

FAMILY OWNED COMPANIES

Bruno Pichard, Partner at Pichard & Associés



Bruno Pichard

"Our firm is a Parisian medium size law firm highly specialized in business laws. The firm was founded in 1946 and developed by our father."

We are a family firm (I work with my two brothers) which has developed strong technical skill in advising family owned companies in addition to advising French subsidiaries of foreign groups."



Ownership and operations of a business may at times be family based, and although the law applies the same for all, family run businesses may have some extra considerations to make. To this end Lawyer Monthly hears from Bruno Pichard, Partner at Pichard & Associés, a French boutique law firm.

Bruno illustrates exactly what these considerations might be, what defines a family company, and tells us a little about the firm's thought leadership in this legal segment.

What is a family company?

There is no legal definition in France for a family company, but you may consider that a family company is a company which has been owned by a family for at least two generations. You may also consider as a family owned company a company that the founder has decided to transfer to his family and not to sell to a third party. More generally, a family company considers itself as such and there are no specific issues in this respect. The most important feature is that the owners wish to maintain the ownership within the family.

Is there particular French or EU legislation surrounding the operations of family businesses that most family start-ups would not be aware of?

In France there are no specific rules governing family owned business. For example, we get a civil code, a commercial code, a labour law code etc., but we do not have a family business code. In spite of this absence of specific legislation, there are some specific and limited rules

which may concern family business. For example in a French société anonyme, the articles of association may stipulate that transfer of shares may be subject to the approval of the board of directors, but such rule does not apply to a transfer of shares to your children, which can always be transmitted without the need of an approval from the board of directors.

Transmission of a business (instead of the sale of a business) benefits also from substantial gift and estate tax reduction, subject to a commitment to keep the shares transferred for at least several years. These rules will also apply if the shares are transferred to a person who is not a member of the family, taking the same commitment, but in practice these rules are generally used for the transfer of a business to the members of the family.

Another important and specific aspect is the duration of the relations. This is particularly true in the case of transfer of the business to the next generation. In the sale of a company to a third party, the process will be limited in time, generally a few months, whereas the transfer of a family business from one generation to the next one can possibly take several years.

Pertaining to the sale, the seller generally stops working in the business (except eventually for a few months to ensure a smooth transition), whereas in a family transmission, the person who transmits the company to the next generation will generally continue working in the company and be interested in its development and success.

What kinds of disputes arise pertaining to family run companies?

To be successful, and to remain as a family business, it is necessary to avoid disputes between members of the family.

As an outside lawyer it is important to take into account the wishes, the needs and the situation of each member of the family. This is particularly true in establishing the governance rules of the company. You always have to see that such rules are accepted by all participants and satisfy all of them. To establish a system which is accepted by some members of the family, but does not satisfy the other members of the family, will cause collapse in the long term.

It is not always easy to determine what these wishes are. For instance, I have in mind the example of a minority shareholder who lived abroad in the country of his wife, and who never went to shareholders meetings. When the majority shareholder proposed to purchase his shares, he was upset and strongly refused. He considered that his shareholding was one of his last links with France and with his family and he did not want to break it.

Financial relations are also a major cause of dispute. The involvement of the family members can be quite different. Some are employed by the company and are paid a salary in

“ You should always take into account the duration of the relations in the family and the need to satisfy all members ”

addition to their dividends. Others are only shareholders and as such receive only dividends. It is therefore necessary to take these different positions into account, especially due to tax on wealth, as the ownership of these shares may be submitted to this tax and dividends may be necessary just to pay it.

How are these often resolved?

In the worst cases, there are no amicable solutions. The dispute is then solved either by commercial courts or by arbitration (often for confidentiality).

It is also possible to resort to mediation and this process is used more and more often as it is an efficient way to try and find a solution acceptable by all the parties involved. However in case no agreement is reached on the solution proposed by the mediator, the dispute remains pending.

It is also possible to establish a corporate body which would be in charge of settling disputes within the company.

What assets do you believe your previous education and experience contribute to your thought leadership in this legal segment?

My two brothers and I do not only

have a legal education, but in addition to our law degree, have graduated from Polytechnique, which is one of the most prestigious scientific schools in France. My brother Hervé, in addition to his law degree in France, graduated from a business school (HEC) and has an LLM from Harvard Law School. This generally allows us to have a more global view in order to answer to the questions and needs of our clients.

As a family owned firm we also understand the stakes for family companies both as regards legal, economic and tax aspect. As well as the underlying human relationships, this gives a unique capacity to provide solutions adapted to our clients' needs.

As a thought leader, how are you helping to develop or implement new strategies and methods of helping your clients on family company legal matters?

We have conceived and set up a specific mode of transferring

family interests. We have named it 'Family Buy Out' and we have registered it as a trademark. The process combines a donation, a sale and an equity contribution. With increasing life expectancy, the owner of a company can no longer afford to simply transfer his shares free of consideration to the next generation. He needs to also sell part of his interest to be able to secure some capital.

An innovative legal tool, this technique is now widely recognized in France as the most efficient way to transfer family companies within the family.

You authored a publication titled 'The transfer of family businesses' (second edition in 2014); what was the overall scope and conclusion of this book?

I wrote this book with my two brothers and it describes French legal and tax rules applicable to the transfer of a company within the family. This book contains a long development on corporate governance in a family owned business based on our practical experience in this field. We have tried to be as practical as possible and give as many examples as possible. The main message of this book is to succeed in the transmission of a family company to the next generation; you should always take into account the duration of the relations in the family and the need to satisfy all members. **LM**

Contact Details:

Bruno Pichard, Partner
Tel: +33 14637 1111 | Fax: +33 14637 5083
122, avenue Charles de Gaulle | 92200 Neuilly-sur-Seine
www.pichard.com