realizálását előkészítő tevékenység, amely egy-egy stratégiai irány megvalósításának feltételeit adja meg.
- Az operatív tervezés általában az éves vagy rövidebb időszakra vonatkozó tervek összeállítását jelenti, amelyben a vállalkozás működését érintő, alapvetően nem jelentős változásokat tervezik. Itt tervezik meg a vállalkozás éves vagy negyedéves teljesítményét, az ehhez kapcsolódó erőforrás-felhasználást, illetve a vállalkozás pénzügyi folyamatait.

3. A családi vállalkozások sajátos tervezési rendszere: párhuzamos tervezési folyamat

A családi vállalkozások tradicionális tervezési modellje az ún. párhuzamos tervezési folyamat, amely integráltan tartalmazza a családi és az üzleti alrendszerre vonatkozó stratégiai és taktikai (akció) kérdések szisztematikus, jövőorientált megközelítését. A két egymással hol konkuráló, hol szimbiózisban együtt élő alrendszer tervezési vonatkozásait az alábbi ábra vizualizálja:

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A párhuzamos tervezési folyamat célja a családi és a vállalkozási igények egyensúlyban tartása. A folyamat két outputja egyrészt a családi vállalkozás folytonossági terve és az üzleti stratégia terv, melyek főbb kérdésköreit az alábbiak szerint foglalhatjuk össze:

a) Családi vállalkozások folytonossági terve:
    a. Feltárja a család elkötelezettségét a vállalkozás iránt
    b. Segíti a családi jövőkép és üzletfilozófia kialakítását a család alapvető értékeinek azonosítása alapján
    c. Felkészíti a családtagok felnövekvő nemzedékét a vezetői posztok betöltésére
    d. Rámutat, hogy az életciklusok hogyan befolyásolják a tulajdonosváltást
    e. Értékeli, elemzi a konfliktusokat, valamint a családi konszenzus megteremtésének lehetőségeit
    f. Segít kidolgozni a családtagok karrierjét segítő módszerek kidolgozását
    g. Felvázolja a későbbi lehetséges tulajdonosi struktúrákat és az örökösödési tervet

A legfontosabb tervezési kérdéskörök, amelyekre tehát ki kell térni a családi vállalkozás folytonossági terve kapcsán a következők:

1. Utódlás menedzselésével kapcsolatos döntési pontok
    a. Vezetői szerepátadás, és tulajdonhányad átruházás, de kinek?
    b. Az utódlás folyamatának időzítése
    c. Az átmeneti időszak viszonyainak tisztázása (felelősség, hatáskör)
    d. Alapító/előd átadást követően betöltendő üzleti és nem üzleti jellegű szerepkörei

2. Karrier és kompenzáció a családi vállalkozásoknál
    a. A családi vállalkozásba történő belépés feltételei (vér szerinti, egyéb rokoni viszony, házastárs, élettárs, adoptált gyermek)
    b. Elvárások (formális és informális képzettség, tapasztalat) a belépőkkel szemben
    c. Családtagok teljesítményének értékelési szempontjai, jutalmazása
    d. A családtagok kilépésével kapcsolatos szabályok

3. Tulajdonosi és irányítási kérdések
    a. Ügyvezetés javadalmazása, érdekeltségének biztosítása
    b. Osztalékfizetéssel kapcsolatos szabályok
    c. Igazgatóság/igazgatótanács versus családi tanács
    d. Üzletrész visszavásárlás szabályai

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4. Családi kapcsolatok
    a. Generációk közötti konfliktusok kezelésének elvei
    b. Testvéri/unokatestvéri konfliktusok kezelése
    c. Családi és üzleti hagyományok, illetve az ún. szocio-emocionális vagyon átörökítése
    d. Családi tervezési gyakorlat, eljárásrend kialakítása
    e. Családi találkozók, családi rendezvények rendje
    f. Családi irányítás generációkon átívelő szabályozása

5. Felelősségi kérdések, magatartási kódex
    a. A családtagok anyagi, személyes és karrier problémáinak kezelésében játszott szerepe a vállalkozásnak
    b. Utódok képzési költségeihez való vállalati hozzájárulás
    c. Családtagok új üzleti ötleteinek támogatási formái és fórumai
    d. A család társadalmi felelősségvállalási tevékenységének főbb elvei, területei
    e. Compliance menedzsment

b) Üzleti stratégia terv:
    a. A vállalat stratégiai potenciáljának felmérése
    b. A vállalat belső adottságainak felmérése
    c. Külső környezeti tényezők elemzése
    d. A vállalat stratégiai potenciáljának meghatározása
    e. A lehetséges üzleti stratégiák vizsgálata
    f. A vállalat újjáalakításának és megfiatalításának lehetőségei
    g. Stratégiai alternatívák gyűjtése, kiválasztás tényezőinek definiálása
    h. A végső stratégiai és befektetési döntések támogatása

A tervezés során a generációk érdek- és értékkonfliktusai miatt számos probléma, buktató merülhet fel, amelyet elmélyíthetnek a családtag és a nem családtag érdekeltek közötti problémák.

Példák	Buktatók	Javasolt megoldások
Idősebb generáció	Kétségbe vonja a fiatalabb nemzedék képességeit Belefárad a mindennapi operatív munkába Nem hajlandóak változtatni a régi rutinokon Paternalizmus, nepotizmus	Jövőbeli szerepvállalás, visszavonulás utáni feladatok tervezése Tanácsadói szerepkör definiálása

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Utód vagy fiatal generáció	Nyomasztják a családi elvárások Nem bíznak a saját képességeikben Hatalom és vagyon-megosztásból adódó konfliktusok	Családi alkotmány Vezetői képzések, formális és informális információ-átadás, tudatos felkészítés az átvételre
Házastárs	Házastársi kapcsolatban felmerülő problémák Anyagi biztonság miatti aggodalom	Vagyonszerződés, okiratok (házassági szerződés, végrendelkezés)

4. Tervezési/menedzselési kérdések és a családi vállalkozások növekedés orientált életciklus modellje

A családi vállalkozás-specifikus életciklus modellek sorában a S. Dodero (2010) munkássága nyomán született megközelítés a családi vállalkozás életének 4 fázisát azonosítja - alapítás, alapítónak köszönhető növekedés, második generáció belépéséhez kapcsolódó fellendülés, professzionális vállalatirányítás – kiemelve az egyes fázisok közötti átmeneti időszakot jellemző kihívásokat és krízistényezőket, amelyeket tudatos tervezéssel menedzselni lehet.

a) Az első szakasz a modell szerint az alapítás fázisa, ahol az alapító, mint magabiztos és nagy teherbírású vállalkozó felismeri az üzleti lehetőséget, és hajlandó minden erőfeszítésével kitartani üzleti ötlete megvalósítása mellett. Ebben az életciklus szakaszban az alapító rátermettsége döntő fontosságú, ő hozza meg tulajdonos-menedzserként a döntéseket, amelyek sok esetben intuíciókra épülő döntések. Az első válsághelyzet akkor következik be, amikor az alapító segítségével a vállalkozás eljutott a növekedés azon szintjére, ahol már szükséges a feladatok egy részének átruházása, azaz megjelenik a delegálás iránti igény az értékesítés és termelékenység növelés érdekében. Amennyiben az alapító képes jó vezetőként fellépni, hatékony kommunikációval mozgósítani a munkavállalókat a családi cég víziója érdekében, akkor újabb növekedési pályára tudja állítani a vállalkozását.

b) Az 50-es éveiben járó alapító a következő krízissel akkor kell, hogy szembenézzen, amikor a gyerekei belépnek a családi vállalkozásba, akik vagy nem elég felkészültek, vagy diplomával rendelkező ambiciózus fiatal vállalkozóként bírálják a szülők vezetői stílusát és vállalkozói tevékenységét. A generációs különbségek feloldása, a gyermekek és szülők közötti hatékony kommunikáción és a szerepek tisztázásán keresztül hozzájárulhat a következő életciklus szakasz sikeres megéléséhez, amelyben a vállalkozás növekedését a gyermekek vállalkozói lendülete táplálja.

c) A következő krízishelyzetet az alapító halála nyomán kialakult, testvérek között zajló hatalmi harc kapcsán éli meg a családi vállalkozás. Ezen válsághelyzet

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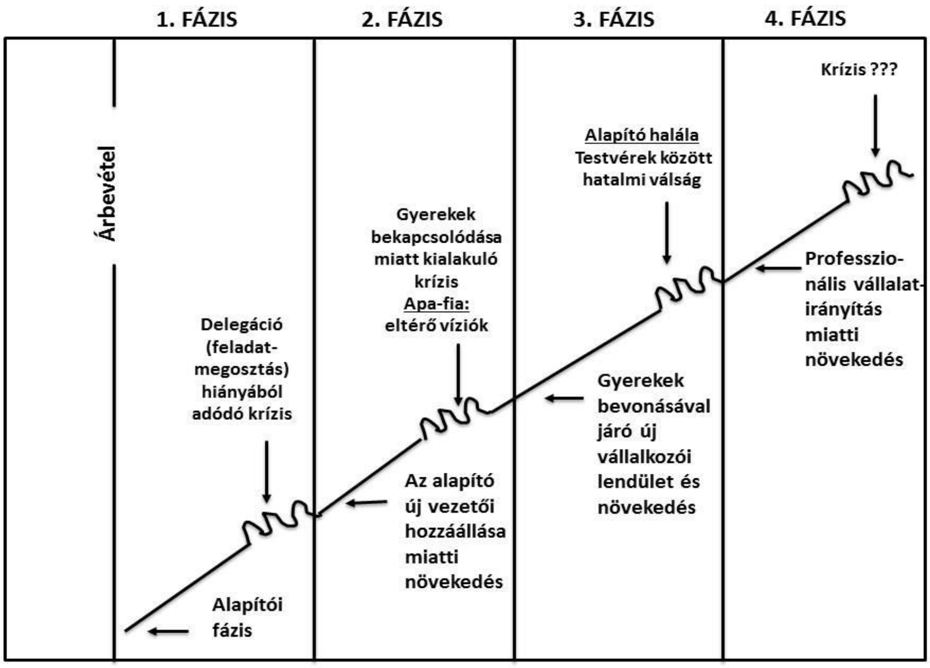
elkerülésében segít, ha a vállalkozás alapítója utódlási terv formájában rögzíti a vezetői szerep átadás módját.

d) A negyedik életciklus szakasz a professzionális vállalatirányítás fázisa, ahol a külső (professzionális menedzser) vagy a belső (családtag vagy egyéb vállalaton belül kinevelt vezető) utód által kialakított, illetve bevezetett irányítási technikák segítségével sikerül a hatalmi játszmákat megszűntetni. A modellben az utolsó krízis teoretikus, ugyanis abban az esetben merül fel, ha a családtag tulajdonosok és a menedzsment között konfliktus alakul ki, azaz a megbízó-ügynök probléma érvényesül az inadekvát kommunikáció és kontroll gyakorlat révén. Az életciklus-modellt a következő ábra ismerteti.

A családi vállalkozás növekedés orientált életciklus modellje



Forrás: saját szerkesztés Dodero, 2010 alapján

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Week 11-12: Summary and Revision Planning I-II.

BUSINESS PLANNING FOR FAMILY-OWNED FIRMS

1. *Introduction – Why do/need business plan? (discussion)*
2. *Integrated planning system*
    a. ***Strategic plan*** *(*stakeholder/firm/environmental analysis, mission, vision, objectives, goals, financial projection*)*
    b. ***Business model*** *(clients' profile, value proposition, identity, financial model, cost structure, competence, competitive intensity, profitability, partnership, business focus, cash flow requirements)*
    c. ***Operational (program) plan*** *(*analysis, key result areas, operational objectives, performance indicators, action plans***,*** budget*)*

3. ***The Parallel Planning Process for Family Businesses***

The Parallel Planning Process is the traditional model of family business planning. The PPP becomes a tool for integrating and balancing family and business thinking and action. The PPP uses a series of planning and programming activities that lead the family and management to a business strategy that matches the family's interests and the business' potential. Strategic thinking by the family and management teams leads to their mutual commitment to a Shared Future Vision.

Based on this shared vision, both systems begin their respective planning activities leading to the development of the Family Enterprise Continuity Plan and Business Strategy Plan.

a) The Family Enterprise Continuity Plan

1. Securing Family Commitment
    - Help the family to explore their level of commitment to the business.
    - Identify core family values.
    - Agree on a Family Business Philosophy.
    - Develop a Family Vision. Encouraging Family Participation
    - Appreciate the nature and sources of conflict and a model for improving family fairness.
    - Understand the importance of family meetings and the development of family agreements.

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2. Preparing the Next Generation of Family Managers and Leaders
    - Recognize how life cycle influences careers and management transitions.
    - Appreciate the challenges of preparing the next generation of family members for business and family leadership roles.
    - Develop systems to support meaningful family career experiences.

3. Developing Effective Owners
    - Recognize how life cycle influences ownership transitions.
    - Consider the choice of future ownership structures.
    - Develop systems to support the development of capable owners.
    - Prepare estate plans that address financial needs, estate taxes and future ownership considerations.
    - Develop an effective family and business governance system.

b) The Business Strategy Plan

1. Assessing the Firm's Strategic Potential
    - Assess the firm's internal capabilities in finance, marketing and organization.
    - Understand the external environmental forces that will influence future opportunities and threats.
    - Analyze the firm's industry and markets.
    - Determine the firm's Strategic Potential.

2. Exploring Possible Business Strategies
    - Explore whether to renew, reformulate or regenerate the business.
    - Assess possible business strategies for the firm.
    - Recognize the factors that influence the choice of a business strategy.
    - Utilize the unique strengths of family businesses in developing a business strategy.

3. Finalizing Strategic and Reinvestment Decisions
    - Apply the Family Business Reinvestment Matrix to identify planning overlaps.
    - Balance business and family demands in making investment decisions.
    - Appreciate the impact of the family's commitment on investment decisions.

Many times, the president or senior family members are blamed for the lack of planning for any of the above reasons. However, this type of thinking fails to recognize that all family

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and non-family stakeholders play a role in family business decision-making and action taking. They also create obstacles to planning

Identifying specific obstacles to family business planning will enable the family to explore what planning means to stakeholders in the family enterprise and that process will stimulate ideas for actions to help overcome the obstacles.

Example	Obstacles	Suggested action steps
Senior generation	Doubts regarding younger generation's capabilities Loss of enjoyment from day-to-day operations	Create meaningful career generation opportunities Identify a future role that contributes to the firm
Successors	Concern about family expectations Self-doubt about capabilities Sharing power and multiple shareholders	Support family meetings to explore commitment and vision Engage in management development activities Create family and business governance structures

4. *Issues for planning process of family-owned firms*

There are some issues for discussion of the planning procedure for the family firm:

a) Managing Succession

- How to identify the next president?
- When does the presidential transition take place (timing)?
- How does the current CEO and successor share planning and decision-making responsibilities during the transition?
- How to evaluate the next president's performance and plan for his or her replacement?
- What non-business interests will keep the senior generation fulfilled during retirement?

b) Family Business Careers

- How to decide which family members can join the family business?
- How to plan management development experiences?

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- What preparation or experience, if any, is required?
- How to evaluate performance and reward achievement?
- What if a family employee does not perform?
- What if a family member chooses to leave the business?
- Whether to permit spouses, partners or other non-blood relatives to work full or part time in the business?
- Whether to allow the next generation's children to enter the business?

c) Compensation

- How to evaluate and compensate family members?
- How are bonuses determined?
- Who are participates in stock option programs?

d) Ownership and Governance

- How to assure the senior generation of financial security?
- Who can own stock in the business?
- What returns and rewards do shareholders get?
- Whether to pay dividends?
- How to redeem stock to provide liquidity for shareholders?
- Does all stock have the same voting rights?
- How are members of the board of directors selected?

e) Family Relationships

- How to deal with conflicts between generations?
- How to deal with sibling or cousin conflict?
- How to teach young members and in-laws the business and also family traditions?
- How to share the family activities and customs with the next generation?
- How to develop and revise family agreements?
- How are family meetings and activities planned?
- How to create a process for family planning and decision-making?
- When to formalize the family governance by organizing a family council?

f) Responsibility and Code of Conduct

- How to help family members with financial, personal, or career difficulties?
- What responsibilities does one family member have to the others?

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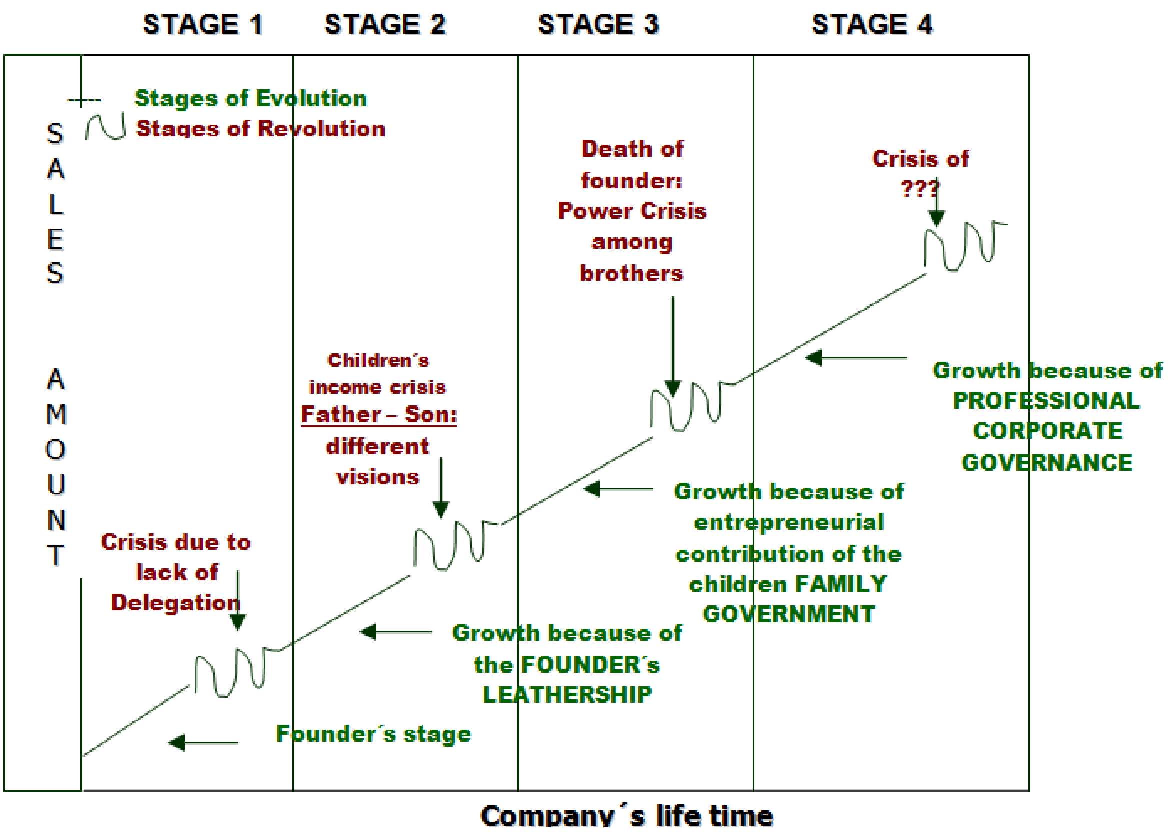
- What if a family member breaks the law or acts in a seriously irresponsible manner?
- How much financial information to share with whom?
- How to support family members' new business venture ideas?
- How to cope with the visibility and the public's expectations of successful families?
- What responsibility does the family have to the community?
- How to share credit for family achievements?

5. *Planning and the life cycle model (DODERO) of the family firm*



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6. *Succession planning*

"Succession planning means making the preparations necessary to ensure the harmony of the family and the continuity of the enterprise through the next generation. These preparations must be thought of in terms of the future needs of both the business and the family" (Lansberg, 1988).

Soft factors:

- preparing a successor for a family business
- successor acceptance for the key stakeholders

Hard factors:

- taxation plan
- financial plan
- legal elements

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