Copyright Statement

The digital copy of this thesis is protected by the Copyright Act 1994 (New Zealand).

This thesis may be consulted by you, provided you comply with the provisions of the Act and the following conditions of use:

- Any use you make of these documents or images must be for research or private study purposes only, and you may not make them available to any other person.
- Authors control the copyright of their thesis. You will recognise the author's right to be identified as the author of this thesis, and due acknowledgement will be made to the author where appropriate.
- You will obtain the author's permission before publishing any material from their thesis.

To request permissions please use the Feedback form on our webpage.
http://researchspace.auckland.ac.nz/feedback

General copyright and disclaimer

In addition to the above conditions, authors give their consent for the digital copy of their work to be used subject to the conditions specified on the Library Thesis Consent Form and Deposit Licence.
THE EVOLUTION AND ROLE OF CORPORATE GOVERNANCE GUIDELINES FOR FAMILY BUSINESSES: A STRUCTURAL INVESTIGATION

Rebecca Jutta Hirsch

A thesis submitted in fulfilment of the requirements for the degree of

Doctor of Philosophy in Law

The University of Auckland

2013
Abstract

Seeking to further the understanding of the role and potential of voluntary corporate governance guidelines for family businesses, this thesis pursues an explorative approach to ultimately arrive at a general set of drafting recommendations for the development of such guidelines. These recommendations are intended to provide guidance to the drafting committees and issuing bodies engaged in the development and conceptualisation of family business governance guidelines. As a result, these drafting recommendations address the overall design, structure and content of governance guidelines with a focus on this business form, as well as including suggestions on the implementation of their recommendations by family businesses themselves.

In order to arrive at these recommendations, an initial expository investigation into the nature and particularities of family businesses is carried out and the corresponding question of the necessity of specific corporate governance guidelines directed to this business form (in contrast to other forms of corporate governance guidelines or codes) is addressed. Building on these fundamental insights the thesis inquires into the role and functioning of family business governance guidelines from a regulatory perspective and examines how self-regulation can take on a further regulatory dimension to respond to the unique requirements placed on family business governance. Completing and deepening the examination of the current state of affairs of family business corporate governance guidelines, an international comparative analysis of selected voluntary corporate governance guidelines that specifically focus on family businesses or include a section on their governance needs is conducted. The parameters underlying this analysis juxtapose the individual approaches according to their development and presentation in an effort to identify the commonalities and differences among these selected guidelines.

The general set of drafting recommendations for family business governance guidelines formulated at the end of this thesis is strongly informed by the results of the comparative analysis. The evaluation of these results, combined with the relevant findings in the academic literature on family business governance, illustrates the already high standard and contribution of the existing family business governance guidelines. Concurrently, the shortcomings which still remain are also identified and attended to in greater detail within the drafting recommendations.
FOR JORDAN
Acknowledgements

First of all, I would like to thank my supervisors, Professor Susan Watson and Professor John Farrar, for their ongoing support over the last years. Susan has always been approachable when I needed to discuss my thesis or think ideas out loud. At the same time she has allowed me the space to develop and clarify my own standpoint on my research topic. Our collaboration on various published research articles has further contributed to refining my academic writing. Many thanks also to John, who has not only generously shared his extensive knowledge with me, but has also asked challenging questions that have encouraged me in my accounting for the multi-faceted influences impacting on family businesses within my thesis. His supportive comments have been a great motivation and have given me more confidence, especially in the final stages of completing my thesis. Thanks also to Associate Professor Chris Noonan for his help in PhD related matters.

Thanks to my family, for always believing in me and supporting me in all my endeavours.

I would also like to thank my friends Nadia Dabee and Ashvin Thambyah for their moral support and encouragement, valuable advice on PhD related concerns, and for positively distracting me with great dinners and outings.

The greatest thank you is owed to my husband Jordan. Thank you for never tiring of motivating and supporting me during this sometimes intense time, for continuously proofreading my drafts, asking the right questions to help me focus my thoughts and for always providing a shoulder to lean on. Thank you also for always finding a way to put a smile on my face.
# Table of Contents

Introduction .................................................................................................................................................. 1  

1 A Perspective on the Historical and Research Development of Family Businesses ................. 3  

1.1 The Historical Development of Family Businesses ................................................................... 4  

1.2 Development of Family Business as a Research Field ............................................................... 5  

2 Conceptual Background of the Thesis .......................................................................................... 12  

3 Thesis Outline and Detailed Chapter Breakdown ...................................................................... 15  

Chapter 1: Decoding Family Businesses – Are Corporate Governance Guidelines Necessary for Family Businesses? ................................................................. 19  

1 Introduction ........................................................................................................................................ 19  

2 Relevance of Corporate Governance Guidelines for Family Businesses — New Zealand as a Motivating Example .................................................. 21  

2.1 The Significance and Situation of Family Businesses in New Zealand ........................................ 21  

2.2 The Need for Corporate Governance Guidelines — Evidence from Case Law ...................... 24  

3 Why Are Family Businesses Special? .............................................................................................. 26  

4 The Need for Corporate Governance Regimes in Family Businesses ........................................ 30  

4.1 Common Rationales for Corporate Governance Regimes ...................................................... 31  

4.1.1 Agency Theory and Other Theoretical Approaches .............................................................. 31  

4.1.2 Growth and Investment ........................................................................................................... 40  

4.2 Particularities of Family Businesses as an Important Reason for Corporate Governance Regimes .................................................................................................................. 41  

5 General Approaches to Corporate Governance Regimes in Family Businesses ................... 42  

5.1 The Invalidity of the ‘One Size Fits All’ Approach to Corporate Governance ................... 42  

5.2 Which Direction to Take — Is a Family Business Focus the Solution? ...................................... 46  

6 Conclusion and Perspectives ............................................................................................................ 50  

Chapter 2: Family Business Governance Guidelines and the Latent Potential of Self-Regulation in Corporate Governance .................................................. 52  

1 Introduction ........................................................................................................................................ 52  

2 Understanding Self-Regulation ....................................................................................................... 54  

2.1 A General Overview of Regulation ............................................................................................... 54  

2.2 The Development of Self-Regulation ........................................................................................... 57  

2.2.1 A Short History of Self-Regulation ....................................................................................... 57  

2.2.2 The Meaning, Purpose and Use of Self-Regulation ............................................................... 60  

2.2.3 The Standing of Self-Regulation ........................................................................................... 64  

3 Self-Regulation and its Place in Corporate Governance ............................................................ 67  

3.1 A Taxonomy of Corporate Governance ....................................................................................... 67  

3.2 The Importance of Self-Regulation – A Re-Examination ......................................................... 74
Chapter 3: Gaining Perspective – A Comparative Analysis of Family Business-Focused Corporate Governance Guidelines ................................................................. 86
  3.1 Research Objectives .................................................................................. 92
  3.2 Selection of the Family Business Governance Guidelines ....................... 94
  3.3 Structural Frame and Methodological Concerns ........................................ 96
  4 Comparative Analysis.................................................................................. 97
    4.1 General Guideline Features ..................................................................... 98
    4.2 Format, Structure and Content Features of the Selected Guidelines ........ 107
    4.3 Summary ............................................................................................... 144

Chapter 4: Food for Thought – A Proposal for a General Set of Draft Recommendations for Family Business Governance Guidelines and their Implementation ....... 146
  1 Introduction .................................................................................................. 146
  2 General Guidelines Features ....................................................................... 148
    2.1 Who Should Be Involved in the Drafting Process? ................................. 148
    2.2 Specification of the Target Audience ...................................................... 152
    2.3 Accessibility of the Family Business Governance Guidelines .............. 154
      2.3.1 Readability .................................................................................... 155
      2.3.2 Clarity ......................................................................................... 157
    2.4 Revision ................................................................................................. 161
  3 Structural Concerns and Relevant Guideline Contents ............................... 162
    3.1 Structural Considerations ....................................................................... 162
      3.1.1 Elements of the Guidelines ............................................................. 162
      3.1.2 The Structural Approach of the Guidelines .................................... 164
      3.1.3 Relevance of the Individual Governance Spheres ......................... 167
      3.1.4 Size and Developmental Stage Considerations ............................... 169
    3.2 Relevant Governance Themes ................................................................ 172
      3.2.1 Governance Relationships in the Family Business ......................... 172
      3.2.2 Relevant Governance Bodies and Roles ......................................... 175
      3.2.3 Essential Governance Documents ............................................... 178
      3.2.4 Dispute Resolution ........................................................................ 182
      3.2.5 The Importance of Communication .............................................. 187
      3.2.6 The Change of Generation – Family Business Succession .............. 189
3.2.7 Share-Related Governance Issues ................................................................. 191
3.2.8 Alignment ........................................................................................................ 195
4 Ways to the Practical Implementation of Family Business Governance Guidelines ........ 196
   4.1 Encouraging Family Business Engagement with the Guidelines ...................... 197
       4.1.1 Through the Guideline Recommendations Themselves ......................... 197
       4.1.2 External Measures to Support the Practical Impact of the Guidelines ........ 199
   4.2 Guideline Implementation – General Expectations on Family Businesses .......... 200
5 Conclusion – The Essence of the Draft Recommendations ...................................... 202
Conclusion and Outlook ............................................................................................ 204
List of Tables

Table 1: Overview of Family Business Inclusive Guidelines .......................................................... 91
Table 2: General Guideline Features ............................................................................................. 99
Table 3: Purpose, Format and Design of the Guidelines ................................................................. 109
Table 4: Structure and Content of the Guidelines ......................................................................... 119
Table 5: Expectations on 'Compliance', Special Features, Changes in the Revision of the Guidelines ................................................................................................................... 136
### Abbreviations

#### Selected Guidelines

<table>
<thead>
<tr>
<th>Short Citation</th>
<th>Full Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>A Practical Guide to Good Governance in Family Businesses</em> (Spain, 2012)</td>
<td>Instituto de la Empresa Familiar (Family Business Institute), <em>Guía Práctica para el Buen Gobierno de las Empresas Familiares (A Practical Guide to Good Governance in Family Businesses)</em> (Spain, 2nd ed, 2012)</td>
</tr>
<tr>
<td><em>Good Corporate Governance in Family Business</em> (Finland, 2009)</td>
<td>PL Finnish Family Firms Association, <em>Good Corporate Governance in Family Business: Governance of Ownership, Business and Family</em> (Finland, 2009)</td>
</tr>
<tr>
<td><em>Governance Code for Family Businesses</em> (Germany, 2010)</td>
<td>INTES (Academy for Family Businesses) and Die Familienunternehmer (ASU), <em>Governance Kodex für Familienunternehmen: Leitlinien für die verantwortungsvolle Führung von Familienunternehmen (Governance Code for Family Businesses: Guidelines for the Responsible Governance of Family Businesses)</em> (Germany, 2nd ed, 2010)</td>
</tr>
</tbody>
</table>
Publishers’ Approval and Copyright Terms and Conditions

Publishers’ approval has been obtained from Thomson Reuters NZ for the inclusion of the research article cited below into this doctoral thesis. Chapter 1 of this thesis (pages 18-49) constitutes a modified and reformatted version of this published article.

The publishers’ approval was granted for the following research article: Rebecca Hirsch, ‘Decoding Family Businesses: Are Corporate Governance Guidelines Necessary for Family Businesses?’ (2011) 17 New Zealand Business Law Quarterly 126-152.

Terms and Conditions

No part of this thesis consisting of the text which appears at (2011) 17 New Zealand Business Law Quarterly 126-152 shall be adapted, modified, reproduced, copied or transmitted in any form or by any means including written, electronic, mechanical, reprographic, photocopying, or recording means.

Furthermore, the above-specified part of this thesis shall not be stored in whole, part, adapted or modified form, in or for any retrieval system of any nature without the written permission of Thomson Reuters. (Thomson Reuters consents to its storage and retrieval on the University of Auckland’s ResearchSpace archive for educational purposes.)

Any application for authorisation of a reserved right of Thomson Reuters in the above-specified part of this thesis shall be made in writing to Thomson Reuters.
INTRODUCTION

The Great Carthage waged three wars.
After the first, it was still powerful.
After the second, it was still habitable.
After the third, it was no longer traceable.\(^1\)

Berthold Brecht

At first glance, Brecht’s quote on the Punic Wars seems to bear little relevance to the topic of family business governance. On closer inspection, a certain resemblance to the often cited ‘three generation dilemma of family businesses’, sometimes also referred to as the ‘Buddenbrooks effect’,\(^2\) cannot be denied.\(^3\) The problem of succession or a generational transfer of the family business is but one of the many points of the discourse surrounding family businesses and their enduring potential as a business form. Some of the commonly held perceptions of family businesses have recently been questioned as to their aptitude in characterising family businesses. However, there is no repudiating the fact that family businesses face certain specific challenges on their way to lasting success, which arise from their particular setting. This thesis focuses generally on the role that corporate governance, in particular voluntary family business governance guidelines, can play in providing a primary antidote to such family business challenges.

Especially in present times, family businesses are confronted with a variety of internal and external pressures. As this thesis will elaborate in greater detail, the internal forces emanate predominantly from an increased complexity inherent to this business form which results from the family being involved in the business operation creating a net of

---

\(^1\) Translation of the German original was based on the following translations of the quote: Daniel Metcalfe, ‘Carthage Must Be Destroyed: The Rise and Fall of Ancient Civilization by Richard Miles’, The Guardian (online), 24 April 2010 <http://www.guardian.co.uk/books/2010/apr/24/carthage-must-be-destroyed-miles>; Punic Wars, TV Tropes <http://tvtropes.org/pmwiki/pmwiki.php/Main/PunicWars>.


\(^3\) The three generation dilemma refers to the difficulty of continuing the family business for the long term. See also John L Ward, ‘Growing the Family Business: Special Challenges and Best Practices’ (1997) 10 Family Business Review 323.
intertwined relationships. Trust forms the foundational anchor of these family business relationships.\textsuperscript{4} It also highlights the importance and manifestation of family values and unwritten social norms which shape, and impact on, all members of the family business.\textsuperscript{5} Although such trust denotes one of the strong points and possible competitive advantages of a family business, it can, however, concurrently generate one of the most arduous sources of conflict. Where trust cannot be maintained and strengthened over the course of time, the potential for the demise of the family business increases.\textsuperscript{6}

The external pressures on family businesses relate closely to economic and cultural developments and changes. Economically, the rise of the modern managerial corporation with its decisive feature of separating ownership and control from one another has contested the permanence and potential of family businesses, especially during the Twentieth Century.\textsuperscript{7} In recent times family businesses are increasingly tested by the demands posed by an ever increasing globalisation and internationalisation of markets, changes and innovation in production processes and the threats arising from fragile economic markets, the latest example of which was experienced through the global financial crisis commencing in 2007.\textsuperscript{8}

From a socio-cultural point of view, the persistence of family businesses as a business form is further called into question. The changing nature of the family as such constitutes probably the most significant factor in this regard. Even only half a century ago, the nuclear family was commonly living and working together in one place, with the extended family living nearby and often also involved in the family’s activities. This situation was not only conducive to building up multi-generational dynasties of business families, but also provided a fertile ground for the success and longevity of the family business as an organisational business structure.\textsuperscript{9} Nowadays, the extended family

\textsuperscript{5} See Colli and Rose, ‘Family Firms in Comparative Perspective’, 341; Andrea Colli and Mary B Rose, ‘Family Business’, in Geoffrey Jones and Jonathan Zeitlin (eds), \textit{The Oxford Handbook of Business History} (Oxford University Press, Oxford, 2007) 204. See also chapter 2, section 3.2 on the relevance of social norms.
\textsuperscript{6} Similar Colli and Rose, ‘Family Firms in Comparative Perspective’, 341, 346.
\textsuperscript{7} See ibid, 341-346; Colli, \textit{The History of Family Business 1850-2000}, 50-51.
\textsuperscript{8} Compare Colli and Rose, ‘Family Business’, 197.
frequently lives further apart from the nuclear family. The permanence of the nuclear family is also confronted with an increased potential for fragmentation due to higher divorce or break up rates and a more natural splintering of the family unit as a consequence of the globalisation progress which opens up more international opportunities and the mobility of individual family members.\(^9\)

While the abovementioned points provide a snapshot of the challenges that test the perseverance of family businesses, these obstacles have so far not resulted in a deterrent or significant regression of family businesses as a business form. On the contrary, recent studies attest to the continuing high worldwide incidences of family businesses, ranging on average between 65 up to 90 percent. These studies also indicate that their relevance as a source of employment and their significant contribution to the national economies and Gross Domestic Product (GDP) remains strong.\(^10\) However, the abovementioned internal and external pressures and challenges demonstrate that there is a greater need than ever for family businesses to establish and engage in good governance, if they are to remain able to compete as well as persist in these current times. Awareness of these pressures further reveals that the particularity of their nature calls for idiosyncratic governance solutions that respond suitably to these specific challenges and influences in the family business. This thesis addresses the unique governance situation and issues facing family businesses.

1 A Perspective on the Historical and Research Development of Family Businesses

A look back into history provides valuable insights into the prevalence of family businesses and their permanence as a business form throughout time, which helps to situate and identify the relevance of family businesses in practice and theory. These historical insights, especially in more recent times, are also reflected in, and underpin, the


growing research – and later on regulatory – interest in the subject of family businesses. In the research dimension, the outline of the disciplines engaging in the study of family businesses and the specific areas of inquiry illustrate the relevant research background and state of affairs pertinent to the topic of this thesis.

1.1 The Historical Development of Family Businesses

Family businesses constitute one of the most traditional and long-standing business forms globally. The historical period that tested, and best displays, the phenomenon and perseverance of family businesses commenced in the second half of the Eighteenth Century with the Industrial Revolution.\(^\text{12}\) During this initial stage, family businesses undoubtedly played a crucial role and contributed significantly to the industrialisation process. At the time, family businesses were able to offer reliability in business relations and employment in uncertain economic times by continuing to exploit the knowledge and expertise gained locally, in their own business and community.\(^\text{13}\)

Some historians have questioned the continuing relevance and dominance of family businesses during the later phases of the Industrial Revolution which saw the emergence of more advanced means of transportation and the advent of larger scales of production and automation.\(^\text{14}\) Their main argument has centred on the increased capital intensity of business operations. It has been argued that larger scale capital needs are at odds with a traditionally smaller scale, family owned, supported and financed business activity.\(^\text{15}\) This narrow view, however, disregards other industrial sectors that comprised the main area of family business-centred commercial activity.\(^\text{16}\) Additionally, larger scale family businesses in Europe, but also in the United States, did in fact emerge and successfully persist as family businesses, despite industrial developments.\(^\text{17}\)

---


\(^{15}\) See Colli and Rose, ‘Family Business’, 198, 199.


Introduction

The argument and its associated negative outlook on the survival of family businesses continued with the rise of the modern managerial corporation throughout the Twentieth Century, which was seen as the future of doing business. This perception viewed family businesses as unable to compete with these larger corporations that were founded on a diffused ownership and a separation of ownership and control.\(^\text{18}\) The consistently high numbers of family businesses nowadays prove that this perspective was short-sighted. In addition to the vast number of family businesses of smaller proportions, a certain number of family businesses are publicly listed companies. Historians, such as Andrea Colli and Mary Rose, together with other researchers, highlight clearly that the rise of the managerial corporation has not brought about the demise or sidelining of family businesses as a business form. Instead, they have held their own and evolved with the changing times, even prevailing in certain markets, sectors or economic circumstances.\(^\text{19}\) In current times there is a broad acknowledgement that the managerial corporation is by no means the only response to present economic and business needs and that a variety of business forms and structures retain a place in the spectrum of appropriate responses to these demands.\(^\text{20}\)

The continuing relevance of family businesses in today’s economies make this historically tenacious business form an intriguing subject of study and substantiates the importance of supporting family businesses through research to ensure their permanence for the years to come.

1.2 Development of Family Business as a Research Field

Since the second half of the Twentieth Century family businesses have become a focus of research. While the initial years saw more sporadic articles emerging, an intensification of family business research from the early 1980s onwards has transformed family business research into an independent topic.\(^\text{21}\) Disciplines that have strongly engaged in


\(^{19}\) Colli and Rose, ‘Family Firms in Comparative Perspective’, 342ff; Colli and Rose, ‘Family Business’, 199-200.

\(^{20}\) See also Colli and Rose, ‘Family Firms in Comparative Perspective’, 343.

family business research from its early days include management, psychology, organisational studies, entrepreneurship and business history.\textsuperscript{22}

Early articles from the 1960s to the late 1980s, likely due to the common juxtaposition of family businesses with the managerial corporation characterised by a separation of ownership and control, predominantly focused on investigating and understanding what actually constitutes the peculiarities of family businesses, that is, how they differ from other business forms. Specific research themes include: the definitional problem of how to best depict family businesses;\textsuperscript{23} the development of a systematic approach for describing family businesses utilising social psychology and systems theory;\textsuperscript{24} and finally, identifying the particular strong points and weaknesses of family businesses and the specific problems immanent to a family business setting.\textsuperscript{25}

Building on these more fundamental themes concerning family businesses, in more recent years the research focus – particularly in the management discipline – concentrates more on corporate governance related issues that emanate from the particular setting of a family business. A common research topic in this context is the change of generations in family business, addressing questions around the succession planning process, the need

\begin{footnotesize}
\textsuperscript{22} See also Colli and Rose, 'Family Business’, 194-195.
\end{footnotesize}
Introduction

for education and qualification of the upcoming generation or the impact of the expanding family on the business.\textsuperscript{26} The topic of conflict in family businesses likewise attracts research attention from various disciplines where, besides exploring the sources and reasons behind the higher potential for discord to arise, means of solving family business conflicts are also examined.\textsuperscript{27} The corporate governance centred research on family businesses further attends to the role that governance theory, such as agency or stewardship theory, play in a family business context,\textsuperscript{28} as well as the related question of whether the ‘one size fits all’ approach traditionally taken in corporate governance codes and guidelines is tenable in view of family businesses.\textsuperscript{29} Additionally, the family business board of directors and its composition, and the closely related aspect of outsiders in the family business, have elicited academic research interest.\textsuperscript{30} Referring to


these latter points of investigation, and corporate governance in general, several research articles and books engage in highlighting ‘best practice’ suggestions for family businesses.\textsuperscript{31} Best practice advice on the corporate governance of family businesses has further emerged from the realm of practitioners where, for instance, consultancy firms or banks have published their own suggestions – generally for the primary benefit of their clients.\textsuperscript{32}

Since this thesis investigates family business governance guidelines, which can be classified as a ‘soft law’ regulatory mechanism of corporate governance, it seems necessary to explore the perplexing position that legal research, especially in the field of corporate governance, takes in family business research. While the abovementioned references clearly show that some legal research exists on the subject of family businesses, family businesses have, however, not received the research attention one would expect given the relevance which the law, in particular corporate law, occupies in relation to family businesses.

The legal framework underpins family business activity in manifold ways – positively, where of an enabling nature, and more negatively where legal rules restrict or prohibit certain conduct or settings. Naturally, a variety of legal areas impact on family businesses; this is especially true for companies’ legislation, inheritance rules, tax laws or employment legislation to name but a few.\textsuperscript{33} Apart from the general bearing which the legal framework has on family businesses, its influence is commonly elevated even

\begin{flushleft}


\end{flushleft}
further when changes in the legal system occur. Legal litigation involving family businesses similarly reflects the range of legal matters affecting this business form. These family business cases provide further practical insights into the nature and often the origins of the problems faced by family businesses. Commonly detected themes in such cases include at their centre matrimonial property issues, inheritance issues and company law matters, such as ownership-related disputes.

In addition to such regulatory and judicial influence of the law, the legal perspective has a further significant bearing on other disciplines that are of relevance to family businesses. As an example, the law – especially the corporate law in its specifications of company law and, more broadly, corporate governance – strongly underpins the management dimension of family businesses and sets the underlying core upon which management based research on family businesses is set. On a different note, the legal angle also contributes a unique perspective to family business research when compared to the dominating management literature in that it does not approach this business form from a predominantly operational point of view. Rather, legal research embarks from a broader, sometimes more abstract, and more structural mindset, which can add valuable insights to the overall research on the topic.

In contrast to this short outline of the general impact of law and the potential of legal insights for family businesses, it is noteworthy that legal research into family businesses is lagging somewhat behind the other involved disciplines. There is little earlier legal research on family businesses; and those articles that address family businesses are often set in the context of closely held corporations. More recently, a slowly growing amount of legal family business research is noticeable. The areas of estate planning, in terms of matrimonial and patrimonial property, and tax considerations in family businesses,

34 See also ibid, 203.
35 A more detailed account of relevant case law can be found in chapter 1, section 2.2.
36 A reflection of this notion emerges, for example, from the management interpretation of the so-called three circle model of family businesses, which equates the business circle with the business management as opposed to the business dimension as such or the board of directors as its primary governance body. This latter governance body plays a key role in the governance of the overall family business. The legal understanding and general research on the role of the board of directors could induce a more varied perspective in this regard. See chapter 1 for details on the three circle model and chapter 4, in particular, on the functions of the board of directors within the family business.
Introduction

comprise probably the most frequently occurring research topics. Legal research on dispute resolution in family businesses has likewise gained traction as a topic of interest. Finally, in the corporate law domain, research on the board of directors in family businesses, and on the corporate governance of family businesses in general has recently emerged. From a practical point of view, leading international law firms have also engaged increasingly in the topic of family business governance and, in similar fashion to the consulting firms, issued their own guides and suggestions on best governance practices. While it is beyond the scope of this thesis to investigate the reasons driving this position of legal research within family business research, this situation provides an important point of departure and motivation for the research project undertaken within this thesis, as will be elaborated further below.

On a regulatory level, family businesses have become increasingly recognised since the turn of the millennium. A decade after the rise of corporate governance codes primarily aimed at listed companies in the 1990s, voluntary family business governance guidelines started to emerge, from 2003 on. The format of these guidelines has varied

from family business exclusive governance guidelines to broader scoped governance recommendations that feature a section on family business governance. Such national efforts are now evident worldwide, but a certain concentration of, especially, family business exclusive governance guidelines is apparent in the region of the European Union.\textsuperscript{43} Notably, the majority of these family business specific governance guidelines have been initiated and driven by private sector initiatives, such as family business networks. To date, few scholars have addressed these family business guidelines in the general context of family business governance.\textsuperscript{44} Although some of the family business guidelines have further received some research attention in their country of publication.\textsuperscript{45}

From a supranational perspective, family businesses have not received the same attention as other business forms, such as multinational, listed or small- and medium-sized businesses. Since 2007 the European Union has devoted greater research attention to family businesses, for instance by commissioning a study establishing their situation and place within the Member States.\textsuperscript{46} Additionally, an expert group, formed in 2007, produced a further research report on family businesses in 2009.\textsuperscript{47} Other supranational institutions have also started to focus on family businesses, either through family business specific or broader scoped initiatives.\textsuperscript{48}

\textsuperscript{43} Chapter 3, section 2 provides an overview of family business governance guidelines worldwide.

\textsuperscript{44} See for instance: McCahery and Vermeulen, \textit{Corporate Governance of Non-listed Companies}; Farrar, ‘The Corporate Governance of SMEs and Unlisted Companies’.


\textsuperscript{46} See Mandl (Austrian Institute for SME Research), ‘Overview of Family Business Relevant Issues’.


Introduction

2 Conceptual Background of the Thesis

As indicated above, family business governance guidelines have not yet attracted great attention in legal corporate governance research. The research interest so far has been of a more general nature and predominantly focused on introducing these guidelines as one of several elements of the corporate governance spectrum available for family businesses or on providing some nationally restricted evaluation in response to their issuance. However, this existing research so far lacks an in-depth study and examination of the rather recent phenomenon of the emerging family business governance guidelines. This thesis builds on the existing research and aims to contribute to closing this gap and to an expansion of our understanding of the role of these guidelines.

The motivation underlying this project originates from the perceived discrepancy in the importance and economic contribution of family businesses on the one hand, and the little public support afforded to them in light of the elevated corporate governance challenges they face as a business form as a result of their particular constellation on the other. Following upon this latter point it comes as no surprise that the three generation dilemma, or sometimes even the survival in the first generation, remains a reality for many family businesses. The idea that voluntary family business governance guidelines can directly offer a valuable governance instrument for overcoming the innate challenges to the affected family businesses hence provides an intriguing point of departure for this thesis. Conceptualising the guidelines as an ongoing preventative measure, rather than as an ex post cure, which often constitutes a temporary fix and in some cases catches on only after significant damage has been done to the family business and the concerned relationships, increases their attractiveness as a governance tool. If these guidelines are further understood as a tool for raising awareness of family business specific governance challenges and for providing these businesses with a starting point to help themselves, without adding an additional layer of compliance for family businesses, then these guidelines principally possess a great potential to make a positive practical impact on individual family businesses and more broadly on the public perception of the capabilities and competitiveness of this business form.

In order to shed some light on this so far underrepresented topic, this thesis sets out to examine the role and possible potential of voluntary corporate governance guidelines aimed at family businesses. In order to identify their role and place in corporate governance, the individual questions that need to be answered require a foundational argument for the general necessity of such family business governance guidelines, and an investigation establishing how these voluntary guidelines are conceptualised from a regulatory point of view and where they are situated in the legal regulatory space. Determining their practical potential requires an analysis of the extent to which the currently existing family business governance guidelines live up to the established regulatory objectives. Consequentially to evaluating the status quo, an exploration of possible areas for further improvement within such guidelines needs to complete this investigation.

The main practical contribution which this thesis seeks to make is to devise a general set of draft recommendations highlighting the core features and governance contents, as well as suggesting relevant implementation advice that should be incorporated into family business governance guidelines. The overarching aim of this set of recommendations is to assist future drafting committees in their task of developing or revising family business guidelines. In doing so, this project brings together theoretical knowledge on family business governance and the practical experiences of family businesses that are embedded in the existing guidelines and litigated cases. Drawing on the theoretical research knowledge from a variety of disciplines, especially through the inclusion of a legal perspective, may further aid in gaining a clearer understanding of the multifaceted areas of relevance to family businesses in what currently marks a more management dominated field.

Overall, this thesis pursues an exploratory approach in order to understand the role and potential of family business governance guidelines. This inquiry is principally rooted in legal doctrinal research and engages in a hermeneutical analysis of the aforesaid guidelines. In light of its exploratory nature, this thesis draws on a combination of

expository and evaluative research methods.\textsuperscript{51} The expository means employed include an in-depth analysis of the relevant family business, regulatory and family business governance research literature; a review of family business surveys and studies as well as legal cases involving family businesses; and a comparative analysis of selected family business governance guidelines.

The analysis of the relevant scholarly literature incorporates research from a multidisciplinary perspective, drawing on legal, social psychology and business – primarily management – knowledge in order to arrive at a comprehensive grasp of family businesses and their corporate governance. This literature review is complemented by insights gained from family business surveys, accounting for and reflecting the practical experience and perception of family businesses in order to achieve an even greater level of comprehension. Similarly, the review of family business case law, which is primarily focused on a concise review of company law cases involving family businesses against the corporate governance background of this thesis, has been integrated in order to gain an additional and practical source of insight into the areas and origins of disputes and the often resulting demise of family businesses. These first expository research means are primarily employed in order to develop, as a first step, the meta-theoretical legal framework that underpins this thesis.\textsuperscript{52} Setting out and describing the legal reality underlying this research inquiry is comprised in the first two chapters of the thesis.

The comparative analysis of selected family business governance guidelines is conducted in chapter three. The descriptive comparative study has been devised and included to discern the functionality of these guidelines and to determine their individual approaches to the guideline design and content.\textsuperscript{53} The overarching objective is thereby to identify the commonalities but also the differences among these guidelines, which in the following chapter are then assessed so as to ascertain where improvements are needed.\textsuperscript{54} The latter purpose of the comparative study is undertaken as part of the main evaluative component of this thesis. In this regard, chapter four provides a systematic account of family business governance guidelines by evaluating the findings of the comparative


\textsuperscript{52} On the meta-theoretical approach see Van Hoecke, ‘Legal Doctrine’, 15.

\textsuperscript{53} Chapter 3, section 3 contains a detailed methodology on the comparison itself.

\textsuperscript{54} For the purposes of comparative legal research, see Cryer et al, \textit{Research Methodologies in EU and International Law}, 28.
study, bringing them together with the theoretical insights derived from scholarly family business governance research and by presenting them jointly in the form of guiding suggestions on how to best draft such family business governance guidelines.

3 Thesis Outline and Detailed Chapter Breakdown

The underlying structure of this thesis proceeds broadly along the main steps in the regulatory process when considering and drafting a new legal regulatory instrument. This regulatory process best reflects and encompasses the crucial questions that need to be answered in order to assess the necessity, feasibility, possible practical impact as well as the best way to realise a regulatory project.55 With the focal point of this thesis on the role and potential of voluntary family business governance guidelines, drawing on the regulatory process thus constitutes a suitable and logical choice for the underpinning thesis framework. The overarching stages of the general regulatory process that inform the main body and also the chapter division of this thesis are reflected in the following questions:

(1) Are such family business governance guidelines necessary as part of the existing corporate governance framework?

(2) How can these guidelines be classified from a regulatory perspective? How do they differ and what do they contribute when compared with other governance mechanisms?

(3) How are the currently existing examples of such family business governance guidelines set up and what do they include?

(4) What lessons can be learned from the analysis of these already existing guidelines and, in consequence, how and in which areas can they be improved further?

This outline illustrates two overarching points of inquiry. The first two chapters provide the foundational groundwork by establishing the rationale as well as the regulatory scope and objectives of voluntary family business governance guidelines. The third and fourth chapter, in contrast, embark on a direct engagement with the currently existing guidelines through a comparative analysis of these guidelines, complemented by

an assessment of its results which leads to the development of a general set of draft recommendations to assist with prospective drafting pursuits. In doing so, all four chapters reflect on the importance of examining the underlying structures of the respective elements of the inquiry. That is, within the foundational investigations comprised in chapter one and two the general structures underpinning family businesses, corporate governance, as well as family business governance guidelines need to be understood in order to correctly determine the role and potential of the latter guidelines. Continuing this structure-based approach, chapters three and four examine the detailed structure of family business governance guidelines.

The first chapter starts out by providing an initial introduction to the relevance of family business governance guidelines by using the example of New Zealand, a country not yet exposed to such guidelines, to illustrate the common situation and experience of family businesses using case studies and a concise case law review. The question as to why this state of affairs offers a first argument in favour of family business governance guidelines is considered here. A multidisciplinary approach to family businesses, primarily drawing on a systems theory perspective, is then used to give a more detailed understanding of the complexity of family businesses. This marks the basis for the following examination of the governance requirements of this business form. The governance needs of family businesses are assessed against the common rationales brought forth for the implementation of corporate governance regimes. The theoretical rationale is derived from the applicability of the leading corporate governance theories to family businesses. In this regard, chapter one provides a systematic account of the relevance and interrelationship of agency theory and stewardship theory with respect to family businesses. The associated connection with the issue of altruism is incorporated into this discussion. Further aspects, such as a desire or demand to growth and investment, as well as the innate complexity and idiosyncrasies of family businesses, are examined and contribute further novel arguments to the debate. Ultimately confirming the general, and to some extent even greater, need for a well-functioning governance system in family businesses, the last part of this chapter outlines possible approaches to how such governance regimes could be facilitated in family businesses. Here the thesis juxtaposes the dominant ‘one size fits all’ approach, endorsed in the prevailing corporate governance codes aimed at publicly listed companies, with more refined governance approaches which employ family business specific governance guidelines or broader
scoped governance guidelines for unlisted companies or Small and Medium-Sized Enterprises (SMEs). The arguments provided militate in favour of separate family business specific governance guidelines for addressing the governance challenges of this business form, thereby setting the stage for the remainder of the thesis.

Having demonstrated the general need and suitability of family business governance guidelines, the second chapter situates these guidelines within the regulatory context of self-regulation. This includes an analysis and assessment of how far such guidelines must differ conceptually from other governance mechanisms in order to be successful in a family business setting. As a necessary starting point for this analysis, a general overview of the legal regulatory space, and of self-regulation in particular, opens the chapter. A tracing of the development, function and standing of self-regulation then leads to a more detailed examination of the place of self-regulation within corporate governance. This taxonomy of the various mandatory and voluntary corporate governance measures, with a particular emphasis on the latter mechanisms, elicits the question of a possible additional dimension of self-regulation in light of the family business governance guidelines. Departing from the usual compliance-oriented focus inherent in the majority of corporate governance codes and guidelines, the purposes of raising awareness about family business specific governance issues and providing guidance towards a self-help approach are addressed and comprise the focal point of this added dimension. The last section in this chapter applies the preceding theoretical considerations to the practical situation of family businesses and highlights why the varying objectives of self-regulation are decisive in this specific context.

Building on the theoretical fundament laid in the first two chapters of this thesis, chapter three takes a more practical angle and engages in a comparison of selected, currently existing family business governance guidelines in order to gain some relevant insights into their practical potential. In preparation for this comparative analysis, the first part of the chapter outlines the evolution and global distribution of the different forms of such guidelines. This is followed by an overview of the methodological considerations and structural framework of the analysis. The conducted international comparative analysis brings together and studies for the first time six selected European family business governance guidelines. The overarching purpose of this review is to carve out the individual approaches to family business governance taken in each of these
Introduction

guidelines, by examining their design and content features. These guidelines are studied against a comprehensive set of parameters. The parameters introduced in this chapter enable the comparison of these otherwise seemingly disparate and overtly country-specific guidelines and are grouped under two overarching themes. As an introduction to the selected guidelines, the first theme concentrates on their general features. The second vital part of the comparison scrutinizes the format, design and structural elements of these guidelines as well as examining which specific governance topics each of them addresses. This analysis constitutes the essential basis for the general draft recommendations developed in chapter four.

Evaluating the results of the comparison, the fourth chapter seeks to collate the identified salient elements and innovative approaches of the selected guidelines into a set of draft recommendations that also accounts for the areas that are insufficiently addressed in the former. These insights are further underpinned by the relevant literature on family business governance. The draft recommendations are devised as a guide for drafting committees and issuing bodies of family business guidelines and aim to facilitate their respective drafting efforts. The recommendations are divided into three main parts. The first section emphasises fundamental points that should be taken into consideration prior to embarking on the actual guideline drafting process. The second part draws attention to the desirable structural presentation and the relevant governance themes that should be incorporated into such family business governance guidelines due to their profound impact. The draft recommendations are concluded by some practical implementation advice with respect to the family business guidelines.
CHAPTER 1: DECODING FAMILY BUSINESSES – ARE CORPORATE GOVERNANCE GUIDELINES NECESSARY FOR FAMILY BUSINESSES? 56

1 Introduction

Despite being one of the most common forms of business adopted worldwide, so far not much attention has been paid to family businesses as a subject for corporate law study. Only in recent years have several countries started to direct their attention more to this business form and, as a result, initiated varied forms of corporate governance recommendations intended to account better for family businesses. Corporate governance guidelines generally are undoubtedly recognised nowadays as a vital and significant part of the legal regulation of companies. 57 Due to the corporate scandals occurring worldwide during the past decades, the importance of good corporate governance has been further emphasised — reflected in an establishment and revision of guidelines, codes and corporate governance legislation for listed companies in an increasing number of jurisdictions. 58 On top of the emerging corporate governance regulation, family businesses as a focus group are receiving growing attention. Starting in the early 2000s with just a few countries engaged, the list of corporate governance guidelines including or focusing on family businesses is steadily expanding at national as well as international policy levels.

This chapter takes up this emerging trend and investigates whether there is an actual need for such governance guidelines aimed at family businesses. The focus here is on the justification and possible approaches to the practical implementation of this new — family business oriented — direction of the corporate governance movement. As a point of departure, New Zealand is used as an example to demonstrate the practical need for family business guidelines. A significant number of businesses in New Zealand are family businesses and yet there are currently no corporate governance guidelines in place that aim at this form of business. The state of affairs and the corporate law issues faced

56 This chapter is a modified version of the namesake published article. I gratefully acknowledge the permission of the copyright owner, Thomson Reuters, to reproduce in this thesis my article written for the New Zealand Business Law Quarterly and appearing as Rebecca Hirsch, ‘Decoding Family Businesses: Are Corporate Governance Guidelines Necessary for Family Businesses?’ at (2011) 17 New Zealand Business Law Quarterly 126-152.
by New Zealand family businesses provide rationales for the potential of corporate governance guidelines.

In order to justify the recent governance focus on family businesses, this thesis initially elaborates on the key reasons why family businesses take a special place within the business landscape and why, as a consequence of this, they might deserve greater attention within the corporate governance debate. Using a systems theory approach, an investigation into the subsystems constituting the family business highlights its idiosyncrasies and identifies the resulting challenges that family businesses commonly face.

Two questions follow from this fundamental understanding of this business form: first, whether the common rationales underlying corporate governance codes make governance mechanisms for family businesses necessary; second, and closely related, whether the idiosyncrasies of family businesses provide for an additional, perhaps more important, rationale in this regard. With regard to the former question, in particular, the common corporate governance rationale stemming from agency problems is pitted against stewardship theory and the notion of altruism, reinforcing the demand for governance recommendations targeting family businesses.

Adopting the view that a good corporate governance regime is beneficial and necessary for family businesses, how this objective can be best realised then needs to be examined. This requires an analysis of existing governance approaches in order to identify which concept might be the most viable to provide corporate governance support to family businesses. This thesis approaches this issue from the premise that the majority of family businesses are unlisted companies. As a first solution, the so-called ‘one size fits all’ approach is considered. This approach suggests that the existing corporate governance guidelines, which primarily focus on publicly listed companies, could also cater to the governance needs of family businesses. The opposing approach involves establishing separate governance guidelines for family businesses. The appropriate focal point of such guidelines is then discussed. The existing governance guidelines suggest an exclusive family business focus or SME oriented guidelines including particular sections on family businesses. The argument concludes in favour of the former alternative.
2 Relevance of Corporate Governance Guidelines for Family Businesses — New Zealand as a Motivating Example

Recent evaluations show a high incidence of family businesses worldwide with rates of over 70 per cent in the majority of countries, and several of them showing numbers close to 90 per cent.\(^5^9\) This impressive incidence of family businesses, however, is contrasted by only a low number of countries actively attending to the corporate governance issues peculiar to this business form.\(^6^0\) But as highlighted below, even within those countries which have drafted corporate governance guidelines, the degree to which family businesses are considered varies significantly. New Zealand belongs to the great pool of countries that have not yet implemented any such soft law measures of corporate governance despite a relatively high number of family businesses within its business landscape. This section uses New Zealand as an example to demonstrate the general importance of governance recommendations for family businesses, setting the tone for the overall position advocated in this chapter.

2.1 The Significance and Situation of Family Businesses in New Zealand

Family businesses play a major role in the New Zealand business landscape. Their incidence is estimated to be between 60 and 75 per cent of all businesses.\(^6^1\) Further, 80 per cent of all employment is in family businesses and family businesses contribute 65 per cent to the GDP.\(^6^2\) Despite these impressive figures, the state of affairs for New

---


\(^6^0\) See for instance: *The Family Business Governance Report* (The Netherlands, 2003); *Governance Guide for Families and Their Businesses* (Switzerland, 2006); *Bussie Code II* (Belgium, 2009); The Hong Kong Institute of Directors, *Guidelines on Corporate Governance for SMEs in Hong Kong* (Hong Kong, 2\(^{nd}\) ed, 2009); Institute of Directors and European Confederation of Directors’ Associations, *Corporate Governance Guidance and Principles for Unlisted Companies in the UK* (United Kingdom, 2010).


Zealand family businesses could improve. The majority of family businesses are in their first generation and the numbers decrease significantly for those residing in later generations indicating a certain lack of longevity. This is also reflected in an average lifespan of New Zealand family businesses of 31 years. In comparison, several other countries like Belgium, Italy or the United States, have the majority of their family businesses in the hands of the second generation and also show a significant percentage of third and later generation family businesses.

Another issue involves the existence of only a few larger or publicly listed family businesses, with the majority of family businesses remaining in the developmental stage of an SME. It is therefore not surprising that the majority of family businesses in New Zealand are not satisfied with the rate of growth or size of their business. More research is required to establish the reasons for this situation, but a few suggestions have already been made in this regard. The commonly perceived business culture of New Zealand businesses is referred to as the ‘3 B’ attitude — an acronym for bach, boat and BMW. This philosophy of ‘satisficing’ refers to a certain lack of ambition within New Zealand businesses. The business is regarded more as a means to achieve a desired lifestyle, but less to create an enduring basis for economic wealth which is sustainable enough to be passed on to upcoming generations.

63 Compare Grant Thornton, PRIMA Global Research Report, 34; Kosmas X Smyrnios and Lucio E Dana, MGI New Zealand Family and Private Business Survey (2007) MGI, 6, 17 <www.mgiworld.com_homepdfs/MGIFamilyBusinessSurvey07_NewZealand.pdf>. The authors of this latter study estimate it as “optimistic to expect that more than a third of family businesses in New Zealand would pass to the next generation”. See ibid, 3.

64 Smyrnios and Dana, MGI New Zealand Family and Private Business Survey, 6, 17.
65 Compare Grant Thornton, PRIMA Global Research Report, 34.
66 Taking into consideration that the majority of businesses in New Zealand reside in the SME sector, it is estimated that 50-80 per cent of SMEs are family businesses. See Maria Slade, 'Keeping Business All in the Family' The New Zealand Herald (online), 24 January 2009 <http://www.nzherald.co.nz/small-business/news/article.cfm?c_id=85&objectid=10553335>; Clayton Cosgrove (Minister for Small Business), ‘Engaging with SMEs: Key Challenges for Policymakers’ (Speech delivered at the Annual Research Symposium at the NZ Centre for SME Research, Massey University, Wellington, 27 August 2008) <www.scoop.co.nz/stories/PA0808/S00416.htm>.
67 Compare Smyrnios and Dana, MGI New Zealand Family and Private Business Survey, 7.
70 See New Zealand Trade & Enterprise Playing to Our Strengths, 4, 12-13; Slade ‘Message for NZ’.
Recent studies looking into the mindset of New Zealand family businesses confirm that there is some truth embedded in these statements. Although more than half of the businesses state the desire to remain a family business or to have this as their preferred option for the future, the majority of the study respondents controversially hold at the same time that, given the chance, they would sell their business or intend to do so later. Similarly, almost half of the responding businesses wish to relinquish family control in the future. A struggle over the business priorities becomes apparent from these diverging views. A lack of longevity of New Zealand family businesses detrimentally impacts on the country’s economy in terms of provision of employment, GDP per capita as well as business growth.

Another aspect emanating from the studies and influencing the situation of New Zealand family businesses is a reluctance to implement formal processes, structures or strategies. About half of the responding family businesses do not have any processes in place to deal with conflicting issues between the family and the business side, written business or long term strategic plans, formal management structures or written succession plans. On the other hand, over 80 per cent consider, for instance, succession planning as an important measure. Such reluctance can impede the growth and perseverance of New Zealand family businesses.

Apart from the described situation of New Zealand family businesses and the attitudes of the involved families, the availability of specialist advice likewise adds to the current state of affairs. While family businesses make use of external advisers, such as accountants or lawyers, to receive general business advice, they seem to be less prepared to ask for advice about issues that arise in the overlap of family and business. A significant number of New Zealand family businesses, for instance, do not seek external advice regarding their succession planning nor do they intend to do so in the near future. Irrespective of the type of advice sought, there is a general feeling that advisers

72 Ibid, 23.
74 Compare generally, Smyrnios and Dana, *MGI New Zealand Family and Private Business Survey*, 6-10.
75 Ibid, 4, 18-19, 24.
76 Ibid, 24.
Decoding Family Businesses

should account more for the particular needs and issues, which arise from being a family business.  

2.2 The Need for Corporate Governance Guidelines — Evidence from Case Law

While there might be a common perception among New Zealand family businesses that there is no need to change the current situation, a look into the case law involving family businesses paints a different picture. Given the corporate governance background, the focus of the following case review is on New Zealand company law cases occurring in the context of family businesses. The persistence with which company law cases that arise from disputes within family businesses have passed through the New Zealand courts emphasises the importance of corporate law as part of the legal research on family businesses. Company law is commonly drawn upon in the crucial situations where family members who are involved in different capacities in the business come into conflict with each other. The business thus becomes the scene of disputes that, after making their way to court, more often than not result in the dissolution of the family business and a breakdown of the family relationships.

A closer examination of these family business related company law cases provides interesting insights into the main areas of conflict and the constellations of the family members involved. The majority of the reviewed company law cases centre on shareholding issues. Within this field of conflict two main categories of dispute can be identified. The first common situation involves disputes about share transfers between family members often in combination with a disagreement about the valuation of the shares. In these types of cases, s 149 of the Companies Act 1993 (NZ), which deals with the requirement to pay fair value in share transfers involving a director, was often

81 A more general review of the case law will produce a considerable amount of matrimonial property, inheritance/family trust as well as employment centred cases that have a family business link. See for instance: Silbery v Silbery-Dee HC Wellington CIV-2005-485-2499, 22 August 2007; Williams v Alfred Holt & Co Ltd Employment Relations Authority Auckland AEA-1-1/00, 29 November 2000. These issues can also be of crucial importance to the continuity of the family business and should be given consideration in family business governance regimes.
82 A comprehensive overview of company law cases involving family businesses can also be found in: John H Farrar, Susan Watson and Laurent Boulle, ‘Dispute Resolution in Family Companies’ (2013) 19 Canterbury Law Review 37-68 (forthcoming).
invoked. The second frequently encountered situation is where a family member brings an action under the oppression remedy pursuant to s 174 of the Companies Act 1993 (NZ) against other members of the family. Section 174 gives a shareholder of a company a remedy where the shareholder has been treated in an unfairly prejudicial manner. Mostly, the oppression remedy is used to protest against a perceived unfair treatment in relation to a family shareholder’s buy out rights or dividend payments. Others use the remedy in situations of power struggles in the company.

Additionally, in many cases the conflicts originate in one sphere and are then carried over into the other. This complication seems to lower the chances of resolving what otherwise might have been a conflict solely in the family or business sphere. It becomes apparent from the family histories that family members often fail to resolve their dispute on a private level and subsequently find themselves on opposing sides in court. Taking the matter to court is usually the ultima ratio for the family to end the dispute. In most cases, the family relationships have, at that stage, deteriorated to such an extent that a reconciliation of the family ties is highly unlikely. In addition, especially where more than one family member of the family business is involved on each side, a discontinuation of the family business might be a further outcome of the conflict. Contrasting the situation found in New Zealand case law with the perceptions of family businesses, one observes a certain lack of awareness of potential issues for conflict and an underestimation of their prospective negative impacts.

In conclusion, New Zealand family businesses run the risk of lagging behind in terms of business growth and continuity. The contributing factors mainly include a certain reluctance about introducing more formal structures and processes and seeking advice on family business specific issues. Lack of awareness about the extent and impact of potential conflicts inherent in family businesses as well as ultimately ‘solving’ family

---

84 See for example: Thomas v HW Thomas Ltd [1984] 1 NZLR 686 (CA); Yovich & Sons Ltd v Yovich (2001) 9 NZCLC 262,490 (CA); Burrows v Rental Space Ltd; Burrows v Hemming HC Auckland M1405/98; CP402/98, 7 June 2001.
86 See Fitzpatrick & Co Ltd v Fitzpatrick (1989) 4 NZCLC 64,861 (HC); Windsor Trading Co Ltd, Re; Doyle v Doyle HC Wellington CP9/02, 24 April 2002; Thexton v Thexton [2002] 1 NZLR 780 (CA).
88 See Salmon J’s comments in Thexton v Thexton [2001] 1 NZLR 237 (HC), [2], [26].
disputes in court likewise add to this situation. The provision of family business focused corporate governance recommendations can help to mitigate these risks.

3 Why Are Family Businesses Special?

The analysis of corporate governance modalities for family businesses requires a profound understanding of the nature and inherent idiosyncrasies that determine a family business. Without such understanding, designing or integrating corporate governance regulation — well suited to the needs of family businesses and achieving the objective of improving their overall situation — is not feasible. In other words, one has to identify why family businesses represent a unique form of business to which corporate governance should attend separately.90

The term ‘family business’ has always been habitually used in everyday language and is also increasingly drawn on in academic research. Academic literature proposes numerous definitions of what constitutes a family business.91 These definitions, however, build on very different criteria and focal points. This heterogeneity impedes a consensus about a common description of family businesses. The prevalent criteria — such as family ownership, family influence or involvement, and multigenerational intentions or involvement — at the very least give an indication from which aspects the family business particularities emanate.

The systems approach developed in family business research provides further insights into the particular situation of family businesses. The so-called two circle model and, building on it, the three circle model, have emerged as the predominant models within

---

90 Similar Wendy C Handler, ‘Methodological Issues and Considerations in Studying Family Businesses’ (1989) 2 Family Business Review 262. For management-based research on family businesses she makes the point that its common purpose centres on “study[ing] what characterizes the family firm, making it a distinct form of organization worthy of its own consideration”.

91 See for instance, definition by Paul C Rosenblatt et al, The Family in Business (Jossey-Bass Publishers, San Francisco, 1985) 4-5: “We define a family business as any business in which majority ownership or control lies within a single family and in which two or more family members are or at some time were directly involved in the business.” Excerpt of definition by Robert G Donnelley, ‘The Family Business’ (1988) 1 Family Business Review 428: “… [A] company is considered a family business when it has been closely identified with at least two generations of a family and when this link has had a mutual influence on company policy and on the interests and the objectives of the family.” Definition by Ivan Lansberg, Edith L Perrow and Sharon Rogolsky, ‘Family Business as an Emerging Field’ (1988) 1 Family Business Review 2: “… [A] family firm is … a business in which the members of a family have legal control over ownership.”

26
the systems approach. The systems approach of conceptualising family businesses generally investigates the overlap of business and family system. The two circle model, formulated in the early 1980s, seeks to analyse and explain the distinctions between the two subsystems of a family business and the potential problems arising from this distinctness in the interaction of both family and business system. Advancing the two circle model, the three circle model brought further clarification about the realities of family businesses. This model compartmentalises the business system further into the circles of ownership and business (management), allowing for a more detailed insight into the different perspectives in a family business. In the following, this chapter primarily draws on the findings gathered from the two and three circle models to highlight the idiosyncrasies associated with family businesses.

The overriding aspect that sets family businesses apart from other business forms is increased complexity. Different factors contribute to this complexity and thereby establish the particularities found in family businesses. On a general level, family businesses are a complex business form due to the variety of settings and structures in which they appear. Family business settings are influenced by, for instance, the corporate status of being a listed or unlisted family business, the extent and areas of family involvement as well as cultural influences where these impact on the business environment. The resulting variety of family businesses might also have been conducive to producing the wide array of diverse criteria to be found in the family business definitions.

---


96 See generally Gersick et al, Generation to Generation, 2-4.
Decoding Family Businesses

Probably the most important layer of complexity is added, because this business form combines the subjects of family and business. Both subjects are discrete and intricate systems on their own. When the two systems are brought together, an even more complex structure emerges in comparison to non-family businesses. As both systems impact on each other, a greater potential for conflict arises. The system overlap makes it more difficult to identify the heart of the matter of a particular conflict. This overlap also explains the abovementioned variety of family business settings, as it duplicates the number of potential combinations of integrating family and business system and thereby determines the individual family business.

The two circle model examines this overlap of business and family system and provides a more comprehensive understanding of the factors that contribute to the described complexity. The functioning of each subsystem of the family business according to its own discrete rules, patterns, principles and values forms the basis for this complexity. In light of the differences in purpose and goals as well as functioning of family and business system, a consequential difference in characteristics between the two subsystems follows. The main purpose of the family system lies in nurturing and taking care of family members and, in doing so, fostering their development in life as the overarching goal. The business system, on the other hand, exists for the primary purpose of producing goods and services with the aim of ultimately realising a profit.

Looking at the functioning of the family system, the family works on the basis of emotional ties between the family members. Affective behaviour influences the give and take in a family in a way that supports the individual needs of family members. Similarly, the realisation of fairness in the family is guided by the concepts of need or equality. Overall, the emphasis is on the individual, who is regarded as an end in itself

103 Lansberg, ‘Managing Human Resources in Family Firms’, 42.
104 Ibid.
with individual success generally not being determined on the basis of material parameters.\textsuperscript{105} With respect to the above, the interaction in the family system usually does not follow an overt pattern and needs to be deduced from the behaviour of the family.\textsuperscript{106}

In contrast, the business system is oriented towards organised task behaviour and the display of a professional attitude.\textsuperscript{107} Behaviour in the business system is therefore governed by rational considerations and focuses on the contributions made to the operational objectives and processes.\textsuperscript{108} The principle of give and take in the business context depends on the economic maxim of market value.\textsuperscript{109} Corresponding to the task orientation, merit forms the foundation of the fairness principle in the business system.\textsuperscript{110} Here, the individual is mainly regarded as an essential means for accomplishing the operational goals.\textsuperscript{111} Accordingly, success in the business system is predicated on measurable criteria such as profits.\textsuperscript{112} The task focus of the business system entails a specified definition of roles, responsibilities and business objectives and thereby principally predetermines an overt business pattern.\textsuperscript{113}

The potential consequences arising from an integration of these discrete systems of family and business are manifold. The substantial overlap of family and business system naturally results in blurred boundaries between these subsystems.\textsuperscript{114} This situation is reflected in the fact that the same individuals have to fulfil responsibilities in both systems.\textsuperscript{115} Family members who are also involved in the business are likely to carry over their behavioural patterns from one subsystem into the other and vice versa.\textsuperscript{116} Bearing the distinctness of the subsystems in mind, behavioural patterns that are valid in one system may be deemed inadequate in the other and can lead to dysfunction in that

\textsuperscript{105} Ibid, 43; Kepner, ‘The Family and the Firm’, 59, 60.
\textsuperscript{107} Lansberg, ‘Managing Human Resources in Family Firms’, 40; Davis and Stern, ‘Adaptation, Survival, and Growth of the Family Business’, 71, 73.
\textsuperscript{108} Lansberg, ‘Managing Human Resources in Family Firms’, 40; Davis and Stern, ‘Adaptation, Survival, and Growth of the Family Business’, 71-72, 73.
\textsuperscript{109} Lansberg, ‘Managing Human Resources in Family Firms’, 42.
\textsuperscript{110} Ibid.
\textsuperscript{113} Ibid.
\textsuperscript{115} See also Gersick et al, Generation to Generation, 5.
subsystem. Additionally, the overlap of the two discrete systems creates considerable operational challenges absent in businesses without a family connection. Family businesses need to find a way of exhibiting proper business practices while simultaneously catering for the needs which the family lays on the business. The difficulty of this task is exacerbated where goals, values or needs in both systems rival each other.

The three circle model with its division of the business system into an ownership and business (management) system identifies an even greater complexity of the family business system. The advantage of the three circle approach, when compared to the two circle model, lies in its ability to account for the perspective of family members who are not actively involved in the operation of the family business but who hold shares in the company. Additionally, this model allows for the consideration of the viewpoint of non-family members who are involved in the business. The distinction into ownership and business (management) circles thus becomes increasingly relevant where the family business is growing. By splitting up the business circle, the model reinforces the complexity arising from different individuals being members in different subsystems and therefore likely to hold different views.

4 The Need for Corporate Governance Regimes in Family Businesses

The last two decades saw a surge of corporate governance guidelines emerging across the globe. In addition to the existing corporate law, these codes or guidelines are considered a valuable tool for promoting and achieving sound business practices by introducing governance mechanisms and structures. The legal status varies among the existing corporate governance codes — ranging from purely voluntary recommendations to codes

---

117 Ibid, 6-7.
120 See also Gersick et al, *Generation to Generation*, 5.
121 Ibid.
that are linked more closely with corporate legislation or regulatory authorities. The focal point of the majority of these guidelines, however, is alike — governance concerns associated with publicly listed companies. Featuring a more dispersed ownership, the primary issues in listed companies are commonly related to the separation of ownership and control. Accordingly, the main topics embodied in corporate governance codes centre on the accountability of boards and management, corporate control, informational and reporting transparency, and investor protection.

From this point of departure, the next section first scrutinises whether the reasons for implementing corporate governance regimes in listed companies likewise hold true for family businesses. Subsequently accounting for the newly emerging governance guidelines aimed at family businesses (sometimes under the superordinate concept of SMEs or non-listed companies), whether the particular challenges faced by family businesses provide a further rationale for corporate governance recommendations for family businesses needs to be addressed.

4.1 Common Rationales for Corporate Governance Regimes

4.1.1 Agency Theory and Other Theoretical Approaches

Building on Berle and Means’ seminal work on the issue of the separation of ownership and control, Jensen and Meckling carried out more detailed research on the problematic

125 Ibid, 2; Farrar, Corporate Governance, 428. This also reflects the primary focus of major governance reports or guidelines, see for instance: Report of the Committee on the Financial Aspects of Corporate Governance (United Kingdom, 1992) [1.7], [3.1] (‘Cadbury Report’); Organization for Economic Cooperation and Development, OECD Principles of Corporate Governance, 11.
128 For instance: The Family Business Governance Report (The Netherlands, 2003); Governance Guide for Families and Their Businesses (Switzerland, 2006); Buysse Code II (Belgium, 2009); The Hong Kong Institute of Directors, Guidelines on Corporate Governance for SMEs in Hong Kong (Hong Kong, 2009); Central Chamber of Commerce of Finland, Improving Corporate Governance of Unlisted Companies (Finland, 2006); Lebanese Transparency Association, The Lebanese Code of Corporate Governance (Lebanon, 2006); Institute of Directors and European Confederation of Directors’ Associations, Corporate Governance Guidance and Principles for Unlisted Companies in the UK (United Kingdom, 2010).
consequences arising from this separation — commonly known as agency theory. Following from the separation of ownership and control, agency theory is predicated on the agency relationship which emerges between the owners (principals) who assign the running of the company to a group of directors and/or managers (agents) instead of carrying out this task themselves. The risks resulting from this separation include information asymmetries and self-interested behaviour by the agents. Information asymmetries describe the difficulty for owners to access ‘inside’ information available to management. Whether management is adequately performing its tasks thus becomes harder to control. Another problem arises from principals and agents having differing objectives and, possibly, also different risk profiles. These asymmetries between principal and agent can entice agents to engage in opportunistic behaviour to further their own interests rather than those of the principals. In consequence, the owners, as principals, are required to implement internal corporate governance mechanisms such as monitoring the agent’s behaviour and providing suitable incentives to keep agents acting in the principal’s best interest. The costs thereby incurred are known as agency costs.

In relation to the traditional agency model, there are dissenting opinions about the relevance of agency problems in the context of family businesses and the corresponding need for corporate governance measures. Proponents of traditional agency theory argue that, due to the owners’ personal involvement in the management of the business and a concentration of ownership within a small group of persons, circumstances commonly found in family businesses, the accrual of agency costs can be avoided or at least

---

significantly decreased. They commonly provide the following arguments in support of their view:

(1) Due to a more concentrated ownership, it is usually efficient to combine decision control and decision management within a smaller group of decision agents, while at the same time largely restricting the residual claims to these decision agents. This situation reflects the general setting found in privately owned companies where the owners are involved in the management of the company. This restriction of residual claims to mostly internal decision makers reduces the incentives for opportunistic behaviour by these agents and thus reduces agency costs related to monitoring and disciplining.

(2) As Fama and Jensen state:

The residual claims of these organizations … are also held by other agents whose special relations with decision agents allow agency problems to be controlled without separation of ownership and management. For example, family members have many dimensions of exchange with one another over a long horizon and therefore have advantages in monitoring and disciplining related decision agents.

(3) A more concentrated ownership is also conducive to reducing the risk of free-riding, an agency problem commonly faced by companies with widely dispersed ownership.

---


139 See also Schulze, Lubatkin and Dino, ‘Altruism, Agency, and the Competitiveness of Family Firms’, 247.


142 See Shleifer and Vishny, ‘A Survey of Corporate Governance’, 741, 754; Van den Berghe and Carchon, ‘Agency Relations within the Family Business System’, 173. The free rider problem here refers to the monitoring efforts of shareholders. In a widely held company, the incentive for each minority shareholder to invest into monitoring is small as the costs do not reflect the benefits. Accordingly, the shareholder is not inclined to engage in monitoring, but still receives the benefits from the monitoring efforts of larger shareholders with higher stakes in the business. Receiving benefits without contributing to the incurred costs captures the free rider problem. See James S Ang, Rebel A Cole and James Wuh Lin, ‘Agency Costs...
Decoding Family Businesses

On the basis of the above arguments, the proponents of this view conclude that family businesses, exhibiting a concentration of ownership in the hands of the family and family involvement in management, accrue fewer corporate governance costs due to reduced agency problems and do not require additional governance measures to ensure efficiency of the firm. ¹⁴³

Opposing this traditional view, some researchers offer a different perspective on the relevance of agency problems in family businesses. ¹⁴⁴ They identify the following agency concerns:

(1) Family businesses often find themselves in a less efficient labour market situation. A certain reluctance to include equity options in the remuneration of non-family members due to the inherent risk of losing control or of limited available resources is one of the factors causing such inefficiency. ¹⁴⁵ Additionally, family businesses are less able to offer contracts competitive with those of widely held companies. They cannot provide similar opportunities of advancement owing to commonly reserving upper level positions for family members. ¹⁴⁶ This in turn can result in having to hire less able people. ¹⁴⁷

(2) Family businesses might also incur agency costs accruing from an increased risk of opportunistic behaviour by (non-family) employees. For the majority of businesses with a more concentrated ownership, the share price of the company is not determined by the market for corporate control and managerial behaviour. Therefore, they are not subject to the same disciplinary pressures and market control

mechanisms as listed companies with widely dispersed ownership.\textsuperscript{148} Also related to this aspect, limited chances of climbing the corporate ladder combined with less attractive remuneration packages can lower the incentive to compete with other agents and are thus conducive to behaviour such as shirking.\textsuperscript{149}

(3) Agency theory, as indicated above, implies a greater alignment of interests due to the convergence of ownership and control. It thereby presumes that the respective individuals are primarily motivated by economic objectives and thus act in an economically rational manner. Contrasting this assumption, research has shown that individuals have economic and non-economic motivations and aim to achieve satisfaction in both.\textsuperscript{150} This diversity of motivations makes an alignment of interests more difficult, especially where these preferences cannot be reflected in monetary value.\textsuperscript{151} An increase in agency costs follows as a consequence.

(4) Additionally, agency problems in family businesses might also occur in a slightly different form. In a family business setting, there commonly seems to be a shift in the level and, correspondingly, the relationship wherein these issues arise. Where the family is a controlling shareholder, agency theory can become relevant in the relationship between the family and minority (non-family) shareholders who only have an ownership stake but not much de facto control.\textsuperscript{152} Likewise, agency issues might arise among family shareholders due to different access to information, specifically, between family members who are also actively involved in the company’s operation and those who only hold shares.\textsuperscript{153}

These two perspectives on the relevance of agency issues in family businesses seem to be coloured by a third approach — stewardship theory. This model is often referred to as a


\textsuperscript{149} Schulze, Lubatkin and Dino, ‘Altruism, Agency, and the Competitiveness of Family Firms’, 250.


\textsuperscript{151} Schulze, Lubatkin and Dino, ‘Altruism, Agency, and the Competitiveness of Family Firms’, 251.


\textsuperscript{153} Similar Cadbury, Family Firms and their Governance, 2; Ken McCracken, Corporate Governance in Family Businesses (2009) The Journal Online <www.journalonline.co.uk/Extras/1006342.aspx>.
contrasting view to agency theory, but in the case of family businesses it is able to provide explanations for some of the abovementioned arguments. Stewardship theory focuses more on the behavioural patterns and motivations of the involved individuals and thereby accounts for the above criticism of agency theory regarding the relevance of non-economic preferences. The notion of altruistic behaviour by corporate executives is also important within stewardship considerations.

Family business researchers are devoting increasing attention to the idea of altruism as it appears particularly relevant where families are involved in corporations. Various definitions of altruism are proposed by different strands of research. The economic definition of altruism is prominently used in family business research. Extending the research findings on altruism in families within household economics to family businesses, altruism is defined here as “a utility function that positively links the welfare (both intrinsic and extrinsic) of an individual to the welfare of others”. This notion of altruism thereby allows for the fulfilment of self-interested motivations, which coincide with benefiting others.

---


155 Craig, Dibrell and Neubaum, ‘Stewardship Behaviour as Governance in Family Businesses’, 4-5; Davis, Schoorman and Donaldson, ‘Towards a Stewardship Theory of Management’, 21, 24 who describe stewardship theory as follows: “Stewardship theory defines situations in which managers are not motivated by individual goals, but rather are stewards whose motives are aligned with the objectives of their principals. … In stewardship theory, the model of man is based on a steward whose behavior is ordered such that proorganizational, collectivistic behaviors have higher utility than individualistic, self-serving behaviors. … A steward will not substitute or trade self-serving behaviors for cooperative behaviors.”


The concept of altruism within stewardship theory emerges because the stewards are not motivated by personal goals as they are intrinsically motivated to pursue pro-organisational objectives. The steward’s personal interests recede due to identifying closely with the organisation. The self-giving of the steward can even lead to a personal sacrifice in order to arrive at organisational success. Altruistic behaviour within the stewardship concept allows for intrinsic rewards for the steward, such as opportunities for growth, achievement, affiliation and self-actualisation, which are gained from realising the organisational objectives. The stewardship definition of altruism is closely related to those definitions developed in social psychology research; a field which provides foundations for the general idea of stewardship theory as well. Altruism here is often referred to as “behaviour [that is] carried out to benefit others without anticipating rewards from external sources”, such as material or social rewards.

A mediating view seems to be most appropriate when evaluating the two definitions. Stewardship theory altruism reflects the situation of family businesses better insofar as it emphasises a lack of self-regarding preferences. The economic definition, with a more pronounced focus on the simultaneous fulfilment of self-regarding and other-regarding preferences, seems to be further removed from the common notion of altruism in families, which is not necessarily based on self-reward. Behaviour within the family can be unselfish and is generally motivated by the close-knit relationships and emotional ties. On a different note, the reliance on family household research as a foundation of the economic definition is an important aspect that deserves more attention within the stewardship approach to altruism. The family factor of a family business is a primary

165 Compare ibid, 24.
focal point and the dynamics of the particular family will impact on the dynamics in the business. Stewardship theory currently focuses on the family members being stewards who pursue the organisational objectives of the family business. Taking the idea from household economics as well as the systems approaches to family business, the role of the family and the relationships therein might need greater emphasis in stewardship theory — especially when investigating the concept of altruism. The family as an ‘organisation’ might actually represent the focus of the pro-organisational behaviour of the family members as stewards, which in turn translates into a dedication to the family business. Concluding, the stewardship approach of altruism combined with a greater focus on the role of the family seems to provide the most feasible account of altruism in family businesses. However, as both definitions of altruism include other-regarding motivations to a greater or lesser extent, the conclusions drawn in connection with agency theory will likely not diverge too much. Accounting for these considerations on altruism in family businesses, the following positive and negative impacts in relation to the agency problem arise.

The importance of non-economic motivations within stewardship theory and altruistic tendencies resonate well with the situation in family businesses as pure profit maximisation is usually not the only objective. Family businesses commonly strive for longevity and provide employment for family members — goals that are not always compatible with pure profit considerations. Accordingly, altruistic influences within family relationships can foster a greater commitment of family members to the welfare of other family members and in turn create a family bond providing the family business with a valuable identity. Altruism encourages loyalty of family members to the family as well as the family business and motivates them to contribute to the objectives of the firm thereby fostering an alignment of interests. These altruistic behaviours thereby

170 Compare Corbetta and Salvato, ‘Self-Serving or Self-Actualizing?’, 357-358.
support communication and decision making, and in turn reduce information asymmetries experienced as part of the agency problem within family businesses.\(^{175}\)

However, altruistic influences do not always impact in a positive way on family businesses. Where altruistic behaviour of parents or the founding generation of a family business towards their offspring or relatives reaches a high level, it might cause the recipients to count on this generosity and therefore shirk their responsibilities in the family business.\(^{176}\) Closely related, altruism can have a negative impact on the implementation of formal governance structures meant to counteract agency problems. Altruistic influences on family behaviour can impede the implementation of such governance structures because they may not lead to the same treatment of family members.\(^{177}\) For instance, preferential treatment of family members due to altruistic behaviour within the family is likely to be contrasted with specified role descriptions and accountability measures in a formal governance regime, which create a more level playing field between family and non-family members. This concern about formal governance structures, however, cannot be seen as an argument against the necessity of corporate governance regimes in family businesses. In contrast, the need to address these issues at an early stage through adequate corporate governance structures and mechanisms in order to preserve the family relationships in the long term becomes more pronounced.

The preceding arguments demonstrate that agency problems are also relevant to family business settings and altruistic tendencies alone cannot sufficiently solve the issues arising in family businesses.\(^{178}\) Based on the premise of agency theory as one of the foundations for corporate governance codes, a need for governance regimes in family businesses is evident.


\(^{176}\) See Schulze, Lubatkin and Dino, ‘Altruism, Agency, and the Competitiveness of Family Firms’, 252-253, 254; Van den Berghe and Carchon, ‘Agency Relations within the Family Business System’, 174. These authors also highlight that while the agency problem arising from this situation might be mitigated as far as the generosity is tied to some extent to performance, the underlying issue of an information asymmetry still persists.


\(^{178}\) As a side note, in accordance with Dyer Jr, the emotional family ties which foster the existence of altruism in the family business can also destroy altruism where family conflicts create negative feelings, such as antipathy. See W Gibb Dyer Jr, ‘The Family: The Missing Variable in Organizational Research’ (2003) 27 Entrepreneurship Theory and Practice 408. In consequence, an even greater demand for corporate governance regimes in family businesses emerges.
4.1.2 Growth and Investment

A further important objective of corporate governance codes is to enable and promote growth in companies. Companies residing in the developmental stage of growth face increasing complexity within their corporate structures, which in turn requires a more formal corporate governance regime to allocate responsibilities properly and create accountability. Associated with corporate growth is another focal point of corporate governance — investor confidence. Growing firms will at some stage face the challenge to attract external investors to secure additional funding where internal capital resources are insufficient. The implementation of governance structures fosters a good reputation of the business and enhances investor trust in the company and its operation.

The importance of corporate growth and investor relations cannot be underestimated. The wealth of family businesses is often completely tied up in the business which needs to grow in order to accommodate the employment and financial needs of the extending family. Family businesses also commonly struggle to evolve from their original small setting to the next developmental stage. Furthermore, family businesses preparing to list on a stock exchange will benefit from a gradual development of corporate governance structures from an early stage as it otherwise becomes difficult to adjust the existing habits and mechanisms of the business to the complex requirements demanded by the listing rules. It is evident from these considerations that the corporate governance regimes are not only beneficial for family businesses, but inevitable in order to attract outside investment and to progress from their initial business outset.


183 See Tan and Tan, ‘The Impact of Corporate Governance on Value Creation in Entrepreneurial Firms’.


186 Similar Tan and Tan, ‘The Impact of Corporate Governance on Value Creation in Entrepreneurial Firms’.
4.2 Particularities of Family Businesses as an Important Reason for Corporate Governance Regimes

The arguments presented in the previous sections already indicate that the particularities of family businesses are crucial for the discussion of the governance needs of this business form. But apart from merely contributing to the debate about the common rationales of corporate governance, the particularities on their own provide a very important argument in favour of corporate governance regimes in family businesses.

The described complexities arising from a combination of the two intricate subsystems of family and business demonstrate the necessity of corporate governance measures. Aside from an increased potential for conflict arising from an overlap of the two subsystems, each subsystem requires governance structures and mechanisms to sort and maintain its internal relationships. Corporate governance considerations for family businesses therefore involve thinking about family governance and business governance in stand-alone terms, but also about how to align the two governance systems in the best possible way in order to achieve a sound governance approach for the overall family business.\(^{187}\) Without a corporate governance regime supporting family businesses, this can otherwise become a very difficult and daunting task.

As family members often fulfil multiple roles within the family business, belonging to different subsystems can lead to internal conflicts of interest and requires governance structures to clearly set out the boundaries and responsibilities of the relevant position. Corporate governance thus enables transparency of decision making and clarification of the pertinent capacities in which the individual family member is acting.\(^{188}\) Similar considerations also apply with respect to the different positions individuals can hold in comparison to other family members.\(^{189}\) As highlighted above, depending on which subsystem individuals belong to, they hold different views and have different objectives, which can lead to conflicts. Corporate governance provides the tools for raising awareness of the causes for the different perspectives and supports their alignment or the achievement of a compromise. In summary, the particularities of family businesses emphasise the demand for corporate governance regimes for this type of business in

---

\(^{187}\) Compare McCahery and Vermeulen, *Corporate Governance of Non-listed Companies*, 154-156; Cadbury, *Family Firms and their Governance*, 32.

\(^{188}\) See Cadbury, *Family Firms and their Governance*, 32.

\(^{189}\) Similar ibid, 11, 20.
addition to the applicability of the common rationales for introducing corporate governance codes.

5 General Approaches to Corporate Governance Regimes in Family Businesses

As indicated, the traditional approach to corporate governance focuses on the problems encountered in listed companies with a widely dispersed ownership. Unsurprisingly against this background, the majority of the emerging corporate governance efforts focus on the remaining area of unlisted companies and address their corporate governance needs. Although family businesses span a wide range of settings and structures from small unlisted to world-renowned listed companies, the majority of family businesses still reside in the realm of unlisted companies. Accordingly, it appears sensible for the purposes of this chapter to focus predominantly on the area of unlisted companies and discuss the impact on listed family businesses separately.

Two main approaches are thus conceivable for introducing corporate governance regimes in family businesses. One solution primarily involves relying on the existing corporate governance codes mainly aiming at listed companies and applying them to unlisted companies. The other involves a separate code of corporate governance targeting the area of unlisted companies, which then leads to the question of what the best focal point for such a separate code would be.

5.1 The Invalidity of the ‘One Size Fits All’ Approach to Corporate Governance

The simplest solution to the problem of corporate governance guidelines for unlisted companies would be if the widely recognised governance codes targeting listed companies could be applied to unlisted companies in equal measure. In academic literature this idea is often labelled the ‘one size fits all’ approach. Considering the

191 Compare Farrar, Corporate Governance, 429, stating for the example of Australia that out of an incidence of 83 per cent within all business forms, only 1.9 per cent of these family owned businesses are listed at the Australian Stock Exchange.
present situation, where the majority of countries predominantly focus on the governance of listed companies, one is left with the impression that policy and law makers deem one set of rules for the whole range of business types as sufficient. Arguments can be set forth in favour of this position.

Probably the most persuasive point refers to the argument that the governance measures incorporated in the existing corporate governance codes have a positive impact on both listed and unlisted companies. At the very least governance guidelines for listed companies raise awareness of the essentials of corporate governance and the beneficial implications good governance has for corporations. Corporate governance principles drafted for listed companies are thus considered to enhance the corporate governance structures and mechanisms in unlisted companies as well. The non-binding nature of most codes further provides a great amount of flexibility, which allows unlisted companies to decide which of the given provisions seem suitable to their respective situation. This arguably diminishes the complexity of these codes and allows corporations to diverge from the provisions which do not fit their particular setting. The flexibility inherent in corporate governance codes thereby attempts to augment the receptiveness of companies towards the codes.

To the extent that the adequacy of the ‘one size fits all’ approach is accepted at all, the following elements of governance codes for listed companies are generally deemed to be beneficial to unlisted companies: provisions regarding risk detection and risk management, auditing standards, ethical approaches to decision making as well as an increased efficiency of the board. The possible deviation from the code corresponds to

wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/09/08/000094946_00082605593465/Rended ered/PDF/multi_page.pdf. Throughout this thesis, the phrase will be only used in the context of corporate governance regimes for listed and unlisted companies.

Similar McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 201; Barnes, “One Size Doesn’t Fit All”, 28.

McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 201.


Compare Seidl, ‘Regulating Organizations Through Codes of Corporate Governance’, 5.

Ibid.

Barnes, “One Size Doesn’t Fit All”, 37; McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 203; Farrar, ‘The Corporate Governance of SMEs and Unlisted Companies’, 216.
the reality that unlisted companies tend to implement only those provisions which they believe to attach value to their corporation, while turning a blind eye on those considered to complicate the internal relationships or to entail costly side effects. Ultimately, the ‘one size fits all’ approach comes down to the idea that it is always better for unlisted companies to implement some corporate governance features rather than none.

Despite a certain validity to this argument, it seems to misconceive the reasoning behind setting up a code of corporate governance. In principle, a code should be regarded as a collection of recommendations whereby the individual provisions are intertwined and interact with each other such that the suggested governance system as a whole leads to an improvement in governance. Accordingly, even if not all provisions can be applied due to the particular circumstances of the company, a possible departure does not equate to a total ignorance of certain provisions. Hence, there will not be a long term benefit in just cherry-picking desired recommendations.

At the same time, this cherry-picking mainly arises because the existing codes for listed companies incorporate a variety of recommendations that are exclusively directed towards listed corporations. For example, provisions focusing on remuneration policies, the establishment of several committees, or the use of independent directors as a means of monitoring do not necessarily constitute priority concerns for unlisted companies.

Probably even more critical is the fact that the codes set up for listed companies completely disregard the needs and issues peculiar to unlisted companies. For instance, the abovementioned idiosyncrasies of family businesses, a typical form of unlisted company, can result in more informal and direct decision making, being more prone to conflict due to an increased influence of emotional factors as well as the possibility of

200 Compare McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 203.
201 An argument in favour of this view is the ‘comply or explain’ concept used in many corporate governance codes. It requires an explanation where the company does not follow the recommendations in the guide. Such a measure would not be required if the adoption of only individual provisions was intended by the code. A description of the ‘comply or explain’ approach can be found in Seidl, ‘Regulating Organizations Through Codes of Corporate Governance’, 4; Björn Fasterling, ‘Prospects and Limits of Corporate Governance Codes’ in Paul U Ali and Greg N Gregoriou (eds), International Corporate Governance after Sarbanes-Oxley (John Wiley & Sons, Hoboken, NJ, 2006) 469-471.
204 Barnes, “‘One Size Doesn’t Fit All’”, 31; McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 204.
diverging interests between the family and the business perspective.205 An additional concern for unlisted companies arises because the guidelines provide generally only little advice about how adoptees could adjust the provisions to their needs. This in turn can result in a reluctance or uncertainty of unlisted companies to select systematically the recommendations useful to them.

Yet, despite these apparent shortcomings of governance regulation, it could still be argued that establishing separate corporate governance guidelines for unlisted companies is not necessary as the obvious gaps in the codes could be filled by using contractual agreements dealing with the remaining issues.206 Certainly, corporate governance structures can be created and improved in this way, but at the same time this ‘patchwork’ approach to corporate governance seems unlikely to accomplish a holistic concept. This of course is not to say that contractual agreements are not beneficial as a supplementary component — for instance in the form of shareholders’ agreements — within a cohesive corporate governance approach.

Looking to family businesses as a common form of unlisted company, several complications arise. Due to the particularities of family businesses, their corporate governance can also be rather complex, which can make it difficult to translate certain issues into contractual terms.207 Similarly, the members of, especially, family businesses might be reluctant to regulate their relationships through contractual agreements as they consider it unnecessary due to their close-knit relationships. Unfamiliarity with the drafting of contracts and a potential lack of objectivity regarding the long-term developments can complicate the situation further.208 Finally, it can be argued that the positive impact which these contractual agreements provide could be jeopardised, as the existence of different bargaining powers of the individual parties during the negotiations (for instance between founder and offspring) weakens the potential of the contract.209

Assembling these points, the question of whether separate corporate governance guidelines for unlisted companies are required, has to be answered in the affirmative. Following from the need for a cohesive governance regime, the next section addresses

206 McCahery and Vermeulen, *Corporate Governance of Non-listed Companies*, 204.
207 See ibid, 153.
208 Compare ibid, 204.
209 See also ibid.
what should be considered as the focal point of a separate corporate governance code within the area of unlisted companies.

### 5.2 Which Direction to Take — Is a Family Business Focus the Solution?
Several countries initiated the drafting of separate corporate governance guidelines for unlisted companies in recent years.\(^{210}\) One prevalent concept in these emerging corporate governance guidelines focuses on the corporate governance of SMEs.\(^{211}\) These guidelines deal primarily with the common issues that arise in the context of smaller unlisted enterprises. Additionally, most of these governance recommendations include at least one section on the particular problems arising within family businesses. The extent to which attention is drawn to family businesses, nevertheless, varies considerably between the individual guidelines.

The main reason behind this choice of focal point probably stems from the generally high incidence of SMEs as the prevailing business type worldwide, often accounting for 90 per cent or higher of existing businesses.\(^{212}\) SMEs contribute a comparably significant proportion to a country’s economy while also being an important source of employment.\(^{213}\) An argument in favour of directing such recommendations at SMEs might be linked to the perception that family businesses are often considered to be just a special subcategory of the broader concept of SMEs and thus face only a few additional issues.\(^{214}\) Evidence for this perception can be found in academic literature, which often switches from SME related issues to family businesses without further explanation, thereby indicating their assumption that family businesses simply constitute a good

---

\(^{210}\) Examples for these drafting efforts: *Buysse Code II* (Belgium, 2009); Central Chamber of Commerce of Finland, *Improving Corporate Governance of Unlisted Companies* (Finland, 2006); The Hong Kong Institute of Directors, *Guidelines on Corporate Governance for SMEs in Hong Kong* (Hong Kong, 2nd ed, 2009); Lebanese Transparency Association, *The Lebanese Code of Corporate Governance* (Lebanon, 2006); *The Family Business Governance Report* (The Netherlands, 2003); *Governance Guide for Families and Their Businesses* (Switzerland, 2006); Institute of Directors and European Confederation of Directors’ Associations, *Corporate Governance Guidance and Principles for Unlisted Companies in the UK* (United Kingdom, 2010).

\(^{211}\) Compare *Buysse Code II* (Belgium, 2009); Central Chamber of Commerce of Finland, *Improving Corporate Governance of Unlisted Companies* (Finland, 2006); The Hong Kong Institute of Directors, *Guidelines on Corporate Governance for SMEs in Hong Kong* (Hong Kong, 2nd ed, 2009); Lebanese Transparency Association, *The Lebanese Code of Corporate Governance* (Lebanon, 2006).

\(^{212}\) Barnes, “‘One Size Doesn’t Fit All’”, 28.

\(^{213}\) Ibid, 28-29.

example of SMEs. A similar procedure can be found in the existing guidelines themselves by the way in which they deal with the governance issues of family businesses. Ultimately, the position taken by policy makers supports the belief that family business challenges should be dealt with within the SME framework.

By contrast, several of the established guidelines adopt a reverse approach. This second approach directs the attention to corporate governance problems likely to arise in family businesses without explicitly referring to SMEs at any point. The view taken within this thesis is that this family business focused approach is equally justifiable — even preferable from a corporate governance perspective. The perception of family businesses as a mere subcategory of SMEs provides a starting point in the discussion for an exclusive family business focus.

This conception of family businesses can be disputed. Incorporating only some family business recommendations, if at all, into an SME focused governance guideline creates the impression that family businesses are always small enterprises. Even though this is the case for a high number of family businesses, it has to be borne in mind that family businesses can span a wide range of sizes and settings. A large family controlled listed or unlisted company can likewise qualify as a family business. It thus seems counterproductive to limit the potential for growth of family businesses by such categorisation. Family business oriented guidelines can better encourage the unfolding of their true business potential as they do not restrain family businesses through provisions that presuppose an expected size and structure.

---

215 See for instance Barnes, ““One Size Doesn’t Fit All””, 31, where she mentions family businesses while talking about the SME sector.
216 An example can be found on the European Commission homepage which provides a portal for SMEs. Family business related issues are positioned as a subsection link within the SME portal under the heading of “Promoting entrepreneurship”. See European Commission, European Small Business Portal (2013) http://ec.europa.eu/small-business/policy-statistics/policy/index_en.htm. Although there is the overarching approach of perceiving and approaching family businesses through the superordinate concept of SMEs, in recent years there has been an increasing shift to address the challenges and issues faced by family businesses in a more separate manner. See European Commission, Enterprise and Industry (2013) http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/family-business/index_en.htm. 
217 See The Family Business Governance Report (The Netherlands, 2003); Governance Guide for Families and Their Businesses (Switzerland, 2006); A Practical Guide to Good Governance in Family Businesses (Spain, 2012); Governance Code for Family Businesses (Germany, 2010).
Furthermore, SMEs are usually defined with respect to their size in terms of the number of employees and/or turnover.\textsuperscript{220} This size criterion pertains to a rather transient nature, which can also differ significantly between countries depending on the respective definition of SMEs. On the other hand, the particularities innate to family businesses generally adhere even to a growing family business; some of them might become even more pronounced in larger family businesses. These specific characteristics therefore seem to constitute more important features from a governance point of view than the size element alone. Family business focused guidelines, however, also account for the size of the particular company by connecting the family business specific governance issues to the existent stage of development in which they are likely to arise.\textsuperscript{221} This concept provides for a steady progress of the family business, but also ensures that the whole variety of family business types is covered by the guidelines.

In addition, other characteristics commonly attributed to SMEs, such as quick and informal decision making, more direct communication and greater flexibility, do not primarily originate from the small number of employees or the amount of turnover.\textsuperscript{222} They are more likely to be attributed to a concentrated ownership structure, owner involvement in the business and close-knit relationships between business participants — the latter are especially pronounced where family members are involved. Even though smaller businesses are generally of a closely held nature, a governance focus on SMEs seems to be less appropriate. The positive and negative features of a more concentrated ownership closely relate to family business specific problems, with their impact heightened by the added complexity of the family element in the business. Since these issues are also simple to integrate into the different developmental stages, family business guidelines overall appear to be the better solution for addressing them.

As highlighted above, the incidence of family businesses worldwide ranges from about 70 to 90 per cent and reflects the global importance of this business form. This high incidence also indicates that the vast majority of SMEs in fact qualify as a family


\textsuperscript{221} Compare Farrar, ‘The Corporate Governance of SMEs and Unlisted Companies’, 217, who argues for the need of a developmental stage approach within an SME/family business governance framework.

\textsuperscript{222} See Barnes, “‘One Size Doesn’t Fit All’”, 30, who after outlining the abovementioned characteristics acknowledges that, “[a]rguably, the relative idiosyncratic owner/manager relationships of … SMEs are more important than the qualifying metrics set in those prescriptions”.

48
business when compared to the abovementioned percentages of SMEs. The dominance of family businesses within the area of SMEs, as well as unlisted companies, combined with their idiosyncratic needs and challenges supports choosing family businesses as a specific focal point for corporate governance guidelines.

The approach advocated here ultimately amounts to the call for an establishment of two sets of corporate governance recommendations for the entire sphere of unlisted companies, one with a family business specific focus and potentially another with an SME or unlisted company focus. A seemingly problematic consequence of this suggestion is the potential for overregulation in the form of too many governance guidelines. Overregulation entails several drawbacks. First, the implementation of multiple governance guidelines for non-listed corporations could result in a fragmentation of the corporate governance regulation. This, in consequence, could lead to the undesired side effect of losing an integrative corporate governance approach in the area of unlisted companies. Such fragmentation can also cause uncertainty for unlisted companies about which code is best suited to their situation as they will likely fulfil the criteria for more than one of the settings addressed. The existence of such overlaps has already been demonstrated above in the context of SMEs and family businesses.

Accordingly, an integrative approach within one set of recommendations may appear to be the best solution in order to avoid the aforesaid disadvantages. However, a stronger and more convincing argument in favour of distinct corporate governance guidelines for family businesses emanates from their identified idiosyncrasies. These idiosyncrasies set family businesses apart from other (unlisted) business forms or structures and, as explicated earlier, provide one of the main rationales for their need for a well functioning corporate governance regime. Since these intricate characteristics of family businesses are difficult to address and solve within the commonly short space dedicated to them in guidelines focused on SMEs or unlisted companies, but at the same time constitute a common reason for family business failure, they should be dealt with in an separate, detailed and structured manner, that sufficiently emphasises their relevance.

223 See also comments in Farrar, Corporate Governance, 429; Mandl (Austrian Institute for SME Research), ‘Overview of Family Business Relevant Issues’, 50.
Additionally, separate family business specific governance guidelines are better equipped to address a further overlap that is created with respect to listed family businesses. Their integration in the proposed family business corporate governance regime needs to be ensured and can be achieved by accounting for governance problems related to the family aspect in listed companies through a distinction into several developmental stages within family businesses. Listed family businesses should use these guidelines as complementary recommendations to any existing governance code applicable to them as listed companies. The governance recommendations for family businesses still remain relevant for listed family businesses, as the family governance issues are not abrogated due to a listing of the company. Additionally, some governance issues, such as the importance of a proper integration of family and business governance, often become even more pronounced in the larger, more developed and, thus, more complex family businesses.

6 Conclusion and Perspectives

The objective of this chapter is to justify the need for corporate governance guidelines aimed at family businesses. The example of family businesses in New Zealand highlights the common difficulties that family businesses find themselves in. Family businesses deserve increased governance attention as a result of the complex dimension of the family being added to the already complex business system. This elevated complexity makes these businesses more prone to conflict and susceptible to additional governance problems arising from the described overlap. The particularities of family businesses provide an important argument in favour of a need for corporate governance guidelines. Family businesses will not only have to sort their family governance and business governance, they also need to integrate the two governance systems in order to achieve a successfully running business while concurrently maintaining the family relationships.

The traditional arguments underlying the implementation of corporate governance codes, such as business growth, investor protection and especially considerations related to agency theory, add to the need for family business governance guidelines. Family businesses are not necessarily less affected by agency problems due to their more close-knit relationships and direct involvement in the business. On the contrary, this particular setting can create agency problems between family members, but also in the relationship with non-family members. Some of these agency problems are even peculiar to family
businesses. The influence of altruism in family businesses mitigates some of these agency-related impacts by acting more towards the common objectives of family and business. At the same time, however, altruistic behaviour in family businesses can create its own set of agency related problems. Altruism alone, therefore, does not provide the solution to the challenges faced by family businesses.

Having established a general need for corporate governance in family businesses, the most promising approach to realise this objective lies in recommendations that focus primarily on family businesses. The main argument for such focus stems from the predominant characteristics of family businesses in comparison to the more transient characteristics of SMEs. A family business focus also allows for the inclusion of the problems faced by listed family businesses as well as size related issues which can be addressed within the different developmental stages of the recommendations.

The already existing family business guidelines demonstrate that the emphasis of these recommendations is less on the aspect of compliance — unlike most governance codes for listed companies. The guidelines rather act as a tool to raise awareness about the specific challenges experienced by family businesses. Without aiming to impose a certain principle or solution on the family business, the recommendations still provide guidance for potential pitfalls and identify different mechanisms to diminish their impact. Family businesses are therefore encouraged and enabled to address their potential problems. At the same time it allows them to come up with their own, individually tailored, solutions better suited to their needs than a generally prescribed procedure. Given the diversity of family business settings, this feature of family business governance guidelines is of crucial importance.

Family business governance guidelines thereby contribute to a better education of family businesses about their common idiosyncrasies and associated issues. Being aware of potential problems and having procedures in place when they actually arise, could be a crucial step in reducing the company law litigation arising from family business disputes. Additionally, the recommendations have a supporting role in terms of specialist family business advice. A better awareness about potential conflict areas may incentivise family businesses to seek more purposive advice from consultants. The advisers themselves can gain a better insight into the particularities of family businesses through the governance recommendations and therefore better align their services to this specific group of clients.
CHAPTER 2: FAMILY BUSINESS GOVERNANCE GUIDELINES AND THE LATENT POTENTIAL OF SELF-REGULATION IN CORPORATE GOVERNANCE

1 Introduction

The insights gained into the nature of family businesses and their elevated need for good corporate governance in the previous chapter form the foundation to understanding the role of family business governance guidelines generally. In order to fully appreciate their role, an additional examination of the intended functioning of this kind of governance guideline proves indispensable. How family business governance guidelines are proposed to work primarily constitutes a question as to their regulatory role, which consists of determining their regulatory situatedness and function. In response to this twofold question, this chapter embarks upon a more abstract approach, aiming to establish the regulatory context of family business governance as an instrument of self-regulation theoretically, together with an investigation of how the self-regulatory notion for this category of governance guidelines differs from other related means of corporate governance. The underlying approach does not aim to ‘reinvent the wheel’, but to elucidate the additional regulatory potential immanent to self-regulation. This latter point is then practically expanded upon by applying the identified regulatory setting and functioning to the situation of family businesses. It is subsequently shown why this conceptualisation of family business governance guidelines is particularly well suited to this business form.

Regulation in its various forms – of late, especially as reregulation or deregulation – has developed into one of the buzz words of our times. Out of the broad range of regulatory mechanisms one form in particular has attracted much attention in the legal and political discourse: self-regulation. In the field of corporate governance, the use of self-regulation is mostly limited to the well-known forms of industry and professional codes, and codes of conduct for companies listed on a stock exchange. Extending this general scope of application, this chapter aims to carve out a unique perspective by ascribing a further use to self-regulation as a more independent and alternative governance tool, specifically in the context of family business governance guidelines. Self-regulation in this regard is not primarily guided by the common compliance considerations, but is rather seen as a governance tool for raising awareness and facilitating ‘self-help’ for the targeted businesses.
The topic of regulation has traditionally been associated in its essence with acts of legislation, that is, with legal rules and their enforcement as set out in an Act of Parliament.\textsuperscript{226} Such a view appears, however, rather short-sighted as it neglects a broad variety of valuable regulatory mechanisms that effectively contribute to regulating individuals and organisations.\textsuperscript{227} The expansion of regulatory approaches, to increasingly include mechanisms more closely related to what is known as ‘soft law’,\textsuperscript{228} that has occurred worldwide over the last decades, specifically reflects this reality.\textsuperscript{229}

One particular mechanism that does not sit easy with the abovementioned legislative understanding of regulation is self-regulation. Self-regulatory approaches have come to take up a significant amount of the regulatory space, but they have not been free from debate and have received much criticism particularly in the area of corporate governance. This is particularly true, for instance, after the worldwide occurrence of far-reaching corporate scandals of the early 2000s as well as following the Global Financial Crisis in 2007/2008. This chapter does not seek to engage exhaustively in the existing debate on the merit of self-regulation, but rather to pave the way for a fresh look at the inherent potential of this regulatory mechanism.\textsuperscript{230} The primary objective is to demonstrate how self-regulation, as a predominantly legal regulatory mechanism, can be utilised to provide a novel regulatory approach, which is well-matched to the legal domain of corporate governance and family business governance guidelines in particular.

A general understanding of the broad field of regulation, including a topical outline of the regulatory mechanisms available, provides the essential point of departure for the following analysis. The overarching objective here is to determine where self-regulation


\textsuperscript{227} See also Freiberg, \textit{The Tools of Regulation}, vii (Preface); Webb, ‘Understanding the Voluntary Codes Phenomenon’, 4.

\textsuperscript{228} For a definition of the term ‘soft law’ see section 2.1.

\textsuperscript{229} Compare Freiberg, \textit{The Tools of Regulation}, 183, 186; where the author highlights the high number of ‘soft law’ measures in contrast to primary legislation through Acts of Parliament for the example of Australia.

\textsuperscript{230} For a concise overview of the merits and criticisms of self-regulation, see section 2.2.3.
is situated within the regulatory realm. In addition to such demarcation, further insight is required into the historical origins and development of self-regulation, as well as a general examination of its particular types, functions and standing as a regulatory model.

Building on these theoretical foundations, this chapter then focuses on a detailed analysis of the place of self-regulation within corporate governance. The more traditional taxonomy of corporate governance, highlighting the common uses of self-regulation in this field, is contrasted with a subsequent re-examination of the practical dimension of self-regulation. The discussion concludes with a proposal for a different, more enabling role for this prominent form of regulation within corporate governance. This part of the chapter also elaborates on the best way of implementing this novel understanding through existing corporate governance mechanisms with a specific emphasis on family business governance guidelines.

Finally, the aforesaid guidelines are used to illustrate the practical relevance of this new perspective on self-regulation within corporate governance. Applying this distinct regulatory approach of family business governance guidelines to the practical setting of family businesses demonstrates the feasibility and appropriateness of this concept of enabling self-regulation for this business form with the intention of improving their overall governance situation.

2 Understanding Self-Regulation

2.1 A General Overview of Regulation

Before delving into the subject of self-regulation, it is vital to gain some general insight into what regulation itself constitutes, and what it intends to achieve, in order to appreciate the self-regulatory perspective suggested below. This section also draws up a brief overview of common regulatory mechanisms and outlines where self-regulation can be positioned within this scheme.

Given the broad variety of regulatory instruments nowadays, a very specific definition of the term ‘regulation’ is likely to be under-inclusive, and, corresponding with the overall objective of investigating possible uses of self-regulation in this chapter, a broader approach seems inherently preferable. Collating different academic answers pursuing a broader view of regulation, the term can be generally defined as any intentional form, measure or act of social control or influence – by the state or another
(private) actor – that seeks to alter the behaviour of individuals or organisations towards a desired outcome. An important focal point for the purposes of the present chapter is that goal of regulation wherein a change of the behaviour of individuals, businesses or other entities is sought. The way that regulation arrives at this outcome can vary: from restricting or even prohibiting certain behaviours to more enabling, incentivising or facilitating approaches. As discussed below in more detail, this latter enabling approach to regulation is essential in order to tap the full potential of self-regulation and therefore forms the foundation for the self-regulatory concept proposed in this chapter.

Regulators can also avail themselves of a broad spectrum of regulatory mechanisms. Their diversity complicates a clear demarcation, but several distinctions into general categories can be made. Traditionally, based on the narrower understanding of regulation as state-derived legal rules, a very general division into regulatory and non-regulatory mechanisms follows as a consequence. The content of the so considered regulatory mechanisms is mostly denoted as ‘command and control’. This approach does not acknowledge the involvement of other actors, for instance industry associations and other non-governmental entities, in the process of regulation. Similarly, other mechanisms, such as codes of conduct on a voluntary basis, that are clearly set up with the intention to influence the behaviour of the relevant target audience will not come within the scope of regulation. In response to these and other criticisms of the command and control method, the focus has moved towards a more ‘decentred’ notion of regulation.

232 See also Baldwin and Cave, Understanding Regulation, 2.
233 See Freiberg, The Tools of Regulation, 21, 83; Morgan and Yeung, An Introduction to Law and Regulation, 80-81.
From a different perspective, which allows for the fact that regulation can be created by different actors in the regulatory space, a classification of regulatory methods can be made according to the subject-specific origin of the particular method. As this thesis pursues a legal perspective overall, the foremost regulatory mechanism to be discussed here is legal regulation. Other examples falling within the scope of this type of categorisation include economic or informational regulation, which often are underpinned by the law as well.\textsuperscript{237} Within the branch of legal regulation, the variety of regulatory instruments is best portrayed as a continuum.\textsuperscript{238} On each end of such a continuum, one would find what is commonly referred to as hard and soft law respectively.\textsuperscript{239} The use of the term ‘soft law’ has been coined in the context of international law, but has also been transferred into, and used in, domestic law, for instance in administrative law, as well as in legal regulation in general. Despite a certain ambiguity due to these diverse uses, soft law can be generally understood as: rules of conduct that are set down in instruments which, in principle, have no legally binding force as such (i.e. no direct legal sanction available for misconduct) but which intend to achieve and may have practical effects.\textsuperscript{240} The hard law side of the continuum is portrayed in the abovementioned ‘command and control’ approach to regulation.

Self-regulation will be generally positioned towards the soft law end of the continuum, particularly where the state has no involvement in any of the processes relating to the self-regulatory instrument, such as drafting, implementation, enforcement

\textsuperscript{237} For a more extensive subject-specific classification of regulatory methods see Freiberg, \textit{The Tools of Regulation}, 84-86.
or review. Self-regulatory mechanisms move, however, along the continuum, and closer towards the hard law end, where the state becomes part (to a greater or lesser extent) of these processes or where the self-regulatory mechanism is underpinned by the law or linked to a piece of legislation. Following such an understanding of self-regulation, certain general typologies of self-regulation have been devised in academic literature. For instance, self-regulation can be compartmentalised into: voluntary self-regulation, coerced self-regulation, sanctioned self-regulation and, ultimately, mandated self-regulation. It becomes clear from this outset that self-regulation can take various forms and its legal regulatory character is dependent on the particular arrangement of the instrument.

2.2 The Development of Self-Regulation

Building on the preceding description of where self-regulation generally fits into the overarching concept of regulation, this section scrutinises self-regulation in closer detail. In order to examine the actual possible scope of this regulatory method, a clear understanding of its origins, meaning, purposes and regulatory standing is indispensable.

2.2.1 A Short History of Self-Regulation

The different conceptualisations of self-regulation also become manifest if one looks back into its historical development. While the self-regulation debate is more a phenomenon of recent times, endeavours at self-regulation can already be found in the medieval guilds. Already at this time rules for trades, but also rules addressing the quality of products, are apparent. A major increase in self-regulation took place in the Nineteenth Century in connection with the industrialisation process. In the example of

---

244 See Webb, ‘Understanding the Voluntary Codes Phenomenon’, 4; Committees of Advertising Practice, The History of Self-Regulation <http://www.copyadvice.org.uk/cap-code/~media/7E64C9E9936D4782A0950CA301061854.ashx>.
Family Business Guidelines and Self-Regulation

Britain, the initiation of self-regulatory models in these days did not stop at the industry level, such as the railway industries, but likewise emerged in professions such as medicine and law as well as in the area of finance. The state, however, was involved in the regulation of these areas, but primarily only to the extent of providing the basic underlying regulatory framework. Further prominent examples of self-regulation during that time include the American and English stock exchanges, which acted independently from the government under the terms of their own rules.

The next important era in matters of self-regulation evolved more towards the end of the Twentieth Century. During the 1970s with emerging globalisation, self-regulation in the form of codes of conduct at a national and international level started to become relevant. Internationally, a focus on business self-regulation was, for instance, initiated with the development of the OECD Guidelines for Multinational Enterprises in 1976. In the United States companies also started to adopt codes of conduct in response to public pressure following incidents of corruption and general criticism towards multinational companies. The following two decades saw a continued emphasis on globalisation, trade liberalisation, privatisation and a greater focus on market based regulatory mechanisms. Despite this period being known as one of deregulation, it did not in fact necessarily reflect a decrease in regulation. While certain areas of regulation shifted into the private sector, which is traditionally closely associated with self-


regulation, an increase in the establishment of regulatory agencies and continued state involvement and oversight was noticeable. The latter frequently triggered a greater formalisation of existing self-regulatory models.

In the area of corporate law, in the mid 1990s a new interest in codes of conduct arose, particularly in Europe. The content of these corporate governance codes and guidelines was predominantly concerned with the internal organisation and structure of companies. The hope was mainly to increase accountability and transparency. However, an inclusion of ethical standards and social responsibility matters was also to some extent manifest. The occurrence of several corporate scandals worldwide at the turn of the century, however, resulted in strong criticisms of the existing corporate governance codes and the ‘over’-reliance on self-regulatory models within the regulation of the securities markets. This resulted in calls for stricter regulation of corporations to avoid a future repetition of these corporate collapses. The United States, as one of the countries greatly affected by a row of corporate scandals, reacted by implementing stern federal legislation in the form of the Sarbanes Oxley Act of 2002. In recent times, with a continuing debate of whether to ‘decentre’ regulation more or less, self-regulation is still prominent, and growing within certain regulatory areas, such as environmental regulation. The format of self-regulation has, however, become increasingly complex due to ample possible combinations of state and non-state regulator involvement.

The historical developments show that self-regulation has been used as a regulatory tool for quite some time and has experienced a variety of configurations, with changes to

255 Compare generally Jenkins, ‘Corporate Codes of Conduct’, 1, 6; Tricker, Corporate Governance, 12-13. See for instance the Cadbury report from 1992, probably the most eminent Code of this era. Report of the Committee on the Financial Aspects of Corporate Governance (United Kingdom, 1992), (‘Cadbury Report’).  
256 See also Smith and Walter, Governing the Modern Corporation, 232; Tricker, Corporate Governance, 15-17.  
existing modes of self-regulation being made in response to political and economic developments, incidents in the particular area of regulation or due to public pressure.

2.2.2 The Meaning, Purpose and Use of Self-Regulation

The complexity of self-regulation, arising from its various constellations and the differing degree of state involvement indicated above, hampers a clear-cut definition of this regulatory concept. The following understanding of self-regulation is therefore based on a rather general definition of the term, placing more emphasis on the underlying idea of self-regulation that enables a distinction from other legal regulatory instruments. A common and very broad definition of self-regulation refers to the rules of conduct for individuals, organisations or groups of either that are set up, administered and enforced by the regulated subjects themselves.259 This purposefully basic definition allows for the variety of forms which self-regulation has taken within existing regulation to be included without being limited to one of them.

In the context of this chapter a further narrowing down of the term ‘self-regulation’ is required. The following sections draw on what is commonly described as voluntary self-regulation. This concept generally depicts the idea that there is little direct state involvement in the abovementioned processes of self-regulation.260 Realistically though, it has to be acknowledged that the state usually has at least a passive interest, for instance in the form of informal oversight, even in matters of voluntary self-regulation.261 Especially in the context of legal regulation, voluntary self-regulation can, however, often refer to the situation where the regulatory involvement of the state can include being part of setting up such measure, but leaving it to the regulated subjects to adopt or comply with it. Voluntary self-regulation is therefore still considered to be the regulatory mechanism closest to ‘pure’ self-regulation.262 Further, voluntary self-regulation needs to

---


be contrasted with a situation of ‘no regulation’, which refers to circumstances where no regulatory measures have taken place yet, and where conduct is generally guided by the underlying unwritten social norms and practices. Voluntary self-regulation differs from such a ‘non-regulatory’ state in that it involves a purposeful effort to alter behaviour towards a desired outcome by ordering conduct.

The key aspect of this regulatory form is the voluntariness of the approach, which has different connotations in a self-regulatory model. It first implies a great degree of autonomy for the regulated subjects to arrange their own affairs without much external intervention or restraint. Secondly, the voluntariness reflects the intention of the regulated subjects to jointly regulate their conduct by themselves and to see this process through to realisation. These two aspects of voluntariness ultimately lead to the further consequence of making the resulting rules, principles or standards indeed self-imposed.

The notion of ‘self’ in terms of delineating the target audience of self-regulation can likewise comprise various connotations. The range of subjects includes individuals, organisations as well as groups of persons or organisations. The subsequent sections of this chapter address a model of self-regulation that focuses more on the individual business level, which predominantly captures family businesses. Depending on their legal structure, these businesses can be, for instance, a company, a partnership or another form of unincorporated business.

Several different purposes can be identified for calling on and implementing self-regulatory models. From the point of view of the affected organisation or industry, external influences for adopting self-regulatory models arise from the underlying...

---

264 Similar ibid, 19.
266 Similarly, Black, ‘Constitutionalising Self-Regulation’, 27 n 21.
267 See Freiberg, The Tools of Regulation, 26; Bartle and Vass, ‘Self-Regulation and the Regulatory State’, 19; Gunningham and Rees, ‘Industry Self-Regulation’, 364; Black, ‘Constitutionalising Self-Regulation’, 26, 27, whose article denotes a different notion of self by identifying ‘self’ with a collective (groups of organisations), which is consequential given the article’s focus on self-regulatory agencies and greater focus on industry self-regulation.
Family Business Guidelines and Self-Regulation

pressure from the government to introduce legislation in the relevant area.\textsuperscript{268} In this regard, self-regulatory measures, in contrast to state-imposed ‘hard law’ legislation, allow the organisation or industry sector more independence and control over the content of the drafted rules as well as their implementation.\textsuperscript{269} A further external influence is closely related to the aspect of public interest, in that the organisation or industry may be inclined to engage in self-regulation in order to respond to and dispel public concerns or criticisms about their activities.\textsuperscript{270} At the overlap of public and private interests, self-regulatory instruments can have a communicatory function. Regulating the disclosure of information by a business in this way allows the business not only to disseminate information to the wider public – for instance to rebut the abovementioned concerns – but also, on a more private interest level, to attract funding from investors.\textsuperscript{271} In their own private interests, organisations or industries may pursue self-regulation as a means of establishing standards of conduct and/or quality amongst themselves so as to improve the way a business is run or for an industry to act more efficiently.\textsuperscript{272} In the area of corporate governance, for instance, such a code of conduct is often introduced to formalise organisational structures, fostering a good corporate culture or an increase of the business’ reputation; all in an effort to ultimately generate a competitive advantage.\textsuperscript{273}

The government may also have several reasons for favouring self-regulation over other legal, regulatory measures. Self-regulation can used by the state to address problems of government ‘overload’.\textsuperscript{274} While maintaining a supervisory role to some extent, the major burden of regulating shifts to the regulated, who naturally will have an interest in being involved in setting the terms of the regulation. From the state’s perspective this approach is beneficial in helping to reduce red tape by ‘lessening’ the amount of legislation and compliance burdens imposed by the state – a contemporary

\begin{footnotesize}

\textsuperscript{269} See also Ogus, ‘Rethinking Self-Regulation’, 98.

\textsuperscript{270} Baggott, ‘Regulatory Reform in Britain’, 436; Bartle and Vass, ‘Self-Regulation and the Regulatory State’, 22.


\textsuperscript{272} Similarly, Baggott, ‘Regulatory Reform in Britain’, 436.

\textsuperscript{273} See also Farrar, \textit{Corporate Governance}, 378; Bartle and Vass, ‘Self-Regulation and the Regulatory State’, 22, 26, 32.

\end{footnotesize}
objective of governments worldwide – while at the same time being responsive to public calls for regulation and government action. Furthermore, if the self-regulatory mechanisms do not yield the desired regulatory outcomes, then the state can use these already existing mechanisms as a base for the consequential government legislation that will need to be implemented as a result. In summary, self-regulation can provide a potentially viable tool for the state to balance public and private interests.

Comparable to the diversity of forms of self-regulation is the variety of regulatory fields that make use of self-regulatory models. As already indicated in the historical précis, areas such as corporate governance and finance have a longstanding tradition of relying on self-regulation. Over the last decades, self-regulatory aspects have also been increasingly implemented in all kinds of safety regulations and, more recently, there has also been a shift in the regulatory focus in environmental matters towards a greater use of self-regulatory mechanisms. Other areas where self-regulation is a prominent feature are, for instance, advertising and press standards. In most of the aforementioned areas, self-regulation is often used as a form of industry regulation. Industry self-regulation attempts to establish (minimum) standards of expected behaviour by industry members. A typical characteristic within industry self-regulation is the practice of using so-called self-regulatory agencies to create, coordinate, administer and often also to enforce the self-regulatory mechanisms for the whole industry. Apart from industry regulation, self-regulatory methods are also a prevalent mechanism in regulating professions. Professions commonly regulated in this way include lawyers, accountants,

275 See also Baggott, ‘Regulatory Reform in Britain’, 445; Priest, ‘The Privatization of Regulation’, 268-271; Sinclair, ‘Self-Regulation Versus Command and Control?’, 530.
276 Farrar, Corporate Governance, 378.
but also the medical or engineering professions. Similar to industry regulation, professional regulation usually also relies on self-regulatory institutions to oversee the scheme.

### 2.2.3 The Standing of Self-Regulation

This part of the chapter is intended to provide only a short overview of the common advantages and criticisms of self-regulation. In the following, these aspects will be used to address how the proposed model of self-regulation lives up to and accounts for them. The following aspects are commonly described as the advantages of self-regulatory systems. Where regulation is formulated and drafted by the regulated themselves, a higher degree of expertise and knowledge can be utilised in the drafting process, which are likely to enhance the regulatory efforts in comparison to direct government regulation. This, in turn, is said to result in increased practicality of the proposed regulation as it will more closely address the actual issues experienced by the affected organisations or industries and, furthermore, because the regulatory solutions can be better tailored to the idiosyncrasies of the regulated and the way they operate. In cases where a self-regulatory agency is involved, self-regulatory instruments are deemed to generate greater compliance with the implemented regulation due to the close connection or partial congruency with the regulated. Regulation is not imposed by an ‘external’ source and there is a high involvement of the regulated in the regulatory process. These aspects aid a better understanding of the necessity of the regulation, which is thereby also founded on the underlying trust of the regulated that its contents accurately account for their circumstances. Similarly, regulation coming from ‘within’ may produce greater peer pressure to comply.

Self-regulation is also generally associated with providing greater flexibility. This flexibility refers on the one hand to the fact that self-regulatory instruments commonly

---

286 See also Gunningham and Rees, ‘Industry Self-Regulation’, 366.
are not subject to the same legal constraints as government regulation and therefore can respond in more creative and innovative ways to the regulatory issue at hand. Related to the described advantage of flexibility is the aspect of a greater informality in self-regulation. Resulting from usually less formalised legal structures and the proximity of the regulated to the regulation, informality can help to solve issues, such as disputes, internally and more effectively with room for more diverse remedies. Consequences of the aforementioned aspects may also significantly decrease the costs stemming from the regulation. Costs for formulating and administering the self-regulatory scheme are borne by the regulated in contrast to direct government regulation. Cost savings are, for instance, related to better access to the information required for drafting, as well as quicker and less formalised processes of amendments and in terms of dispute resolution.

Not surprisingly, the same features that are drawn on to highlight the advantages of self-regulation also provide its Achilles’ heel and are the foundation of the common criticisms of self-regulation. Close proximity of the regulated to the regulation can lead to ‘regulatory capture’. The regulated naturally have their own vested interests and there is an inherent danger that the resulting self-regulation schemes primarily serve these interests and do not effectively solve the regulatory issue at stake. These vested interests could further lead to under-regulation, because the focus of the self-regulation might be placed on the issues faced by the regulated rather than on a comprehensive scheme that also incorporates affected outside parties into the field of consideration. Furthermore, this situation might be aggravated by the fact that affected third parties – in many cases the public – will likely have no involvement or information about the drafting process, thereby raising the chances of an underrepresentation of their concerns.

287 Freiberg, The Tools of Regulation, 29; Farrar, Corporate Governance, 376.
289 Farrar, Corporate Governance, 376; Baldwin and Cave, Understanding Regulation, 127.
291 Ogus, ‘Rethinking Self-Regulation’ 98; Baldwin and Cave, Understanding Regulation, 127.
in the self-regulatory system. The interests of the regulated could also result in anti-competitive behaviour of the self-regulation system, for instance by exacerbating the entry requirements into an industry or self-regulatory agency.295

Another concern relates to the perceived inefficiency of self-regulation, arising, for instance, from an often inadequate sanctioning system or from an under-enforcement of the available sanctions.296 Self-regulation is also associated with lower levels of accountability of the regulated, in particular to the wider public. For instance, self-regulation is not subject to the same scrutiny and mechanisms of checks and balances as government regulation.297 This is combined with lesser transparency in decision making. A last point of criticism is closely connected with schemes of voluntary self-regulation. These systems function primarily on the basis of consent. This can lead to gaps in the coverage of the self-regulatory instrument insofar as those not consenting to and abiding by the scheme are concerned.298 The perspective one takes – be it an organisation, industry, government or public interest view – will taint the final verdict on the overall merit of self-regulation.299 Likewise, it depends on the respective configuration of the self-regulatory system, especially referring to the extent that the state is involved in the measure, as this will change the weight that the advantageous and critical aspects carry.

As a final insight into self-regulation within this section, it is relevant to consider where the perceived limitations of such systems lie.300 It is suggested that self-regulatory measures lend themselves particularly to situations where the regulatory matter does not involve an important concern for the public interest. Public safety, for instance, would constitute an important matter in this regard. Additionally, the concerned matter should be of low risk or impact and can therefore be left to the regulated, who may have a greater personal incentive to sort it themselves.

294 Baldwin and Cave, Understanding Regulation, 128, 129.
298 Compare Farrar, Corporate Governance, 377; Baldwin and Cave, Understanding Regulation, 128.
299 Compare the discussion in Priest, ‘The Privatization of Regulation: Five Models of Self-Regulation’, 274.
300 The following points are drawn from Freiberg, The Tools of Regulation, 28-29. A further specification of the preferable conditions of the industry sector to be regulated, can be found in Priest, ‘The Privatization of Regulation’, 301-302.
3 Self-Regulation and its Place in Corporate Governance

Having depicted self-regulation in its more general regulatory setting, this section focuses on positioning the proposed model of self-regulation in the context which is deemed most feasible for its application – corporate governance. In the following, a short introduction to the notion of corporate governance is complemented by a classification of the various mechanisms in the corporate governance framework. It will be identified where self-regulation becomes relevant within this classification. The second part of this section then proceeds to re-examine the common role of self-regulation that has been developed so far in this chapter and proposes a different way for using self-regulation as a regulatory tool in a corporate governance context. This part further elaborates which governance measures seem most conducive to realising this model of self-regulation in practice.

3.1 A Taxonomy of Corporate Governance

In the business world, the term corporate governance features extensively and prominently nowadays. Becoming a widely used phrase in the early 1980s, manifold definitions of what constitutes ‘corporate governance’ have emerged. Their contents vary depending on the angle from which corporate governance is approached. From a management point of view, the definitions commonly emphasise the primary role of corporate governance as optimising the performance of a company and elevating the resulting profits. A more legal perspective may highlight aspects of conformance and compliance by companies as the focal point of corporate governance. Referring to the latter, important themes of corporate governance include the role of the board of directors as well as establishing what is considered best practice.

Bringing these different focal points and influences together, narrower and wider approaches to corporate governance can be identified. Narrow definitions refer to

---


302 Compare Tricker, Corporate Governance, 14.

303 See ibid, 13-14.


corporate governance as “the system by which companies are directed and controlled”.\textsuperscript{306} Such understanding reflects a more internal focus of corporations and addresses specifically the role and responsibilities of those in charge, in particular the board of directors. The scope of corporate governance, however, can also be seen to stretch much further. It extends, for instance, to issues such as corporate social responsibility to the wider public.\textsuperscript{307} Understanding corporate governance as going beyond the restricted scope of board activities in a company, and accounting for a wider circle of stakeholders, a widened definition of corporate governance focuses on regulating the relationships between company-internal stakeholders, ranging from employees to the board of directors, and, where affected, external parties.\textsuperscript{308} The key element of this definition consists in the fact that the operation of a company ultimately depends on the human individuals involved. Balancing these diverse interests requires not only implementing organisational structures and processes, clarification of roles, rights and responsibilities to improve accountability and transparency, but also specifying desirable corporate conduct and objectives, including the ways to achieve them.\textsuperscript{309} The task of corporate governance is therefore twofold: sorting the interrelationships of the company’s stakeholders on the one hand, and structuring the business issues on the other, in order to create a successful and competitive company overall. This broader approach provides the foundation for the remainder of this chapter since it is capable of including a wider range of corporate governance measures, especially those on the soft law side of the legal regulatory continuum, and, moreover, because a comprehensive approach better reflects the actual functioning of a company.

A taxonomy of corporate governance measures can naturally be pursued from very different points of departure. Consistent with the legal regulatory approach of this chapter, a sensible distinction can be made according to whether the governance

\textsuperscript{306} Cadbury Report, [2.5]. Similarly, Tricker, Corporate Governance (1984), 6-9.
\textsuperscript{307} See, for instance Tricker, Corporate Governance, 25-26; Du Plessis, Hargovan and Bargaric, Principles of Contemporary Corporate Governance, 7-8.
measures are mandatory or voluntary in character. Comparable to the earlier arguments, it has to be borne in mind that a clear cut demarcation is not always possible with respect to hybrid forms of corporate governance that sit somewhere between these two main categories. Focusing on these two contrasting characterisations allows the identification of the fundamental differences among these main distinctions within the corporate governance spectrum. The insights gained, in turn, help one to understand and analyse individual governance measures depending on the presence of mandatory and/or voluntary features.

Mandatory corporate governance measures, often referred to as being legally binding regulatory instruments, are usually situated closer to the hard law end of the legal regulatory continuum. Accordingly, these governance mechanisms are commonly imposed by the government, or, at least, include some relevant government involvement in the regulatory process. The distinguishing feature of mandatory corporate governance instruments is that a range of sanctions is applicable in the case of non-compliance with the behaviour required by the measure. Their main purpose hence lies in achieving the adoption of desired behaviour by the corporate community. An important element in realising the compliance goals is the usually wide range of enforcement mechanisms available within mandatory governance measures.

The most prominent example of mandatory corporate governance constitutes the companies’ legislation. Nowadays, mostly in the form of statutory enactments by parliament, the companies’ legislation provides a broad range of legal rules that mainly address the affairs of incorporated businesses, but it also captures other legal business structures to some extent where these are not covered by a separate piece of legislation. Companies’ Acts cover a wide range of corporate governance issues which primarily focus on the company’s internal affairs. Common topics include, for instance, the regulation of the relationships between internal company stakeholders – director’s responsibilities and liabilities; shareholder rights and remedies – as well as meeting

310 Compare also Farrar, Corporate Governance: Theories, Principles and Practice, 3-4; Du Plessis, Hargovan and Bargaric, Principles of Contemporary Corporate Governance, 162; Eddy Wymeersch, ‘Corporate Governance Codes and their Implementation’ (Working Paper Series, WP 2006-10, Financial Law Institute, University of Ghent, 2006) 1-2. 311 Generally, see also the distinctions within legal regulation made in Freiberg, The Tools of Regulation, ch 10. 312 Du Plessis, Hargovan and Bargaric, Principles of Contemporary Corporate Governance, 162; Freiberg, The Tools of Regulation, 179.
procedures and decision making processes.\textsuperscript{313} Certain parts, however, also address the company’s relationship with external parties, such as creditors.\textsuperscript{314} Although generally being the case, not all the legal rules found in the Companies’ Acts possess a prescriptive character, some of them function rather as ‘default’ rules.\textsuperscript{315} Acts usually allow for certain internal, structural governance decisions to be made independently by the company or in deviation from the rules of the Act via the instrument of a corporate constitution.\textsuperscript{316} In addition to Companies’ Acts, there are further related types of legislation which directly impact on the corporate governance of companies. Financial reporting requirements are but one example. Other areas, such as fair trading or health and safety will at least create indirect influences. Not necessarily an ‘instrument’ of corporate governance, court decisions may also impact on a company’s corporate governance. Especially in common law countries, the legal interpretation by judges can determine the expectations for the future conduct by companies and their internal stakeholders.\textsuperscript{317}

Likewise, more closely associated with mandatory corporate governance measures are mandatory corporate governance codes. While these codes can and often do contain certain voluntary components, they are ‘mandatory’ insofar as they do not give the regulated companies full discretion in terms of compliance.\textsuperscript{318} The reasons for introducing a mandatory nature of corporate governance codes are diverse. One possibility is that the code is directly connected with companies’ legislation and therefore companies are legally required to comply with its content.\textsuperscript{319} This link can thus result in

\textsuperscript{313} For two country specific overviews of the general content of companies legislation, compare Du Plessis, Hargovan and Bargaric, Principles of Contemporary Corporate Governance, 162; Calder, Corporate Governance, 34-38.

\textsuperscript{314} See for instance the part on creditor claims in Companies Act 1993 (NZ) ss 302 ff.


\textsuperscript{317} Compare Du Plessis, Hargovan and Bargaric, Principles of Contemporary Corporate Governance, 165; Farrar, Corporate Governance, 415, 420. Examples include, for instance, several interpretations of the standards expected of company directors as fulfillment of their duties. For a more detailed case analysis in this regard, see Susan Watson and Rebecca Hirsch, ‘Empty Heads, Pure Hearts: The Unintended Consequences of the Criminalisation of Directors’ Duties’ (2011) 17 New Zealand Business Law Quarterly 316-321.

\textsuperscript{318} Compare Wymeersch, ‘Corporate Governance Codes and Their Implementation’, 2-3, where an overview of the various types of corporate governance codes and their legal status is presented.

\textsuperscript{319} See the examples provided in ibid, 3, 8; Freiberg, The Tools of Regulation, 193.
the availability of a wider range of sanctions than just those which come under a corporate governance code per se.\textsuperscript{320} Mandatory codes can also come in the form of stock exchange listing rules. Their mandatory element is reflected in that the compliance with these governance rules is a condition to get admitted to the stock exchange and to maintain membership.\textsuperscript{321} The mandatory character of a code can also arise from a duty for the regulated companies to ‘comply or explain’ their deviation from the contents of the code.\textsuperscript{322} While these types of governance codes generally do not have the same legal status as corporate legislation, the mandatory element stems from the circumstance that the companies cannot simply abstain from complying: they are at least required to justify why they do not comply.\textsuperscript{323}

In summary, mandatory corporate governance measures can be seen as providing the minimum standards of, or sometimes also boundaries to, conduct to be expected of companies and their stakeholders in order for the company to function properly and to ensure its compliance with these requirements.

Although less prominent in the academic literature, with some exceptions,\textsuperscript{324} voluntary governance measures have become a persistent feature in the corporate governance framework. In contrast to mandatory instruments, voluntary corporate governance measures characteristically do not entail a legal requirement for the regulated subjects to adhere to them.\textsuperscript{325} The lack of compulsory adherence, however, does not imply that the goal of compliance – that is, some change towards a desired behaviour – is not intended with voluntary governance measures. It rather indicates that the enforcement

\textsuperscript{320} Compare for instance \textit{Corporations Act 2001} (Cth) s 793C, which outlines the wide range of potential parties that are able to file an application to court in the case of non-compliance with the ASX listing requirements. See also Farrar, \textit{Corporate Governance}, 418, 423.

\textsuperscript{321} For the example of the Australian stock exchange listing rules, see also Du Plessis, Hargovan and Bargaric, \textit{Principles of Contemporary Corporate Governance}, 166-168.


\textsuperscript{325} See generally, Webb, ‘Understanding the Voluntary Codes Phenomenon’, 11; Wyneersch, ‘Corporate Governance Codes and Their Implementations’, 2.
component, which is vital in mandatory instruments, is less emphasised here. This is partially also due to the fact that these voluntary measures are geared more towards addressing company internal matters and thus often leave it to the respective company, rather than to an external party, to deal with the enforcement of their contents. 326 Generally, the regulatory process surrounding these voluntary measures also involves little, if any, involvement by governmental actors. 327 The main focal point of voluntary instruments typically rests on the provision of standards for best practice in companies, thereby often going beyond the behavioural requirements imposed by mandatory governance measures. 328 Accordingly, these instruments often supplement or complement the existing companies’ legislation.

A variety of voluntary corporate governance measures can be identified and the boundaries between them are often blurred. The most common example is probably the myriad of voluntary codes of corporate governance. 329 They are rather all-encompassing and can include other more specific voluntary governance measures. These codes contain recommendations regarding the internal structure of a company in terms of its direction, control, risk management and disclosure as well as stakeholder relations. 330 In this regard, the generic governance themes addressed in voluntary corporate governance codes commonly bear a resemblance to those in their mandatory counterparts. Where not already incorporated into a corporate governance code directly, companies can establish so-called codes of conduct, which primarily constitute an agreed set of standards that advise all affected stakeholders regarding their responsibilities and expectations regarding their conduct within the company. 331 Similarly, a code of ethics detailing the expectations on ethical behaviour and other matters of corporate social responsibility can be part of a code of corporate governance. Another difference between codes of conduct


327 See generally, Freiberg, The Tools of Regulation, 192.


329 These voluntary governance codes are sometimes also referred to as corporate governance guidelines or recommendations, thereby highlighting the lesser external force often associated with such voluntary governance measures. Such governance measures can also take the form of standards or covenants, but these regulatory tools are not exclusive to the field of corporate governance. For further detail on these instruments, see Freiberg, The Tools of Regulation, 189-204.


331 Compare Freiberg, The Tools of Regulation, 192.
and ethics when compared to codes of corporate governance exists in that the former emerge usually at the individual company level, while governance codes are typically established for a wider corporate audience. Voluntary corporate governance codes can further originate at a national or an international level. A prominent example at the international level are the 2004 *OECD Principles of Corporate Governance* which, like most codes of corporate governance, are primarily aimed at listed companies. As already mentioned above, governance codes can also apply the ‘comply or explain’ method. Such governance codes can thus be completely voluntary in nature, where the disclosure component is not a mandatory requirement and the code solely relies on the willingness of the companies to report deviations.

Due to its hybrid character, the corporate constitution also needs to be mentioned as part of the voluntary corporate governance measures. While the general legal rules dealing with the corporate constitution, as noted above, are usually incorporated into the mandatory governance measures of the Companies’ Acts, it is entirely up to the individual businesses whether or not they adopt a constitution. Additionally, the majority of the legal rules concerning the contents of the corporate constitution allow the companies to deviate from the pre-set legislative standard where desired. The corporate constitution, although generally regulated and governed by the companies’ legislation, provides great latitude for voluntariness when it comes to the adoption and actual content of a business’ constitution.

Bringing the abovementioned corporate governance measures together with the regulatory method of self-regulation, it becomes clear that the latter is compatible with a wide range of corporate governance instruments. Self-regulation appears predominantly in the form of voluntary codes or guidelines of corporate governance. However, where mandatory corporate governance codes have a co-regulatory nature, elements of self-regulation can likewise be found. Focusing on the regulatory instrument of corporate governance codes, the benefits and criticisms of self-regulation, which have been highlighted above, generally apply to mandatory, and especially voluntary, codes as well.

---

333 Fasterling, ‘Prospects and Limits of Corporate Governance Codes’, 472.
Regarding the objectives of corporate governance codes, their communicational function is of great relevance. Governance codes, especially mandatory ones, help to clarify the content of the companies’ legislation by providing further detail and explanations. Further related to this aspect, the codes also elucidate what is expected of the individual companies and what amounts to proper business conduct. More abstractly, the development, implementation and review of corporate governance codes contribute to the national and international dialogue surrounding the best governance approaches and practices for businesses. As will be highlighted in the following section, voluntary corporate governance guidelines in particular can fulfil a further important purpose that is usually not given great attention. They can be initiated to raise businesses’ awareness about important corporate governance issues and provide a point of departure for businesses to help themselves.

3.2 The Importance of Self-Regulation – A Re-Examination

As has been demonstrated so far, self-regulation has become a widely used regulatory tool across many areas of law. Traditionally, self-regulation – despite the variety of forms it can take – is principally adopted to provide a mechanism to improve compliance with processes and legal rules in order to streamline industry sectors and to achieve minimum standards of best practice. In consequence, the objective of compliance triggers a necessity for enforcement mechanisms within the self-regulatory scheme. This general set-up of self-regulation provides one of the sources of the criticisms often brought forth against this regulatory tool.

Seeking to exploit the potential that self-regulation can have as a means of regulation, this chapter proposes a different way of utilising self-regulation that has received little consideration so far in the regulatory discourse. The following account draws on self-regulation as it occurs within corporate governance, because this field provides a likely area of application for this kind of self-regulation. The core idea motivating this different approach is the possibility of employing self-regulation as a tool to raise awareness about certain corporate governance related issues that are specific to certain kinds of

336 See also Fasterling, ‘Prospects and Limits of Corporate Governance Codes’, 481-482; Farrar, Corporate Governance, 378.
337 Compare also Fasterling, ‘Prospects and Limits of Corporate Governance Codes’, 483.
Family Business Guidelines and Self-Regulation

These issues are, hence, not addressed in the more general ‘one size fits all approach’ employed within existing corporate governance codes. Beyond simply raising awareness of these issues, this approach to self-regulation, which can be best described as ‘enabling self-regulation’, further intends to offer these businesses a starting point and general guidance for how to best address the governance issues they will likely face. Thus, compared to the traditional uses of self-regulation, the emphasis of this approach is not on the aspects of compliance and enforcement, but rather on the ability to provide a tool for ‘self-help’ to businesses. This is realised by enabling these businesses to recognise a potential governance issue, from which recognition they can then devise a strategy and solutions tailored to their individual situation, so that they are prepared for when these issues actually arise in their particular business setting.

Utilising self-regulation in this manner can empower businesses to take initiative and gain confidence in tackling certain difficult governance tasks. This mindset is particularly important in businesses where the governance structures still mostly have an internal scope and, accordingly, rely less on outside advice. The same applies where businesses are reluctant to take the governance issue at hand outside the business, for instance due to the sensitivity of the respective problem. Of course, this enabling self-regulatory approach does not foreclose the insight that external advice may be required at some stage. Rather, the original initiative is supposed to come from the businesses themselves: they need to determine at what point a devised solution calls for input by an expert, based upon their own judgement and level of expertise facilitated by the adverted tools of self-regulation.

This form of enabling self-regulation acts on the maxim that prevention is better than cure. By drafting solutions before an underlying issue becomes an actual problem or causes some form of detriment to the business and its stakeholders, it allows the involved stakeholders to approach the issue from a more objective or neutral perspective without having to react under time pressure. Even in cases where an issue cannot be solved in

---

338 It should be noted that the objective of ‘raising awareness’ about good governance and governance related issues is also acknowledged in the context of general codes of corporate governance. However, this objective forms more of a side concern in this regard. Compare, Joseph A McCahery and Erik P M Vermeulen, Corporate Governance of Non-listed Companies (Oxford University Press, Oxford, 2008) 201. In contrast, in the modified concept of self-regulation proposed here, ‘raising awareness’ constitutes one of its two main purposes.

339 Similarly pointing to the relevance of detailed guidance in governance recommendations for non-listed companies, see ibid, 211.
advance, this method still provides the advantage that when the problem actually arises it merely requires implementation of the devised mechanism, perhaps with some minor adjustment to suit the particular situation. Such an approach contributes to an easier maintenance of the relationships between the stakeholders since compromises might be easier to reach and conflicts of opinion can be discussed fully. In following this method, ‘enabling self-regulation’ takes a more long-term perspective on corporate governance. The objective is not to gain just a temporary competitive advantage, but to secure the continuity and permanence of the business and to gradually build up the required governance mechanisms. Furthermore, this approach will be generally a less costly process for the business as compared to only being able to react to a situation already gone wrong or to being obliged to comply with a predetermined set of regulations. Similarly, the overall cost of drafting and maintaining such an enabling self-regulatory system should be reasonably low given that the scheme is based on the voluntary initiative of the individual businesses and due to its support-oriented character. In addition, the particular concerns covered should concur with the business’ own interests.

Approaching the corporate governance of specific business settings through the suggested self-regulatory model also coincides with the general idea depicted in the increasingly recognised research trend of investigating the importance of social norms within the law, often with a particular emphasis on the area of corporate law. Unwritten social norms that generally have developed over a period of time constitute the basis for human interactions not only within the wider society, but also in more enclosed settings such as individual businesses. These mostly informal norms exist prior to and alongside any more formal regulatory pursuits and are thus influential and determinative.

---


for the constitutive conduct within a business.\textsuperscript{342} While more formal legal regulatory instruments possess very little flexibility in order to account for the distinct social norms at play in individual businesses, the proposed enabling self-regulatory approach is in fact geared towards incorporating and working with the existing social norms when developing an adequately tailored corporate governance structure. This holds all the more so since this approach focuses on business settings that face a greater complexity due to their particular context, which likely also increases the number of influential social norms. Enabling self-regulation accounts for and works with the existing social norms of the business and aligns them with good corporate governance practices where required.

The difference in approach also silences some of the criticisms raised against the traditional forms of self-regulation. The problems generally arising from companies focusing on their own vested interests when setting up or implementing self-regulatory regimes are less prominent in the approach suggested here. Instead, this concept targets the individual business interests and uses them as the motivator to get these companies engaged in establishing better corporate governance processes. This is mainly possible due to the fact that self-regulation is the means to address mostly internal factors of the businesses’ corporate governance with a special focus on the governance particularities of the individual business setting. Accordingly, external concerns, such as those of the wider public, are less pronounced. External stakeholder relationships, however, become of increasing relevance once the business governance progresses beyond predominantly internal issues.

Similarly, critical arguments dealing with the more limited availability or inadequacy of existing sanctions, as well as the related concerns about weak enforcement within self-regulation systems, can also be enfeebled for the most part. As explained above, this approach to corporate governance self-regulation does not aim to impose a set of rules on businesses with corresponding demands for compliance. However, this concept should not be misinterpreted in such a way that no reaction by the businesses is sought. On the contrary, this enabling self-regulation is not conceptualised as a mere abstract and theoretical approach to governance, but it should rather be used as a point of departure and guidance to establish and refine individually suited corporate governance structures.

and mechanisms. The governance recommendations hence are intended to trigger a proactive response from the companies.

While accounting for some of the more general points of criticism of self-regulation, further concerns specific to this approach can be raised. It could be argued that this form of enabling self-regulation just adds another level of complexity for businesses which are already faced with a plethora of corporate laws and corporate governance codes to adhere to. The approach suggested here contributes, in fact, to the opposite scenario and aims to cut down on the complexity experienced by businesses. This approach not only breaks down complex governance issues into their details but also provides further points of reference and examples for how to address them in the specific business context. In addition, this concept advocates for the businesses to take up the governance initiative at their own pace, thereby providing them with more flexibility and allowing for a progressive development of corporate governance. The corporate governance structures and mechanisms can therefore increase naturally in their complexity in congruence with the business’ own development.

A further important point that needs to be clarified is whether the proposed approach can still be regarded as a form of self-regulation or whether it resembles a much looser and less formal regulatory tool of information and education. While both seek to influence the behaviour of the regulated subjects, the major distinction between these two forms of regulation rests primarily on the idea that systems of self-regulation generally require a more active response to their content insofar as businesses are intended to become proactive in addressing the governance issues, setting up mechanisms where needed. The approach advocated for in this chapter therefore goes beyond simply receiving the disseminated information which potentially may lead to a change in attitude towards certain issues.

Emerging from the description of this different approach of enabling self-regulation is the question as to how this concept can be best implemented in practice. Given the features of this kind of self-regulation, voluntary corporate governance guidelines appear

344 Compare ibid. Bartle and Vass similarly highlight here that the ‘harder’ approaches involve “clear action”.

78
to be the most effective governance tool to use here.\textsuperscript{345} The main argument for this choice of regulatory tool lies in the fact that many of the characteristic features of these guidelines complement and reflect the idea behind enabling self-regulation. Their inherent flexibility, due to being of a voluntary nature and being able to capture a range of possible solutions, provides for the recommendations to be individually adjustable to the target audience’s respective needs. The more formal appearance of such guidelines, as compared to more informal approaches, signals the intention that an active response is expected without appearing compulsive. The guidelines’ structure also provides a basic framework in which to integrate the different recommendations. Corporate governance codes often come in principle-based form, using a number of overarching governance maxims; some governance guidelines are also presented in a more explanatory running text-based format, which typically goes into greater detail. The enabling self-regulation approach requires a bit more explanation to elucidate the different governance issues sufficiently for the businesses themselves and to offer them some food for thought to aid and encourage their problem-solving process. Accordingly, a running text-like format is to some extent required, but at the same time the structure of these guidelines needs to be easy to use and thus well-laid out using an unambiguous language since it is intended to be used by the businesses themselves directly.

Expanding the potential of traditional self-regulation, this chapter has thus far drawn attention to an alternative procedure for employing the concept of self-regulation and proposes a form of purely enabling self-regulation that will be particularly useful in the field of corporate governance. This approach focuses on raising awareness about idiosyncratic governance issues that can affect certain types of businesses; these issues are commonly not addressed in the more generalised codes of corporate governance. Beyond the awareness function, this approach also aims to provide a point of departure for the businesses themselves to help them in addressing the governance issues and finding solutions that are individually tailored to their own personal and business needs. It is also suggested that the best way to realise this form of enabling self-regulation is through voluntary corporate governance guidelines, which are flexible enough and most closely reflect the core ideas of this concept. The next section will clarify and illuminate

\textsuperscript{345} The term ‘corporate governance guideline’ appears more suitable in the context of enabling self-regulation since it better reflects the crucial guidance element of this approach and further that compliance is not the primary focal point here.
the proposed idea of ‘enabling self-regulation’ further by using family businesses as an example to demonstrate a situation in which this approach is most suitable. The following reasoning brings together the insights gained above on the nature of family businesses and self-regulation in general.

4 Enabling Self-Regulation – A Preferred Governance Mechanism for Family Businesses

Family businesses constitute one of the most traditional forms in the business world. They persisted along with the rise of the large multinational corporation. Their longstanding history does, however, not mean that the myths around, and issues faced by, family businesses have all been solved. On the contrary, until relatively recently, family businesses have not played a major role in international research agendas. The recent increase in research interest is not only due to the realisation of the importance of family businesses worldwide, but especially because of the greater recognition of the challenges which this unique blend of family and business presents. As highlighted in the so-called systems theory approach to family businesses, the two overarching systems of family and business – which can be further compartmentalised into stakeholder-specific subsystems in a business – disclose considerable differences in the basis of the intra-system relationships, purposes and functioning between family and business systems. Not surprisingly, the clash and overlap between these two systems all too often leads to corporate governance issues in the family business that can result in the discontinuation of the business as well as a complete breakdown of family relationships. In general terms, solving these governance issues usually requires not only the sorting of the corporate governance structures of each system individually, but further their alignment with each other.

Many family businesses are not fully aware of the added potential for conflict stemming from their particular family context.\(^{346}\) In contrast, there is a rather common, and often mistaken, perception that the involvement of the family in the business results

\(^{346}\) Similarly, Vivien R Goldwasser, ‘Shareholder Agreements: Potent Protection for Minorities in Closely Held Corporations’ (1994) 22 Australian Business Law Review 281. See also Irene Mandl (Austrian Institute for SME Research), ‘Overview of Family Business Relevant Issues’ (Final Research Report, conducted on behalf of the European Commission, Enterprise and Industry Directorate-General, Contract No 30-CE-0164021/00-51, Vienna, 2008) 4-5. <http://ec.europa.eu/enterprise/entrepreneurship/craft/family_business/doc/familybusiness_study.pdf>. The latter report highlights that not only are family businesses not aware of certain specific governance challenges, but also often lack the knowledge of how to address them.
in fewer conflicts or an easier resolution in case an actual conflict arises. This lack of awareness, their specific idiosyncrasies and the distinct governance issues arising therefrom, underlines this business form’s suitability for the proposed model of enabling self-regulation. Voluntary family business governance guidelines utilising this enabling self-regulatory concept can be crucial in achieving a positive change in family businesses and, by adopting a broad and developmentally staged approach, can also cater for the great variety and settings that family businesses come in and the corresponding difference in governance needs. In contrast to the more general, already existing, corporate governance codes, which are mainly concerned with the management and direction of the business, the self-enabling model can focus more on the interrelationships in-between family members and between family and non-family members as well as on how the family influence impacts on the regular business activities. As a result of this subject-specific focus, the guidelines take away some of their inherent complexity and can go more into depth when addressing the various issues, which ultimately contributes to a better understanding within the family businesses. The emergence of several family business-specific corporate governance guidelines worldwide over the last decade also testifies to the potential inherent in the application of the concept of enabling self-regulation through voluntary corporate governance guidelines to family businesses. Notably, the number of these guidelines that exclusively focus on the governance issues of family businesses, and hence which reflect the proposed model of enabling self-regulation in corporate governance very closely, is steadily increasing. 347

These arguments demonstrate that the governance-specific issues of family businesses aptly fall under the intended scope of application of enabling self-regulation. The question nevertheless remains, why these voluntary self-regulatory corporate governance guidelines provide a better solution than enacting further legislation that specifically addresses the governance challenges faced by family businesses? Generally, family businesses are regulated by corporate law like every other business; they have to comply with the legal rules imposed by the companies’ legislation as well as with mandatory corporate governance codes – for instance where the family business is incorporated or

347 For example, see The Family Business Governance Report (The Netherlands, 2003); Governance Guide for Families and Their Businesses (Switzerland, 2006); Governance Code for Family Businesses (Germany, 2010); A Practical Guide to Good Governance in Family Businesses (Spain, 2012).
listed on a stock exchange, respectively. In addition, they can also subscribe to voluntary self-regulatory initiatives such as codes of conduct, which focus on how the general business operations should be best carried out. On the other hand, the sphere of ‘no regulation’ also has its role in family businesses insofar as there are also unwritten, often subconscious, rules, practices and norms at play, which have an impact on the way the family business is operated in that they may, for instance, trigger a certain kind of conduct by the family business.348

Related to the latter sphere, the following argument again picks up the point about already existing informal social controls or norms; an explicit example of which are family norms.349 Regulation through legislation needs to consider these existing informal rules and, where suitable, integrate them as a foundation for their regulatory pursuits or at least account for them when structuring legislation. The problem with the target group of family businesses arises from the fact that each family has their own distinct set of rules and behaviours which in turn impact on the business. Hence, these informal norms are specific to the individual business, making it difficult to integrate them into an all-encompassing provision. Legislation faces the dilemma of being too generic to be applied consistently to the diverse settings of family businesses, while otherwise not being able to provide a more in-depth account addressing these different governance needs. Furthermore, the greater the discrepancies between any drafted legislation and the existing individual informal social norms are, the less successful the legislative efforts are likely to be.350 In the context of family businesses, taking up and assessing the underlying informal norms and developing them further may increase the effectiveness of the regulation. Even where the existing informal family habits and norms may have some negative impact on the proper governance of the family business, it is important to build on these norms and highlight how and why the respective behaviour of family businesses should be adjusted. Referring to this, the more focused approach of enabling self-regulation offers a more flexible approach which can be more reflective of a variety of settings, norms and developmental stages of family businesses.

349 Christine Parker, ‘Reinventing Regulation Within the Corporation: Compliance-Oriented Regulatory Innovation’ (2000) 32 Administration and Society 532.
350 See also Freiberg, The Tools of Regulation, 21.
Another related aspect to be considered is the potentially large information asymmetry between the government as the regulator and family businesses as the regulated subjects. While acknowledging that the regulator can obtain expert advice to gain a better insight into the situation and problems of family businesses, enabling self-regulation – especially where drafted in co-operation with or even initiated by family business networks – is deemed to be closer to the target audience and more likely to engage in a mutual process closely involving the group of family businesses. This ultimately leads to a better informed knowledge base when drafting family business governance guidelines which, combined with a potentially greater rate of approval by the family businesses, appears to be the more effective approach to achieve the desired regulatory outcome.

Additionally, the co-operative approach, as well as an overall simplified regulatory process, will ensure that the enabling self-regulatory method is the cheaper and thus preferable alternative to a legislative solution for family business in terms of the costs associated with the regulatory process. As for the costs accruing for the family businesses when addressing and implementing changes in their corporate governance structures on the basis of family business focused governance guidelines, these should be significantly lower than the compliance costs arising from complying with traditional legislation. This advantage of self-regulation is mainly derived from the avoidance of having to implement a certain change at a certain time in the family business. By allowing them to address matters gradually, but progressively, and being flexible and sensitive to the financial situation of the individual businesses, this may also result in a more cost-effective solution to deal with a particular issue. It further should be considered that the time, costs and efforts taken initially to set-up these preventative corporate governance measures should ultimately be more than offset by a diminished strain on the relationships among family members and between family and non-family members in the business, together with the money saved due to a better handling of disputes within the family business. While there is still not enough information to determine the actual positive impact which enabling self-regulation via voluntary corporate governance

352 Emphasising the importance of working together with family businesses, see the preface in the revised Spanish guidelines as an example. A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 5.
guidelines can have on family businesses, the initial balance of arguments clearly suggests that this approach should be given serious consideration in the context of family businesses.

5 Conclusion

Much academic discourse has been afforded to the debate surrounding the merits and drawbacks of self-regulation in its traditional setting in recent years. By applying a wider notion of the term ‘regulation’, which focuses on achieving a change in behaviour instigated by the state or a private actor, and more properly reflects the vastness of the regulatory space, this thesis suggests that the full potential of self-regulatory schemes has not yet been tapped. Transcending the old debate and assessing the true potential of self-regulation as a regulatory device, a different perspective of looking at and using self-regulation has been suggested. In a corporate governance context, an area of law which has a tradition of using self-regulation as one of its mechanisms to regulate businesses, self-regulation can be used as a preventative and enabling way to raise awareness about governance issues that are faced by certain constellations of businesses. This form of self-regulation goes beyond the existing corporate governance codes in its detail and in the specific issues that are addressed. In addition to raising awareness within the affected businesses, this concept also involves the provision of general guidance and a point of departure in how to address these governance issues. This chapter argues that voluntary corporate governance guidelines are the most effective regulatory tool with which to achieve the concept of enabling self-regulation. The regulatory nature of this type of guideline reflects the identified key ideas of enabling self-regulation the closest and thus is best equipped to translate these core objectives into an easily usable format. Moreover, their voluntariness provides a great foundation for a co-operative approach with the affected businesses. The guidelines thereby appeal to the businesses’ own vested interests and thus can increase their responsiveness to the provided recommendations.

The goal of this chapter has not been to lift self-regulation up above other regulatory systems, such as legislation. The focus was, rather, on theoretically determining the

---

353 A few insights into the response by family businesses (and other non-listed businesses) to such guidelines are provided in: McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 216-217: stating that one year after its introduction, 70 per cent of the responding businesses are aware of the existence of the Belgian Buysse Code and 20 per cent are adhering to some of the recommendations made therein. Similarly, Christoph Van Der Elst, ‘The Belgian Struggle for Corporate Governance Improvements’ (European Corporate Governance Institute, Law Working Paper No 114/2008) 35-36 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1261448>.
regulatory background of the relatively recent phenomenon of voluntary family business governance guidelines. In this regard, the approach has been to find a way of making the most of the existing merits of self-regulation, while simultaneously minimising some of its detriments. In order to clarify the basic ideas of enabling self-regulation via the instrument of voluntary corporate governance guidelines, this chapter applied this abstract concept to the practical situation in family businesses. Due to their idiosyncrasies arising from the overlap of family and business, which in turn can trigger specific corporate governance challenges, this group of businesses showcases the value and the need for enabling self-regulation. Not only does this approach allow for the variety of family business settings to be included, but it also provides for a gradual and progressive improvement of their governance structure in accordance with the particular situation and needs of the individual family business. Their suitability as an example for the applicability of enabling self-regulation is further underpinned by the circumstance that some countries have already initiated family business-focused voluntary corporate governance guidelines, which are intended to support them in their governance decisions.

On the whole, this exposition of self-regulation through voluntary family business governance guidelines highlights that there can be more to self-regulation than meets the eye and illustrates a different way of how the inherent, but so far underutilised, potential of self-regulation as a tool for raising awareness and ‘self-help’ can be realised. Concurrently, the provided insights into the regulatory role and function of this specific form of corporate governance guidelines aids the understanding of their distinctness when compared with more generic codes of corporate governance. These insights thus provide a further component essential to the following analysis of selected family business governance guidelines and also inform the subsequent set of guiding propositions for the drafting committees of such initiatives.
CHAPTER 3: GAINING PERSPECTIVE – A COMPARATIVE ANALYSIS OF FAMILY BUSINESS-FOCUSED CORPORATE GOVERNANCE GUIDELINES

1 Introduction

In recent times, corporate governance codes and guidelines have come to form an integral part of the corporate legal regulatory landscape. The main surge of corporate governance codes began in the early 1990s and since then has spread all over the globe. The target audience of these generic codes are larger companies. This is reflected especially in the fact that stock exchanges commonly have made compliance with such corporate governance codes a necessary component of their listing requirements.

Voluntary corporate governance guidelines focusing on family businesses, on the other hand, are a much more recent phenomenon. Contrasting with the notion of the ‘one size fits all’ approach reflected in the more generic corporate governance codes, these family business governance guidelines address the idiosyncrasies peculiar to this form of business that can give rise to additional layers of complexity and resulting governance concerns beyond those faced by businesses without family involvement. These more focused guidelines have emerged periodically since the early 2000s. They had a rather quiet start in that they were mostly established by private sector initiatives and did not receive much attention beyond these circles. Only lately, at a time where some of these first family business guidelines are already undergoing a revision process, this type of governance recommendations is gaining momentum towards a more global coverage and

354 It should be noted here, that there have been some prior implementations of such governance codes. Most notably, at the international level, the OECD Guidelines for Multinational Enterprises were established in 1976 as well as, at the national level, the America Law Institute’s Principles of Corporate Governance which were authorised by the Institute already in 1978 (however the final version was only published in 1994). See Melvin Aron Eisenberg, ‘Overview of the Principles of Corporate Governance’ (1993) 48 The Business Lawyer 1271 nn 1; Minor Myers, ‘Corporate Reform Movements and Corporate Law: Lessons from ALI’s Principles of Corporate Governance’ (Paper presented at the Midwest Corporate Law Scholars Conference, Moritz College of Law, Ohio State University, 15 June 2011) 1 <http://moritzlaw.osu.edu/events/mlsc/myers.pdf>; Organization for Economic Co-operation and Development, OECD Guidelines for Multinational Enterprises (2011) <http://www.oecd.org/daf/inv/mne/48004323.pdf>. The former OECD guidelines, however, naturally cover a much broader spectrum of topics, such as human rights, bribery or taxation, than what would commonly be included in more nationally focused corporate governance codes.

an incremental recognition of its merits and practical relevance. Their importance stems from two overriding aspects in particular: firstly, family business guidelines provide a remarkably suitable instrument to enable a better accessibility of the growing body of family business governance research, which in turn will prove to be of a greater practical value to the concerned family businesses. Secondly, by offering family businesses guidance for how to best address specific corporate governance issues which arise from their particular business setting, the guidelines can help to break down the additional layers of complexity affecting family businesses, thereby contributing to their longevity.

This thesis sets out to fill the still present research gap that exists with respect to family business governance guidelines by seeking to determine a common ground for viable corporate governance recommendations for family businesses. This area has yet to be explored and analysed in detail in the literature. This chapter provides an in-depth investigation into all elements relevant to developing family business-oriented governance guidelines, aiming to provide the framework for future developments, improvements, and revisions of such guidelines, as well as contributing to a better understanding of the corporate governance needs of family businesses. The key element of this investigation consists of an international comparative analysis of selected family business governance guidelines, focusing predominantly on those initiated in the European region.

Preparing the basis for this comparison, the next section provides an overview of the historical development of family business governance guidelines, their international distribution and the general structural formats in which they are commonly released. This is followed by a concise description of the general methodology employed in the analysis, detailing the reasons for selecting the identified family business governance guidelines as well as the structural layout of the comparative review. The analysis itself emanates from this review, the findings of which are collated in table format. The emphasis here is on outlining the diverse approaches to establishing the different guidelines, their individual focal points and their visual presentation. This comprehensive analysis is conducted in a factual manner, which in turn provides the basis for an evaluation of the insights gained in order to establish a general set of draft recommendations for the drafting committees of family business governance guidelines.
The evaluation of the comparison and the establishment of these draft recommendations are both carried out in the subsequent chapter.

2 Corporate Governance Guidelines Addressing Family Businesses – An Overview

The historical emergence of family business governance guidelines is best explained alongside the development of family business as a research topic. Family businesses became a discrete subject of inquiry in the late 1970s and early 1980s. In these early days, the better part of the research attention was dedicated to analysing and understanding why family businesses form a special kind of business. From this research their peculiarities as a business form came to light and provided the basic rationale for further and more detailed research on the subject matter. Stemming from this early research and in response to the insights gained, the research focus increasingly encompassed topics treating the corporate governance needs of family businesses, most notably since the 1990s. The topics of central concern ranged from specific thematic analyses, such as the succession in family businesses, to more general and all-encompassing inquiries. The development of family business-oriented corporate governance guidelines constitutes a logical extension of the theoretical research focus as they bridge the gap between knowledge gained in theory and its possible implementation in practice. In consequence, these pursuits concentrate on creating practical solutions and providing governance advice for family businesses that is geared towards their particular needs and concerns. They further strive to support family businesses in building and maintaining corporate governance structures which address both the family and business sides of this unique business form.

The first country-specific family business guidelines surfaced in 2003. Right from the start, a diversity in approaches to establishing family business governance recommendations appears and sets the tone for the subsequent development and drafting efforts in this area. The scope, content and comprehensiveness of the individual guidelines (in part) differ considerably according to their various formats. The main distinction can be drawn between those that focus exclusively on family business governance concerns and those that address a wider target audience, such as SMEs or

356 In order to avoid a repetition of the thematic literature review conducted at the beginning of this thesis, the reader is referred to the Introduction for further details on specific references.
non-listed companies, including only a separate chapter on the governance of family businesses. The two family business governance guidelines published in 2003 reflect this general division of focal points. For instance, while the Dutch Family Business Network issued the first exclusively family business-focused corporate governance recommendations under the title “The Family Business Governance Report: Practices and Recommendations”, the Hong Kong Institute of Directors authorised its own governance guidelines “Guidelines on Corporate Governance for SMEs in Hong Kong”, taking the broader SME approach but featuring a specific chapter on family business governance issues. The following overview table\(^\text{357}\) highlights the breadth and diversity in the development of family business governance guidelines.

<table>
<thead>
<tr>
<th>Name</th>
<th>Country</th>
<th>Year</th>
<th>Focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guidelines on Corporate Governance for SMEs in Hong Kong</td>
<td>Hong Kong</td>
<td>2003</td>
<td>SME focus, one section on family businesses</td>
</tr>
<tr>
<td>Governance Kodex für Familienunternehmen: Leitlinien für die verantwortungsvolle Führung von Familienunternehmen (Governance Code for Family Businesses: Guidelines for the Responsible Governance of Family Businesses)</td>
<td>Germany</td>
<td>2004</td>
<td>Exclusive family business focus</td>
</tr>
<tr>
<td>Guía Práctica para el Buen Gobierno de las Empresas Familiares (A Practical Guide to Good Governance in Family Businesses)</td>
<td>Spain</td>
<td>2005</td>
<td>Exclusive family business focus</td>
</tr>
<tr>
<td>Principles of Good Corporate Governance for Unlisted Companies: Code of Good Practice for Directors and Boards</td>
<td>Spain</td>
<td>2005</td>
<td>Focus on unlisted companies, one section on family businesses</td>
</tr>
<tr>
<td>Buysse Code (I and II): Corporate Governance Recommendations for Non-listed Enterprises</td>
<td>Belgium</td>
<td>2005</td>
<td>Focus on non-listed enterprises, one section on family businesses</td>
</tr>
<tr>
<td>Österreichischer Governance Kodex für Familienunternehmen (Austrian Governance Code for Family Businesses)</td>
<td>Austria</td>
<td>2005</td>
<td>Exclusive family business focus</td>
</tr>
<tr>
<td>Code G: Governance Guide for Families and their Businesses: Growing the Family Business</td>
<td>Switzerland</td>
<td>2006</td>
<td>Exclusive family business focus</td>
</tr>
<tr>
<td>The Lebanese Code of Corporate Governance</td>
<td>Lebanon</td>
<td>2006</td>
<td>Focus on Lebanese joint stock companies with a short section and more detailed appendix on family businesses</td>
</tr>
<tr>
<td>Improving Corporate Governance of Unlisted Companies</td>
<td>Finland</td>
<td>2006</td>
<td>Focus on unlisted companies with a short section on family businesses</td>
</tr>
<tr>
<td>The Corporate Governance Guide: Family-Owned Companies</td>
<td>Pakistan</td>
<td>2008</td>
<td>Exclusive family business focus</td>
</tr>
</tbody>
</table>

358 I have provided a translation of the title for those guidelines or codes where no official English translation was available. Links for the guidelines and codes included in the table have been included in the bibliography where available.
Gaining Perspective – A Comparative Analysis

<table>
<thead>
<tr>
<th>Name</th>
<th>Country</th>
<th>Year</th>
<th>Focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Le Code Spécifique de Bonnes Pratiques de Gouvernance des PME et</td>
<td>Morocco</td>
<td>2008</td>
<td>Focus on SME and family businesses</td>
</tr>
<tr>
<td>Entreprises Familiales (Special Code of Good Governance Practices</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>for SMEs and Family Businesses)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Governance Code for Unlisted Joint-Stock Companies in</td>
<td>Albania</td>
<td>2008</td>
<td>Focus on unlisted companies, one section on family businesses</td>
</tr>
<tr>
<td>Albania(^{359})</td>
<td></td>
<td>(last updated 2011)</td>
<td></td>
</tr>
<tr>
<td>Good Corporate Governance in Family Business – Governance of</td>
<td>Finland</td>
<td>2009</td>
<td>Exclusive family business focus</td>
</tr>
<tr>
<td>Ownership, Business and Family</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guía Colombiana de Gobierno Corporativo para Sociedades Cerradas</td>
<td>Colombia</td>
<td>2009</td>
<td>Focus on closed societies and family businesses</td>
</tr>
<tr>
<td>y de Familia (Colombian Guide of Corporate Governance for Closed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Societies and Family Firms)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Governance Guidance and Principles for Unlisted Companies</td>
<td>United</td>
<td>2010</td>
<td>Focus on unlisted companies, one section on family businesses</td>
</tr>
<tr>
<td>in the UK</td>
<td>Kingdom</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Corporate Governance Code for Small and Medium Enterprises:</td>
<td>Dubai</td>
<td>2011</td>
<td>Focus on SMEs with a short section focusing on family businesses</td>
</tr>
<tr>
<td>Building the Foundations for Growth and Sustainability</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1: Overview of Family Business Inclusive Guidelines

This overview indicates a growing awareness over the last decade concerning the particularities arising from a family business setting and the resulting corporate governance concerns that need to be addressed. European countries, in particular, have been at the forefront of developing family business governance recommendations. Notably, several of these countries have opted to take an exclusive family business-focused approach when developing their recommendations. This already hints at the great variety of governance issues that can arise in a family business. The above overview also shows that Spain and Finland are the only countries which offer two different governance guidelines with a family business coverage – one guideline following the family business specific approach and the other pursuing a wider

\(^{359}\) It should be noted that the Albanian Code and the United Kingdom Corporate Governance Guidance and Principles for Unlisted Companies are both based on the Corporate Governance Guidance and Principles for Unlisted Companies in Europe initiated and issued by the European Confederation of Directors’ Associations (ecoDa). The ecoDa code can be accessed under <http://www.ecoda.org/docs/ECODA_WEB.pdf>.
A further concentration of family business inclusive guidelines can be found in the Greater Middle East. However, the preference here tends toward broader governance guidelines for SMEs or unlisted companies with a separate section dedicated to family businesses. Overall, the drafting efforts in the abovementioned countries are also indicative of the high incidence of family businesses and their prominence in each respective national economy. Finally it needs to be noted that a number of the early governance guidelines have already gone through a revision of their original versions signalling an on-going commitment to family businesses and the intention of the initiators to further increase the quality and practicability of these recommendations.

3 General Methodology of the Comparative Analysis

The purpose of this section is to clarify the general methodology underlying the comparative analysis to follow. The subsequent analysis examines the structure, content and design of selected, currently existing, family business governance guidelines. This analysis will, in turn, inform the development of a general set of draft recommendations for the corporate governance of family businesses. Attention is drawn in the present section to the motivation and purpose of this comparative investigation as well as the rationale and process behind the selection of a limited number of family business guidelines that form the subject matter for the in-depth examination. The last part of this section details the structural frame and methodological aspects of the comparison itself.

3.1 Research Objectives

The overarching motivation of this thesis as such, and of the comparison in particular, is to help and enable family businesses to build a more sustainable and lasting business while concurrently protecting their family relationships. The development of family business guidelines, as described above, can provide an important tool for achieving these goals. However, while the number and, correspondingly, the diversity of such guidelines are on the increase, research has yet to catch up with this rise. Research initiatives are needed to contribute to the evaluation and analysis of the guidelines with the express aim of improving and guaranteeing their efficacy for the future. Apart from the proliferation of guidelines, the need for such concerted research efforts becomes

\[\text{The main reason for the existence of multiple governance guidelines in one country is due to the different issuing bodies that were responsible for their development.}\]
particularly clear when one bears in mind that the revision process of these family business governance guidelines has already started with several guidelines being now in their second edition and others are likely to follow suit soon. Without a thorough analysis and evaluation of the existing guidelines, such revisions threaten to fall short of their full potential. A further benefit of such directed research is that it will bring together the different ideas and approaches that the guidelines’ authors have developed. A comparative analysis provides a platform upon which disparate agencies can learn from each other. This in turn could initiate more collaboration and the sharing of insights gained during the drafting process and, later, feedback concerning the practical experience of how the family business guidelines work ‘on site’.

Currently however, research interest in these guidelines is still very much in its fledgling stages. Some corporate governance scholars have looked into these governance tools in discourses on best practices and means of corporate governance in family businesses, SMEs and unlisted companies. Still lacking to date is a detailed comparative study of the existing family business governance guidelines aimed at reaching a better understanding of how best to draft them; which contents to include; as well as identifying viable ways of facilitating their actual implementation in order to achieve the most beneficial governance outcomes for family businesses.

This chapter takes up this research gap and embarks on a comparative analysis of six selected family business governance guidelines with the objective of subsequently integrating its findings into a set of general draft recommendations for family business governance guidelines. The idea here is not to provide an exhaustive solution, a likely unfeasible goal in the light of the diversity in approaches and cultures, but to focus rather on identifying the desirable features of such guidelines with respect to their broader design, content and structure. These draft recommendations are intended to be utilised as

a point of departure for the development of prospective family business governance guidelines as well as for the revision of those already in existence.

3.2 Selection of the Family Business Governance Guidelines

The selection of the corporate governance guidelines, which form the foundation of the comparative analysis, constitutes one of the most crucial methodological considerations of this research project and accordingly requires particular attention as to the rationales underlying the respective choices. Since the focus of this thesis is on family businesses, the selection process concentrated on those guidelines that provide a more comprehensive and penetrating coverage of family business concerns. The majority of the governance guidelines, taking their perspective from an SME/unlisted enterprise point of view, include only one section on family business issues. While these sections contain some relevant content, they cover the issues in a very condensed form, which mostly fails to provide enough detail for family businesses to readily take up the recommendations and put them into practice.

A further, although in this context more subordinate, reason for isolating those guidelines which exclusively treat family businesses and their peculiar features arises from the fact that family businesses are not merely a subcategory of SMEs (or unlisted companies). The increased structural complexity and additional governance issues often faced by family businesses which result, are in general not caused by the actual size of the business but are due to the family element residing at the core of the business. Yet it is recognised that the complexity of these governance issues commonly increases with the growth of the business. Pursuing this line of thought, the comparative analysis primarily concentrates on the guidelines that have been developed exclusively with family businesses in mind. In order to account for the efforts made by the wider governance approaches in terms of their family business coverage, and also to contrast them with the guidelines that exclusively take a family business focus, one governance guideline which features the broader SME/unlisted companies approach has been included in the comparison.

As seen in section two of this chapter, family business governance guidelines have emerged all over the globe. Seeking to refine the focus of the analysis further and to provide a common basis for the comparison, the selection of the governance guidelines in
this chapter centres on those recommendations that have evolved in the geographical area of the European Union.\footnote{It should be noted that the European Union and its institutions play more of an umbrella role in terms of family business governance and do not provide a detailed influence on the drafting efforts. One more broadly focused initiative in this regard is the \textit{Small Business Act of 2008} (reviewed in 2011), which contains 10 principles in support of SMEs (and family businesses). See European Commission – Enterprise and Industry, \textit{SMEs – Small Business Act for Europe} (2013) <http://ec.europa.eu/enterprise/policies/sme/small-business-act/>.} Since the first guidelines have emerged predominantly in this area, with regard to the family business exclusive guidelines, the reason for this choice is readily apparent. As highlighted above, it is also the area in which the greatest number of family business guidelines exists. Furthermore, there is a comparable developmental standard among the different countries included in the analysis. Apart from their commonalities, these countries yet, at the same time, present independent and very distinct approaches to establishing their respective family business guidelines. This selection thus ensures a great diversity at the core of the comparative analysis.\footnote{The country-specific focus of the comparative analysis has been chosen for the its more general focus on family business governance in their national setting, as opposed to a more industry-specific emphasis, since the former aligns better with the objectives of the analysis. On the distinction between industry-focused and national-focused guidelines, see McCahery and Vermeulen, \textit{Corporate Governance of Non-listed Companies}, 215-216.} The selected family business exclusive corporate governance recommendations emanate from the following European countries: Finland, Germany, the Netherlands, Spain and Switzerland.\footnote{\textit{Good Corporate Governance in Family Business} (Finland, 2009); \textit{Governance Code for Family Businesses} (Germany, 2010); \textit{The Family Business Governance Report} (The Netherlands, 2003); \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012); \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006). Note: The revised Spanish and German guidelines have not yet been translated into English. I have relied on my own translations of these documents.} The Austrian guidelines have not been included, because their current revised version has been developed in collaboration with the same authors that have worked on the revision of the German family business guidelines one year earlier.\footnote{The INTES Institute was involved as an author on both occasions. See also European Family Businesses – GEEF, \textit{The EU Corporate Governance Framework – Consultation Paper}, Annex I.} In order to avoid comparing two relatively similar guidelines, and given the greater comprehensiveness as well as the predating of the substantial revision of the German guidelines when compared with the Austrian ones, the decision for inclusion was made in favour of the German family business guidelines.

Belgium’s “Buysse Code of Corporate Governance Recommendations for Non-listed Enterprises” is included as the one SME/unlisted enterprise focused guideline, selected from the pool of available European guidelines using the wider approach to family
business governance. The choice of Belgium is mainly due to the fact that it features a relatively comprehensive section on family business governance and that it has also already undergone a revision.

3.3 Structural Frame and Methodological Concerns

The comparison aims to provide a theoretical qualitative analysis of the selected family business governance guidelines. The analysis does not draw on quantitative research methods, such as statistical analysis, since the focus of the comparison is on identifying key governance themes, structural and design elements as well as specific content features rather than on a numerical compilation of family business guidelines. This qualitative approach is also reflected in the fact that, purposefully, only a small sample of family business guidelines has been selected, thereby allowing for a more in-depth analysis and thus greater exposition of the individual guideline components. Gathering these qualitative insights creates the requisite basis to enable the drafting of the general set of recommendations for family business governance as carried out in the following chapter.

The information collected from scrutinising each of the selected guidelines has been collated in condensed form in two main tables, one focusing on the general features of the family business guidelines and the second concentrating in greater detail on their design, structure and content elements. The second table has been divided further into smaller segments due to the greater amount of detail contained in this second part of the analysis. The table format and design, as such, and the concise presentation of the information generally, are intended to facilitate a more intuitive, initial overview of the different approaches and themes employed in the various guidelines and a starting point for the analysis itself. This analysis collates the information to identify the commonalities and differences among the selected guidelines. The analysis is conducted in a factual manner. The evaluation of these discerned insights is held off until the next chapter since the evaluation lies closer to the general set of draft recommendations to be developed there.

---

366 Buysse Code II (Belgium, 2009).
367 In order to further aid the overview function of the tables, the information related to the broader unlisted enterprises approach of the Belgian guidelines has been visually delineated from the other family business exclusive governance guidelines for better contrast.
Literature on comparative corporate governance and, in particular, other research studies conducting a comparative review of corporate governance codes (in Europe) have been consulted to determine the specific table parameters according to which the selected guidelines are analysed. These studies have been primarily drawn on to identify those criteria that are commonly considered to be influential to the overall drafting process, the guideline elements and format, as well as their future development. Examples for such criteria include, for instance, the composition of the drafting committee as well as the nature of the issuing body in general, or changes made during a revision process. Further parameters that more specifically account for the particular family business context of the comparison have been added and have been generally based on their impact on the existing family business guidelines as well as their connection to the overarching research aspects regularly featured in family business research. Examples of such parameters include the purpose of the individual family business guidelines and the overall approach taken in their content structure.

4 Comparative Analysis

The comparative analysis of the selected family business guidelines proceeds in the order of the parameters as set out in the two main tables. Table 2 features general information with respect to the selected guidelines and Tables 3-5 comprise detailed information on their structural, design and content aspects. Each main table is preceded by a general explanation of its particular content focus and the rationales behind the choices of parameters. Subsequently, the detailed analysis of the insights gained from examining the various guidelines is conducted. The comparison is concluded by a brief summary that brings together the novel features unearthed in this analysis and thereby also sets the path for the formulation of a general set of draft recommendations for family business governance.

4.1 General Guideline Features

The first table of the comparative analysis provides very general information on the name of the guidelines, the date of original issuance and – where applicable – of their revision, the issuing body or authors of the guidelines, the addressed target audience as specified in the guidelines and ultimately the extent of the guidelines in terms of page numbers. Apart from the obvious inclusion of the name and issuance date of the guidelines, the focus on their revision is of relevance. It is valuable to see which guidelines have actually undergone a revision as this demonstrates the ongoing importance of the guidelines to family businesses as well as issuing authorities. So long as the guidelines come under revision, it is clear that they are being used and are a live issue for those involved. Further, it is widely accepted that the nature of the issuing body or author is generally essential for the direction of a corporate governance guideline or code. Attention will therefore be paid to the individual issuing bodies of the selected guidelines as well as the composition of their respective drafting committees. The addition of the target audience of the guidelines can highlight a more specific focus of individual guidelines. This proves to be a point of differentiation among the guidelines to some degree. Finally, the extent of the guidelines has also been incorporated as it may give some indication of the quantitative comprehensiveness of the guidelines and, when taken together with the analysis of the respective content, will allow some conclusion as to the desirable length and comprehensiveness of such family business recommendations to be drawn.

369 This parameter is supported by a more in-depth analysis of the changes made during these revisions, which is included as the final parameter of table 2.

<table>
<thead>
<tr>
<th>Country</th>
<th>Title</th>
<th>Date</th>
<th>Revision Date</th>
<th>Issuing Body</th>
<th>Target Audience</th>
<th>Extent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>Good Corporate Governance in Family Business: Governance of Ownership, Business and Family</td>
<td>2009</td>
<td>N/A</td>
<td>PL Finnish Family Firms Association</td>
<td>Family firms – especially owners</td>
<td>20 pages</td>
</tr>
<tr>
<td>Germany</td>
<td>Governance Code for Family Businesses: Guidelines for the Responsible Governance of Family Businesses</td>
<td>2004</td>
<td>2010</td>
<td>INTES (consulting and educating company for family businesses), Die Familienunternehmer (ASU) (interest group organisation of family businesses)</td>
<td>Family businesses – especially owner families</td>
<td>28 pages</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>The Family Business Governance Report: Practices and Recommendations</td>
<td>2003</td>
<td>N/A</td>
<td>FBNED – The Dutch Association of Family Firms</td>
<td>All interested family businesses, whether Dutch or foreign; specifies family members, shareholders, CEOs, their close advisers and commissioners of the larger family businesses, but also smaller family businesses seeking to grow</td>
<td>48 pages</td>
</tr>
<tr>
<td>Spain</td>
<td>A Practical Guide to Good Governance in Family Businesses</td>
<td>2005</td>
<td>2012</td>
<td>Instituto de la Empresa Familiar (Family Business Institute)</td>
<td>Family businesses</td>
<td>70 pages</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Code G: Governance Guide for Families and their Businesses</td>
<td>2006</td>
<td>N/A</td>
<td>Continuum AG (family business consulting company), Prager Dreifuss (law firm), Vereinigung der Privaten Aktiengesellschaften (Swiss association of privately held companies)</td>
<td>Family members and business officers (in family businesses); for medium-size and large companies that are privately run independent of legal form</td>
<td>36 pages</td>
</tr>
<tr>
<td>Belgium</td>
<td>Buysse Code II: Corporate Governance Recommendations for Non-listed Enterprises</td>
<td>2005</td>
<td>2009</td>
<td>Committee on Corporate Governance for Non-listed Enterprises under Chairman Baron Paul Buysse</td>
<td>Entrepreneurs; “all enterprises registered by Belgian law that are not classed as ‘listed companies’ as defined in the Belgian Companies Code” (Buysse Code II, [1.1])</td>
<td>2.5 out of 33 pages</td>
</tr>
</tbody>
</table>

Table 2: General Guideline Features
Title

The guideline title is generally instructive about the focus taken in the particular guidelines. While all of the examined family business specific guidelines explicitly refer to the context of the governance of family businesses in their title, the Belgian guidelines do not. This can be easily explained by the wider approach taken in the latter governance guideline, which focuses on non-listed enterprises, but it also indicates that, overall, less attention is paid to family business-related issues.\(^{371}\) It is of further interest that within the family business specific guidelines, the Swiss’ choice of wording for the title is the only one out of the selected guidelines that does not simply refer to ‘(governance of) family businesses’ as such, but instead to being a “Governance Guide for Families and their Businesses”.\(^{372}\) This distinction already highlights that both of these elements of a family business will (need to) be treated separately in the course of the guidelines, but also that the proper governance of the family component is as, if not even more, important for the overall success of the family business as the business component of the family business.

The subtitles included in some of the family business governance guidelines are likewise insightful in terms of specifying their focal point or the overarching objective of the guidelines. The subtitle in the Finnish guidelines indicates that their recommendations are structured along the division of subsystems under the so-called three circle model, an approach developed within a systems theory conceptualisation of family businesses. While the German subtitle does not extend too much beyond its general heading, it still emphasises the objective of seeking to facilitate the responsible governance of family businesses.\(^{373}\) The Swiss family business governance guidelines’ official subtitle specifies the central goal of aiding the growth of family businesses. The latter guideline goes even further by adding the following caption above the main title: “Family: Business: Environment”.\(^{374}\) This addition hints at the structure governing the guideline, which – as already described – concentrates on the governance issues involving the family as well as the business. Moreover, the position and role of the family business is addressed in its broader business environment as well.

\(^{371}\) Compare also Buysse Code II (Belgium, 2009), foreword, section 1.
\(^{372}\) Emphasis added. See Governance Guide for Families and Their Businesses (Switzerland, 2006).
\(^{373}\) Emphasis added. See Governance Code for Family Businesses (Germany, 2010).
\(^{374}\) See Governance Guide for Families and Their Businesses (Switzerland, 2006).
Date

The majority of the selected governance guidelines have been developed in the first half of the last decade, with the Dutch recommendations being the first family business specific guidelines to emerge in the year 2003. While the Finnish family business exclusive guidelines are the latest original draft of governance recommendations within the comparison, published only in 2009, it should be pointed out that the Finnish Central Chamber of Commerce already included a concise paragraph on family business governance issues, particularly on the matter of succession in family businesses, in their 2006 recommendations on “Improving Corporate Governance of Unlisted Companies”. The original Belgian governance recommendations date back to 2005, thus similarly making them one of the earlier guidelines that pursue a wider, and not family business exclusive, approach.

Revision

Although many of the family business guidelines within the comparison have been issued in the initial years of the general appearance of this kind of guideline, only two out of the five of the selected family business specific guidelines have undergone a revision so far. The German guidelines were the first to be revised in 2010, six years after their original publication. The second, only very recent, revision took place with regard to the Spanish family business governance recommendations, seven years after their initiation. Against this background, it is further illuminating to see that, for instance, the Swiss governance recommendations in their initially published German language version from 2006 explicitly signal their intention to review and update these guidelines regularly. And yet, to date, they have not followed suit. On the other hand, the Belgian guidelines, advocating the wider unlisted enterprise focus, have been revised in 2009, only 4 years after their initial publication. Comparing these three revision periods, a time span of on average more than 5 years passed before any revision took place, with the non-family business specific Belgian guidelines exhibiting the least amount of time between the two

375 Central Chamber of Commerce of Finland, Improving Corporate Governance of Unlisted Companies (Finland, 2006) 11.
376 Governance Guide for Families and Their Businesses (Switzerland, 2006), 6. The pinpoint citation here refers to the German language version of the Guide. This part of the guidelines has not been included in the English translation.
In this regard, it should, however, be already noted that the two revisions concerning the family business specific guidelines were of a much more comprehensive nature and thus resulted in more substantial changes when compared to the revisions made in the Belgian guidelines.

While not being an actual revision in terms of changing and updating the originally existing version of the guidelines, in 2005 the Dutch Family Business Network published a separate family business governance document as a “logical sequel” to its initial 2003 governance guidelines called “Ownership Strategies for Family Businesses”. This second set of recommendations focuses in greater detail on the ownership aspect in family businesses and the responsibility and choices resulting from this position, yet without replacing the 2003 recommendations. While similarly not constituting a revision, the majority of the selected guidelines have also been translated into English. It should be noted that the current version of the German guidelines from 2010, as well as the revised Spanish guidelines from 2012, have so far been only published in the countries’ native language. Time will tell, whether a translation of these two latest editions was generally not intended, which could signal a greater national focus and applicability of the guidelines.

Issuing Body

The first notable insight that becomes apparent when comparing the various issuing bodies of the selected guidelines is that all of these recommendations have emerged from private sector initiatives. That is, there is a general lack of government involvement in the area of family business governance. Not surprisingly, within the selected family business specific guidelines a great impetus toward drafting has emerged from family business-related institutions and associations, first and foremost the Family Business Network and its associated local chapters. The Dutch, Finnish and Spanish family

---

377 Similar time spans seem to generally apply with regard to other family business inclusive governance guidelines, as detailed in the overview in section 2 above. The only other guidelines that have already been revised are the family business specific Austrian Governance Code for Family Businesses, first published in 2005 and revised in 2011, and the Guidelines on Corporate Governance for SMEs in Hong Kong, first published in 2003 and revised in 2009.
378 The detailed changes made in these three revisions will be analysed as part of the second table below.
379 See FBNed – The Dutch Association of Family Firms, Ownership Strategies for Family Businesses (Bilthoven, June 2005) 3.
380 See also ibid.
381 Only the Swiss and the Belgian governance guidelines had some government representation within their drafting committees. See Governance Guide for Families and Their Businesses (Switzerland, 2006), Guideline on Corporate Governance for SMEs in Hong Kong (Switzerland, 2006), 6 (German language version); Buysse Code II (Belgium, 2009) 31-33.
business guidelines emanate directly from these local family business network chapters – the FBNed, FBN Finland (PL – Finnish Family Firms Association) and the Instituto de la Empresa Familiar (Family Business Institute) – respectively. The remainder of the selected guidelines exhibit at least an indirect relation with their respective local chapters. For instance, the chair and one other committee member of the German drafting initiative are concurrently also the President and Executive Director of the local German Family Business Network chapter. Similarly, the President of the Swiss-German local chapter is likewise one of the main initiators of the Swiss family business governance guidelines. In this regard, it is also noteworthy that the committee chair and a further committee member of the wider-ranging Belgian guidelines are also simultaneously the President and the CEO of the Belgium Family Business Network. In contrast to other selected guidelines, this link has not resulted in drafting family business specific guidelines in the Belgian case, but instead has led to the production of more broadly focused guidelines for unlisted enterprises which include a section on family business governance issues.

In some instances, there has also been a collaboration between several institutions. Most pointedly, the German and Swiss Guidelines stand as clear examples here. In the German case, the most recent version was developed on the initiative of INTES, a consulting and education institute for family businesses, and Die Familienunternehmer (ASU), an interest group organisation representing family businesses. The issuing bodies of the Swiss governance guidelines include a family business consulting company (Continuum AG), a law firm (Prager Dreifuss) and a Swiss interest group organisation of privately held companies (Vereinigung der Privaten Aktiengesellschaften). Closely related to this fact, and independent of the nature of the actual issuing body, all of the

---

383 Ibid.
384 Ibid.
385 Ibid. See also the committee composition at the end of the Belgian Code: Buyssse Code II (Belgium, 2009), 31.
386 It should be noted that the first edition of the Spanish guidelines was also a collaborative initiative among the Spanish Family Business Institute, the Financial Studies Foundation and the IESE Business School (University of Navarra). The revision has, however, been predominantly driven by the Spanish Family Business Institute while still drawing on the expertise of other collaborating organisations. See A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 5.
387 Governance Code for Family Businesses (Germany, 2010), 25.
388 Governance Guide for Families and Their Businesses (Switzerland, 2006), 33. Note: The Swiss interest group organisation of privately held companies (Vereinigung der Privaten Aktiengesellschaften) has not been mentioned again in the English language version of the Swiss guidelines.
selected guidelines were developed by a drafting committee. All of these committees were interdisciplinary in their nature and composed of members with a diverse range of professional backgrounds. The latter range from general and family business consultants, individuals from the respective family business networks or interest group organisations, lawyers, academics from business and legal disciplines, members of parliament or government related agencies, general business interest group organisations, representatives of banks, senior management or board members of (family) businesses, to representatives of the financial services industry and related interest group organisations.

Comparing the different committees established for developing the selected guidelines, some idiosyncrasies can be detected. The size of the committee varies significantly between the guidelines, from small committees of eight or nine members in the Netherlands and Finland to 20 and more in Switzerland, Belgium and Germany. The Spanish report does not identify any specific committee members, but mentions ten specific collaborators that were also involved in the guideline revision. It is notable that the larger committees in Switzerland and (especially in) Germany include a considerable number of family business representatives, contributing to the greater size of the committee. Despite the small number of committee members, the Dutch guidelines were developed by a committee that predominantly consisted of senior management or board members of local family businesses. In this regard, the Spanish guidelines acknowledge in their preface that the close relationships cultivated with a large number of local family businesses have informed and contributed to the changes made in the revised version. Due to the difference in focal point, the relatively large Belgian guideline committee does not include as many family business representatives, but rather businesses that reflect the non-listed enterprise scope of the guidelines. In addition, among the selected guidelines the Belgian committee consisted of probably the most diverse group of members. This committee further appears to have placed a particular emphasis on the importance of involving various (financial industry) interest group organisations. Another feature that stood out in the comparison of the committee

---

389 The Family Business Governance Report (The Netherlands, 2003), 2; Good Corporate Governance in Family Business (Finland, 2009), 2; Governance Guide for Families and Their Businesses (Switzerland, 2006), 9 (a more extensive list of the committee members can be found on page 6 of the German language version); Buysse Code II (Belgium, 2009), 31-33; Governance Code for Family Businesses (Germany, 2010), see overview of committee members after title page.

390 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 5.

391 Ibid.
compositions was the high number of committee members, especially with regard to the involved academics, with an economics background within the Finnish guidelines committee. The other guidelines did not show such tendencies and generally relied on more varied backgrounds – in particular with regard to academic committee members – featuring members specializing in fields as diverse as management, accounting and finance, (corporate) law and corporate governance.

**Target Audience**

Within the group of the selected family business specific governance guidelines it is not surprising that family businesses are identified as the target audience of the recommendations. But in some instances further specifying nuances highlighting particular interest groups or stakeholders within, and connected to, the family business are detectable. The introductions to both the German and the Finnish guidelines target the collective of family owners in particular.\(^\text{392}\) Similarly, the Swiss and Dutch guidelines go into further detail when outlining the personal scope of their recommendations.\(^\text{393}\) The Swiss guidelines refer in particular to the family members and business officers within the business.\(^\text{394}\) The Dutch recommendations also mention, specifically, the family members, the shareholders and the CEOs of family businesses and then, even beyond the boundaries of the actual family business as such, they include close advisers and commissioners into their target audience.\(^\text{395}\) It is noteworthy that the Dutch guidelines are the only ones within the pool of the selected guidelines that include family business advisers as potential addressees of their governance recommendations. Additionally, these recommendations highlight that their guidelines are not only meant for local businesses, but may also be of interest to foreign family businesses.\(^\text{396}\)

The latter guideline, as well as the Swiss and Finnish recommendations, even suggests a further element specifying their target audience – namely, the size and developmental stage of the addressed family businesses. The Swiss recommendations are aimed at

---

\(^{392}\) Governance Code for Family Businesses (Germany, 2010), 3-4; Good Corporate Governance in Family Business (Finland, 2009), 2. It should be noted in this context, that the 2005 sequel to the Dutch family business governance recommendations also has an exclusive focus on the ownership issues arising in family businesses. See generally, FBNed – The Dutch Association of Family Firms, Ownership Strategies for Family Businesses.

\(^{393}\) The ‘personal scope’ here refers to the group of persons at which the family business guidelines are directed.

\(^{394}\) Governance Guide for Families and Their Businesses (Switzerland, 2006), [5].


\(^{396}\) Ibid, 7.
medium-sized to large family businesses that are, however, still privately run.\(^{397}\) The Dutch guidelines, while also focusing on larger family businesses, also explicitly include smaller family businesses that are intent on expanding their business into the stipulated scope of application.\(^{398}\) The Finnish recommendations stress that micro-companies as well as listed family businesses have not been included in the primary scope of application.\(^{399}\) Despite this particular declaration, the Finnish recommendations refer to the situation of listed family firms on several occasions throughout the guidelines.\(^{400}\) Additionally, the Swiss guidelines, as the only of the selected family business specific guidelines, also state explicitly that family businesses are addressed irrespective of their chosen legal form.\(^{401}\)

In contrast, the Belgian guidelines address their recommendations to the entrepreneurs and, more specifically, to “all enterprises registered by Belgian law that are not classified as ‘listed companies’”.\(^{402}\) This is unsurprising given the naturally wider focus of these guidelines. In a way similar to the Swiss guidelines, they are thus allowing for a potentially wide coverage of unlisted businesses without limiting the legal form to that of incorporated businesses.

**Extent**

The selected family business specific guidelines range in their comprehensiveness from 20 up to 70 pages, with Finland and Germany at the lower end and the Netherland and Spain at the higher. The average length of the selected guidelines solely addressing the governance issues of family businesses themselves amounts to 40 pages. A comparison with the volume of the broader focused Belgian guidelines indicates a great difference in the extent to which family business specific governance issues are covered. The Belgian recommendations dedicate about 2.5 pages out of a total of 33 to the governance of family businesses.

---

\(^{397}\) *Governance Guide for Families and Their Businesses* (Switzerland, 2006), [5].


\(^{399}\) *Good Corporate Governance in Family Business* (Finland, 2009), 2. They do, however, suggest other relevant governance codes that may be helpful to family businesses that find themselves in such configuration.

\(^{400}\) See for instance, ibid, 4, 5, 7.

\(^{401}\) *Governance Guide for Families and Their Businesses* (Switzerland, 2006), [5].

\(^{402}\) *Buysse Code II* (Belgium, 2009), [1.1].
4.2 Format, Structure and Content Features of the Selected Guidelines

The second set of tables depicts the information gathered on the guidelines’ purpose, their structure and format, the guideline content, special features, the extent to which compliance is emphasised in the guideline as well as the relevant changes that were made in the revision process. The examination of these parameters constitutes the principal part of the comparison. The features uncovered within this section depict the heart of the guidelines. These will prove to be crucial for devising a general set of draft recommendations for family business governance in the next chapter. The stated purpose of a family business governance guideline is worth considering as it elucidates the objectives that the guideline initiators seek to achieve, but often how they also plan to realise these objectives. Closely related to the latter, the ‘purpose statement’ often indicates how the recommendations are meant to be used by the target audience. The format and design parameters address the overall design elements of the individual guidelines. The focus here is on identifying how the content is structurally organised and presented in the guidelines as well as to see if the recommendations make use of stylistic devices, such as explanatory and visual aids and guidance, for the benefit of greater accessibility to the reader.

The content element of the analysis draws on the content themes addressed in the guidelines and their structural presentation. The emphasis of this parameter is put on broad themes including the common issues addressed in order to discover the most salient points of interest. Furthermore, the parameter of ‘special features’ is included to be able to account for unique points or issues that have been incorporated into the recommendations and that transcend the core topics typically covered in family business governance guidelines. A further rationale for including this category is that it also captures distinctive and useful design features not provided in other selected guidelines. While all the selected guidelines are voluntary in nature, investigating to what extent they anticipate a certain degree of ‘compliance’ or response by the target audience is of relevance. The varying terminology used can be an indicator of the different levels of importance that the authors of the guidelines ascribe to individual recommendations. In addition, it signals the envisaged general degree of commitment by the target audience. The final parameter included here looks into the nature and extent of the changes made during the revision process that some of the selected guidelines have undergone.
Analysing these revisions from a design and, especially, content point of view may give some indication about the lessons learned and potential feedback.
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Purpose</th>
<th>Format</th>
<th>Design</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td>Aid the development of good governance practices in family businesses</td>
<td>Running text format</td>
<td>Simple colour scheme</td>
</tr>
<tr>
<td></td>
<td>Increase in family business competitiveness</td>
<td>Two column style</td>
<td>Bolding font</td>
</tr>
<tr>
<td></td>
<td>Use specific features of family businesses to generate best outcomes for family owners and business</td>
<td>Section division by numeration</td>
<td>Italicisation</td>
</tr>
<tr>
<td></td>
<td>Enhance understanding of various roles in family businesses</td>
<td>Introduction to main topics and most subsections</td>
<td>Brief examples</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Use of diagrams</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Some cross-referencing</td>
</tr>
<tr>
<td>Germany</td>
<td>Assist family owners in developing suitable solutions to governance issues</td>
<td>Principle based format</td>
<td>Simple colour scheme</td>
</tr>
<tr>
<td></td>
<td>Aid family businesses in evaluating existing governance practices</td>
<td>Section division by numeration</td>
<td>Bolding font</td>
</tr>
<tr>
<td></td>
<td>Enhance understanding of what is good governance in family businesses</td>
<td>Frequent use of enumerative lists</td>
<td>Italicisation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Introduction to main topics</td>
<td>Brief examples</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Some cross-referencing</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Enhance understanding of what is good governance in family businesses</td>
<td>Running text format</td>
<td>Elaborate colour scheme</td>
</tr>
<tr>
<td></td>
<td>Aid continuity and progress of family businesses with resulting benefits for national economy</td>
<td>Section division by numeration</td>
<td>Bolding font</td>
</tr>
<tr>
<td></td>
<td>Incentive for exchange of ideas among family businesses for how to best utilise recommendations for better governance</td>
<td>Few enumerative lists</td>
<td>Use of enumerative lists</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Introduction to main topics and major subsections</td>
<td>At the end of subsections – specific recommendations</td>
</tr>
<tr>
<td>Spain</td>
<td>Emphasis on the practicality of the recommendations</td>
<td>Running text format</td>
<td>Elaborate colour scheme</td>
</tr>
<tr>
<td></td>
<td>Provide practical tool for family businesses to solve their specific governance issues</td>
<td>Section division by numeration</td>
<td>Bolding font</td>
</tr>
<tr>
<td></td>
<td>Enhance understanding of what is good governance in family businesses</td>
<td>Few enumerative lists</td>
<td>Comprehensive examples</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Introduction to main topics and major subsections</td>
<td>Use of question format, diagrams, page headers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Use of enumerative lists</td>
<td>Some cross-referencing</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Promote best practice and transparent and parallel decision-making in family businesses</td>
<td>(Shorter) running text format</td>
<td>Elaborate colour scheme</td>
</tr>
<tr>
<td></td>
<td>Strengthen internal trust and external standing of family businesses</td>
<td>Section division by numeration</td>
<td>Bolding font</td>
</tr>
<tr>
<td></td>
<td>Provide governance tools to assist family businesses</td>
<td>Numeration of paragraphs</td>
<td>Italicisation</td>
</tr>
<tr>
<td></td>
<td>Assist in realising advantage of being a family business</td>
<td>Introduction to main topics</td>
<td>Comprehensive examples</td>
</tr>
<tr>
<td></td>
<td>Foster clearer understanding of various roles in family businesses</td>
<td>Subsections preceded by overview of recommendations</td>
<td>Use of question format, diagrams</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Enumerable lists</td>
<td>Frequent cross-referencing</td>
</tr>
<tr>
<td>Belgium</td>
<td>No particular reference to family businesses</td>
<td>Mixed approach: principle and running text</td>
<td>Bolding font</td>
</tr>
<tr>
<td>(the primary focus is on the family governance section)</td>
<td>But generally: facilitate growth of addressed businesses</td>
<td>Division by numeration</td>
<td>Brief examples</td>
</tr>
<tr>
<td></td>
<td>Assist in establishing mechanisms to avoid pitfalls and conflicts</td>
<td>Numeration of paragraphs</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Frequent use of enumerative lists</td>
<td></td>
</tr>
</tbody>
</table>

Table 3: Purpose, Format and Design of the Guidelines
Purpose

While formulated and expressed in different ways, the general overarching stated purpose of all the selected family business specific guidelines is to facilitate an improvement of corporate governance in family businesses. The individual guidelines go about achieving this goal by addressing both practical and theoretical aspects of family business governance, while placing different emphases on each of those aspects.

As can be already gathered from their title, the Spanish guidelines explicitly express that they are principally written to provide family businesses with a practical tool to enable them to better deal with the challenges they face due to their specific nature. In a less pronounced form, the Finnish guidelines also declare their intent to aid the development of efficient corporate governance practices in family businesses and then link this to the ultimate purpose of increasing the competitiveness of family businesses as well. Similarly, the German guidelines express the practical ambition to assist family owners in developing individually tailored solutions to their governance issues that correspond with their respective situations. These recommendations even add a further layer to their practical dimension by specifying as another purpose their aim to aid family businesses in the evaluation of their existing governance practices in order to support them in their further governance optimisation and adjustment. In doing so, the guidelines are not only relevant to family businesses that are just starting to elaborate their governance practices, but are likewise geared towards family businesses with a more advanced governance structure. The Dutch recommendations outline their intended practical purpose of fostering a greater discourse among family businesses on how these recommendations can be helpful in establishing good governance systems within their businesses.

The Swiss guidelines express the practical objectives of their recommendations in a two-fold way. On the one hand, they emphasise the goal of promoting best practice and transparent and parallel decision making procedures in the family and the business, which in turn is related to the further purpose of strengthening trust within the family

403 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 4.
404 Good Corporate Governance in Family Business (Finland, 2009), 2.
405 Governance Code for Family Businesses (Germany, 2010), 3-4.
406 Ibid, 4.
business as well as its integrity with external stakeholders. It should be noted here that within the practically oriented descriptions of their purpose, these recommendations emphasise the importance of dealing separately with the governance of the family and the business. On the other hand, the Swiss – similar to the Spanish purpose statement – aim to provide some specific governance tools to assist family businesses. However, the focal point here stems from the fundamental belief that the additional family component in the business can actually be beneficial and the suggested mechanisms are meant to support the family businesses in realising this advantageous potential. The angle taken in this regard by the Swiss goes beyond the more general notion displayed in other family business specific guidelines in that they not only seek to improve their governance structures in response to the specific governance challenges, but, additionally, to explicitly accentuate and build on the inherent advantages that arise from being a family business. Likewise, the Dutch seek to address the common “image problem” of family businesses by focusing on combining professional corporate governance with the inherent strengths of family businesses. In a less overt way the Finnish guidelines also convey a similar notion. They seek to use the idiosyncratic features of family businesses to create the most beneficial outcomes for the needs of the owner families and the business. In this way they further highlight the separation of these two areas for governance purposes in correspondence with the Swiss.

The Belgian recommendations do not explicitly refer to family businesses in their purpose statement, but focus predominantly on practical objectives by seeking to provide a “practical manual” geared to facilitate a viable growth of the targeted businesses. Additionally, the recommendations aim to assist non-listed businesses in establishing mechanisms to avoid tapping into significant governance pitfalls or conflicts. While not specifically referring to family businesses here, the last aspect resonates clearly with the ideas presented by the first set of selected guidelines. The specific mention of the purpose of conflict prevention stands out in the Belgian guidelines as this is a concern closely related with family businesses. None of the family business specific governance guidelines, however, directly names this as one of their objectives.

408 Governance Guide for Families and Their Businesses (Switzerland, 2006), 3.
409 Ibid, 5.
411 Good Corporate Governance in Family Business (Finland, 2009), 2.
412 Buysse Code II (Belgium, 2009), 6.
413 Ibid.
The theoretical purposes mentioned in the individual family business specific guidelines differ more from each other than is observable within the practical purposes. As already indicated under the practical purposes for the Swiss guidelines, the distinction of family and business governance also forms the foundation underlying their described theoretical objectives. The Finnish recommendations explicitly emphasise that their main focus is on enhancing the understanding of the disparate roles in a family business, including an awareness of the responsibilities and expectations of these roles, interrelation between different roles, and their relevance in relation to the different governance bodies. Less clear, but overall making the same point, the Swiss guidelines state the purpose of fostering the development of “clear and optimal conditions” in the family business by clarifying the distinct requirements, expectations, organisational structures within the different spheres of family, business as well as external stakeholders.

The other guidelines do not primarily focus on the clarification of roles, but instead ascribe importance to the theoretical purpose of providing for a better understanding of what constitutes good governance of family businesses as well as improving awareness of the common governance obstacles arising in family businesses. This common purpose can be identified in the Dutch, German and Spanish recommendations. While the German guidelines more generally refer to assisting the families in “asking the right questions” essential to establishing and maintaining good governance, the Dutch highlight their intention to shed light on what is necessary to guarantee the longevity of family businesses and also to progress as a business. Interestingly, the Dutch, in this regard, not only refer to the importance of the benefits gained from these objectives by the family businesses themselves but also to its relevance for the Dutch national economy. The Spanish recommendations greatly interlink this theoretical purpose with their abovementioned overall practical focus. Their guidelines aim to schematically collect the most utilised, significant, and novel elements deemed to be crucial for a good governance of the family and the business.

414 Good Corporate Governance in Family Business (Finland, 2009), 2, 6.
415 Governance Guide for Families and Their Businesses (Switzerland, 2006), 3.
416 Governance Code for Family Businesses (Germany, 2010), 4.
418 Ibid.
419 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 13.
Format and Design

The first element of these two closely linked aspects to be addressed is the way in which the content of the guideline is generally presented. The chosen formats differ between the selected guidelines, with the majority of the guidelines employing a mix of different formats. The Finnish recommendations strongly follow a running text based format with sometimes quite long paragraphs. The text is presented in a two column style and thus appears very dense. This is broken up clearly into the different main topics and also aided by including numbered subheadings throughout the recommendations as well as an enumerative list in one instance. Within their recommendations, the Finnish provide a short and general introduction for almost all of their main topics which is then followed by more detailed information. Similarly, the majority of subtopics include a shorter introductory paragraph at the outset.

A comparable text format can be found in the Spanish as well as in the Dutch guidelines. The running text format in the Spanish recommendations is broken down into paragraphs of different length, with numbered subheadings located directly at the beginning of the relevant paragraph. In contrast to the Finnish example, subheadings occur much more frequently, thereby substantially breaking up the segments of running text, increasing the readability of the text. The main topics are also clearly distinguished by placing the numbered headings on a separate page. Furthermore, the subsections begin with a short introduction leading over to a very detailed coverage of the relevant topic, and the same is true for the beginning of each main topic. Despite the overarching choice of a running text format, the Spanish recommendations are repeatedly interspersed with bulleted or numbered lists of concise information to either showcase different alternatives for a certain issue, to bring an enumerative list to the forefront of consideration, or to provide a brief overview of certain points. The Dutch guidelines similarly feature a running text format which is set in paragraphs of differing length. However they do not use any numbering apart from the main subsections and therefore display their guidelines in a manner slightly closer to the Finnish approach in this aspect. The Dutch recommendations also use bulleted lists on several occasions, often when outlining certain key points of an issue by way of an overview, especially at the beginning of sections. Within the sections, an introduction is generally followed by more detailed information on the topic at hand. In distinction to the previous two guidelines, the
sections are then finished off by providing specific, concise recommendations on the discussed content which are consecutively numbered throughout the entire guidelines. It should be noted here that the detailed information provided in the sections already includes several governance recommendations, some of which are picked up again in these specific recommendations where further clarification or details are deemed necessary. The specific recommendations are not a mere repetition of these more general suggestions though, but always elaborate on the earlier remarks.

The Swiss guidelines do not deviate too much from the running text format described above. However, they use a much shorter amount running text per paragraph. This results in a greater compartmentalisation of the included information. While the main body of the recommendations follows this running text approach, the guidelines utilise bulleted lists especially at the beginning of the family governance chapter as well as in the introductory part. The layout of the Swiss guidelines incorporates main headings and subheadings in different sizes to clearly demarcate the different topics addressed in the guidelines. Each main heading is followed by a few introductory paragraphs in order to provide an overview of the topics ahead. In contrast, the subsections employ a different format by starting off with general recommendations on the respective issues which are presented in a boxed frame and subsequently explained and clarified in more detail through the information provided in the short paragraphs. The latter are additionally numbered consecutively throughout the guideline allowing for easy reference to certain key aspects or points of interest.

In contrast to the predominantly favoured running text format within the selected family business specific governance guidelines, the German recommendations are the only ones that are presented in a more ‘principle’ based format. That is, they present their governance suggestions as a list of short principles or maxims that family businesses should follow. The reason for this choice might stem from the issuance of these family business guidelines as a ‘governance code’ reflecting the very common approach to the more general corporate governance codes worldwide which are typically presented in a more principled form.\textsuperscript{420} The frequent use of bulleted lists throughout the German family

\textsuperscript{420} It should be noted that the broader Belgian recommendations are also issued as a code. As highlighted below, they also draw on the more principle-based format, however in a less strict way. The comment made in the introduction to the ownership focused governance document published by the Dutch Association of Family Firms in 2005 is interesting in this regard. With reference to the Dutch family business governance guidelines, it is stated that these recommendations are “not a code laying down what
business code consistently fits with this choice of format. Overall, the layout follows a clear hierarchical structure with the help of different sized and numbered headings and subheadings as well as a corresponding numbering of the different principles within the subsections. Additionally, each major heading is followed by an introductory paragraph which provides a synopsis of the respective governance features at issue. Where deemed necessary, the principles are often followed by further short paragraphs containing more detailed or clarifying information. These are presented in a similar principle-based style and wording.

The family business governance chapter in the Belgian guidelines uses a mixed approach combining a principle style and running text format within their recommendations. The extensive use of bullet points as a way of enumerative listing within in the first part of the family business chapter can probably be explained due to the necessarily dense presentation in this chapter as only one part of a broader focused governance code. It is also this part that formulates the recommendations in the more concise principle format. The second half of the recommendations uses short running text style paragraphs comparable to those in the Swiss guidelines. The layout makes use of distinct headings, with only the main section headings being numbered. While the subheadings are not numbered, the recommendations within them are numbered consecutively in correspondence with the main topic heading.

The second element of interest from a design perspective is the incorporation of visual aids and other stylistic devices. One of the notable visual aids employed in the majority of the selected guidelines are colour schemes. Apart from the Belgian recommendations, all the family business specific guidelines employ colour schemes to varying degrees. The German and Finnish recommendations utilise colour in a relatively restricted way, primarily emphasising only headings and, in the case of the German recommendations, distinguishing the introductory paragraph from the subsequent recommendations as well. The Spanish, Dutch and Swiss guidelines, on the other hand, use colour to a greater extent, strategically emphasising important parts of the
content. For instance, the Dutch and Swiss guidelines highlight their specific or overarching recommendations in coloured boxed frames. Similarly, the Spanish use coloured boxed frames to highlight important overview sections pertaining to certain roles and functions in the family business, as well as practical advice on certain issues. The Spanish guidelines also contain a colour coding in their surveys, diagrams, and page headers. The Swiss similarly employ colour in their diagrams and they frame important points with accentuating colours, thereby drawing attention to important questions the family business needs to address. The Dutch also use colour, but only to highlight their page headers and ‘stakeholder labels’. Another visual aid is the use of word formatting devices such as bolding or italicising. Without exception, all of the selected guidelines make use of bolding in their headings and subheadings. Some guidelines use it additionally to emphasise certain words, phrases or key elements. The Swiss and the Finnish guidelines further employ italicisation as a way of emphasising.

The provision of examples to further elucidate a certain governance aspect is probably the most common stylistic device utilised by the majority of the selected guidelines. However, the degree of comprehensiveness of the examples included varies considerably across the guidelines. The German, Finnish and Belgian recommendations more or less briefly mention, for instance, certain topics to be included in governance documents or tasks to be conducted by certain governance bodies via bullet points or some other form of enumerative listing. Other recommendations, such as the Swiss, Dutch or Spanish, extend the use of examples further to also describe practical situations in which a certain governance issue can occur, or to highlight different alternative solutions for how to resolve such an issue – just to name a few. The three latter guidelines also frequently incorporate questions into their recommendations to fulfil the function of a heading or to provide family businesses with a starting point for addressing their own governance issues by encouraging them to ask themselves the given questions. Linked to that is a further stylistic device repeatedly used throughout the Spanish recommendations – surveys. These surveys either reflect practically on a question associated with the respective subsection in which they are placed or they come in the form of diagrams or graphs. In either case, both formats represent the opinion of Spanish family businesses on

423 The ‘stakeholder labels’ employed in the Dutch guidelines are explained briefly below.
424 This can be detected in the Finnish and, to some extent, in the Swiss recommendations. The latter formatted the general recommendations in the coloured boxed frames at the beginning of each subsection in a bold font.
a particular governance matter. Diagrams in the Spanish, Dutch, Finnish and Swiss governance guidelines are further taken up to show interrelations between governance bodies, systems or mechanisms.

Striving for a user-friendly orientation within the guidelines, the Spanish and the Dutch recommendations utilise headers that indicate the main topic under which the current subsection is subsumed. The Dutch recommendations further include labels at the beginning of each subsection, indicating for which particular stakeholders the respective subsection is of special relevance, with ease of navigation through the document being similarly borne in mind. The frequent cross-referencing employed in the Swiss recommendations likewise aids the orientation of the reader. At the same time it also indicates the interconnection between governance aspects relevant in more than one sphere of the family business and refers the reader to a more detailed explanation of a governance concept that is addressed at a different, more appropriate place in the recommendations. Cross-referencing as a stylistic device is also employed in the German, Spanish and Finnish guidelines, although to a much lower extent.
<table>
<thead>
<tr>
<th>Country</th>
<th>Parameter</th>
<th>Structure</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>Based on 3-circle model</td>
<td>Preface; Introduction</td>
<td><strong>Good governance and ownership</strong></td>
</tr>
<tr>
<td></td>
<td>Emphasis: dominant focus on owner governance</td>
<td></td>
<td>Topics: annual meeting, board of directors, supervisory boards, auditing, communications</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Good governance and business</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: executives, family members in the business</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Good governance and the family</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: council of owners, family council, next generation, expenses of family governance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Bedrocks of good governance in family firms</strong></td>
</tr>
<tr>
<td>Germany</td>
<td>Based on 3-circle model</td>
<td>Preface; Introduction (Preamble)</td>
<td><strong>Responsible family ownership</strong></td>
</tr>
<tr>
<td></td>
<td>Emphasis: primary focus on business governance and owner governance</td>
<td></td>
<td>Topics: values/objectives, information, role of family governance, new family members</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Owners</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: owners as a group, individuals owners</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Supervisory board</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: tasks, composition, compensation, liability</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Executives/Management</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: tasks, composition, compensation, liability</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Annual accounts and usage of profits</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Transfer and exit of ownership</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Family governance</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Glossary</strong></td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Based on 3-circle model</td>
<td>Preface; Several introductory sections (eg. rationale, methodology, reading guide, relevance and definition, typology, special features of family businesses, structure of recommendations)</td>
<td><strong>Family governance recommendations</strong></td>
</tr>
<tr>
<td></td>
<td>Emphasis: balance of family, business and owner governance</td>
<td></td>
<td>Topics: values/goals, communication, family leadership and involvement, dispute resolution, next generation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Business governance recommendations</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: strategic concept, governance model, management policies, board of directors, general staff involvement, outside shareholders, management succession</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Owner governance recommendations</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Topics: shareholder involvement, choice of being an owner, rights and duties, size of shareholder group, shareholders’ agreements, voting and non-voting stock, outside shareholders</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Recommendations for the relationship between the 3 pillars</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Recommendations for fail safe measures</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Suggested use</strong></td>
</tr>
<tr>
<td>Country</td>
<td>Structure</td>
<td>Content</td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>---------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Based on 2-circle model</td>
<td>Preface; no specific introductory section (instead: definition of family business and importance of good governance)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Emphasis: balance of family and business governance</td>
<td>Corporate governance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Topics: role and regulations of the general meeting, board of directors (types, function, chair, competencies, governance processes, regulations, size and composition, classes of directors, directors' duties, liability, role of independent directors, appointment, re-election and resignation of directors, structure of the board, committees, remuneration of management and directors), annual accounts, internal control, corporate responsibility and sustainability</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family governance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Topics: objectives, development, family assembly (functions), family council (functions, common practices, size and composition), family protocol (content, businesses that do not have a family protocol)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family/Business relationships</td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>Based on 2-circle model</td>
<td>Preface; Introduction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional focus on public governance</td>
<td>Implementation advice</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Emphasis: balance of family and business governance</td>
<td>Family business and its stakeholders</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family governance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Topics: family charter, wealth strategy, family reunions and family council, information and communication, succession and handing over the business</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporate governance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Topics: vision and strategic orientation, board of directors, executive management, shareholders, management systems, corporate culture, requirements for the key people, generational change</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public governance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Topics: customers, employees, investors, business partners, the public, the state, professional organisations</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Glossary</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Checklist for good governance in family businesses</td>
<td></td>
</tr>
<tr>
<td>Belgium (the primary focus is on the family governance section)</td>
<td>N/A</td>
<td>Family governance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Topics: the family forum, the family charter, consulting with the shareholders, succession, conflict resolution</td>
<td></td>
</tr>
</tbody>
</table>

Table 4: Structure and Content of the Guidelines
Structure and Content

General Content Elements

Before delving into a more detailed analysis of the content matters covered in the individual selected governance guidelines, an overview of the general composition of the family business recommendations will help to understand the underlying approach which the guideline authors have taken to convey their ideas and efforts to the target audience. At the beginning of all selected guidelines, sections containing a preface and introduction can be found. The general contents covered in both are variously compartmentalised into each part depending on the individual set up of the guidelines. This makes it difficult to draw a clean line between their respective contents.

With the exception of the German and Swiss recommendations, which feature a less personalised preface, the prefaces have been written by the guideline initiators, in most instances by the chair of the committee. A common theme emerges among those guidelines that are now in their second edition where reference to the original publication of the recommendations comes to be included as part of the preface. Spain and Belgium focus in more detail on the changes that have occurred in the meantime, especially drawing on the more fragile economic climate resulting from the financial crisis, the evolution of family businesses and their governance practices since the first guidelines, and the corresponding reasons necessitating a revision and updating of the guidelines. The very brief preface in the German guidelines simply refers to the underlying rationale behind of the revision, which is based on the experiences made from working with the first edition as well as incorporating insights gained from the ongoing theoretical discourse on family business governance. The preface further mentions the expansion of the code drafting committing for the second edition. A reference to the contributors or committee charged with developing the individual recommendations can also be found in the Dutch, Spanish and Belgian prefaces. The remaining preface topics significantly overlap with what other selected guidelines have included in their introduction and are thus addressed together in the following paragraph.

425 See A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 4-5; Baysse Code II (Belgium, 2009), 6.
426 Governance Code for Family Businesses (Germany, 2010), 2.
427 The Family Business Governance Report (The Netherlands, 2003), 3; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 5; Baysse Code II (Belgium, 2009), 6.
In contrast to the other selected guidelines, the Spanish recommendations do not contain a clearly designated introductory section, but have chosen to prelude their recommendations by providing a short family business definition, followed by a section on the importance of good governance of the family and the business, a short overview and general differentiation of the three primary governance organs in a family business, and finally a paragraph on the purpose and addressees of the recommendations. The introductory sections in the other selected guidelines address comparable topics. The remaining guidelines all describe their intended goals and include a reference to the intended addressees in one of the two initial sections. The Dutch and Finnish likewise include a definition of family businesses as part of their introduction, but also refine the actual personal scope of application within the variety of family businesses even further. Together with these guidelines, the Swiss and the German guidelines further set apart family businesses as a business form, by describing their particularities, as well as highlighting their economic relevance, and stressing the resulting importance of good governance in family businesses. Referring to this latter aspect, the Swiss lay particular stress on clarifying the role of the family and its governance as the core of the family business. With a slightly different focus, the Finnish accentuate the role of the owners of the family business as part of their overview of the different roles in a family business that is again based on the three circle model.

The German guidelines, on the other hand, conclude their introduction with advice on the intended ‘compliance’ levels based on specific wording choices. These wording choices help to distinguish between those recommendations that are strongly suggested to be implemented and those where family businesses are given a bit more leeway in terms of implementation. In similar fashion, the end paragraph of the Swiss introduction alerts the reader to how the most relevant recommendations are marked and highlighted within each subsection. The Dutch, while also outlining a gradated ‘compliance’ system similar to the German model, go even further into detail by including a methodology underpinning the drafting of the guidelines as well as incorporating a reading guide into

---

428 Note: The German recommendations are preceded by a separate section titled ‘Preamble’. This has been taken to be their introductory section since this part is itself precluded by a preliminary note, which was treated as the preface. Further, the Dutch include overall two preliminary sections that together cover the mentioned introductory topics.
429 Governance Guide for Families and Their Businesses (Switzerland, 2006), [2], [3].
430 Good Corporate Governance in Family Business (Finland, 2009), 6.
431 Governance Code for Family Businesses (Germany, 2010), 4.
432 Governance Guide for Families and Their Businesses (Switzerland, 2006), [6].
the introduction.\textsuperscript{433} Lastly, it is not surprising that, due to their broader focus, the Belgian guidelines do not allude to family businesses specifically in their introduction apart from mentioning briefly that corporate governance is vital in ensuring the longevity of family businesses.\textsuperscript{434}

Beyond these introductory elements of the guidelines, the German and Swiss recommendations also incorporate a glossary of relevant terms at the end of their guidelines. The latter go even further and provide family businesses with a checklist based on the recommendations and topics included in the guidelines to facilitate engagement with the addressed governance issues and see them through to realisation. They also incorporate a section that advises individual family businesses on how to best put these recommendations and suggestions into practice. The Dutch governance guide takes a similar path by also offering a section on the “suggested use” at the end of its recommendations in addition to its already mentioned reading guide, with both acting as complementary aids to the targeted family businesses. Additionally, the Swiss, Dutch and Finnish guidelines include a short section providing a description of their respective issuance bodies.\textsuperscript{435}

**Structural Approach**

Providing an insightful point of departure for the following detailed content analysis that looks into the themes commonly captured in the selected governance guidelines, a brief overview of their general content structure is useful. Except for the Belgian example which exclusively focuses on the family governance within its family business section, two general structural patterns can be identified among the selected family business specific guidelines. The first approach is a guideline structure based on the already mentioned three circle model, which has been developed as a systems theory approach to understanding family businesses. This line of thought categorises family businesses into the three different spheres of family, owner and business.\textsuperscript{436} The Finnish follow this

\textsuperscript{433} *The Family Business Governance Report* (The Netherlands, 2003), 8, 13.
\textsuperscript{434} *Buysse Code II* (Belgium, 2009), [1.3]. There is no specific introduction to the family business governance section itself.
\textsuperscript{435} *Governance Guide for Families and Their Businesses* (Switzerland, 2006), 33; *The Family Business Governance Report* (The Netherlands, 2003), 4; *Good Corporate Governance in Family Business* (Finland, 2009), 19.
\textsuperscript{436} See chapter 1, section 3.
structural foundation in the most explicit way by even referring to the model. The Dutch similarly draw on these three systems as the pillars for family business governance. According to their overall structure, the German guidelines likewise adhere in principle to this approach. In contrast, the Spanish and Swiss recommendations base their core structure only on the twofold distinction between family and corporate governance. However, it should be emphasised that the two guidelines pursuing this twodimensional structural approach do integrate shareholder-related information where appropriate in the other two spheres, most predominantly within their respective family governance chapters. It should also be noted that the Swiss recommendations feature a third main component which focuses on the governance relationship with external stakeholders.

Overall, it is noticeable that the individual family business specific guidelines place a different emphasis on the relevance of the individual governance spheres. The overarching trend sees a striving for a balance in the coverage of family and business governance recommendations. This strategy applies in particular to the Swiss and Spanish recommendations. The former guideline places a slightly greater emphasis on the family governance. This governance sphere is the first topic dealt with in the recommendations, likely due to its attested foundational influence on the business governance. The latter recommendations award somewhat greater attention to the aspect of business governance in family businesses by treating these issues first and to some extent more extensively. The German governance guidelines address all three dimensions – the family, business, and ownership spheres – and dedicate a great deal of consideration to the area of business governance, followed by the governance of the ownership sphere to a slightly lesser degree. Family governance issues are dealt with in a relatively brief form; however the ownership section also includes some reference to family governance aspects. This situation is probably traceable to the inherent conception of shareholders as being primarily the owner-families. The Dutch

437 Good Corporate Governance in Family Business (Finland, 2009), 6.
439 In this regard, the German guidelines have been placed under this concept, since they emphasise the role and responsibilities of the (family) owners, but also address, in addition, the matters of the family and the business.
440 See for instance: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 57-58 (recommendations on the transfer of shares); Governance Guide for Families and Their Businesses (Switzerland, 2006), [39] (recommendations on shareholders’ agreements).
441 Governance Code for Family Businesses (Germany, 2010), section 1. These recommendations address the owner family and overlap to some extent with issues coming under the family governance aspect.
recommendations, albeit dealing with the family governance first, provide, overall, an even balance among all three governance spheres – with a slightly shorter section on the matter of ownership. Standing out from the previously mentioned guidelines are the Finnish recommendations. Although they built up their content structure along the three circle model and consequentially address all three governance dimensions, their clear emphasis of the ownership sphere is conspicuous. This emphasis is reflected in their dealing not only with this dimension first and more extensively, but also in their likewise approaching the other two spheres from an ownership perspective.

Detailed Content Features

The first sphere of significance which is addressed in all the selected guidelines is that of ‘family governance’. Almost all of the selected guidelines recommend the creation of family governance bodies in correspondence with the size or developmental stage of the family as a crucial element of good family governance. The Belgian recommendations, in reflection of their wider approach, focus only on the one governance body deemed essential by all the guidelines that address the family governance bodies: the creation of a family council as a committee generally composed of a number of selected family members. The term family council is most commonly used, but the term family forum likewise occurs. It is suggested in the Dutch, Swiss and Spanish recommendations that this governance body be complemented by a second, more broadly encompassing, governance body comprised of the family and its members as such, variably referred to as family meeting, family reunion or family assembly. The Finnish recommendations, again reflecting a more owner-focused structure, also include the governance body of a

---

442 But it should be noted that the same issuing body has published a separate governance document in 2005 that is exclusively devoted to the ownership strategies in family businesses. See FBNed – The Dutch Association of Family Firms, Ownership Strategies for Family Businesses.
443 See, for instance, Good Corporate Governance in Family Business (Finland, 2009), 13 (introducing the ‘council of owners’ within the family governance part).
444 The only guideline that does not explicitly refer to the creation of such a governance body is the German family business code.
445 Buysse Code II (Belgium, 2009), [9.1-9.4]. Definitions for the term ‘family council’ are provided in: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 43; The Family Business Governance Report (The Netherlands, 2003), section 3.2.2; Governance Guide for Families and Their Businesses (Switzerland, 2006), [28]-[29]; Good Corporate Governance in Family Business (Finland, 2009), 4.2.
446 See Buysse Code II (Belgium, 2009), [9.1-9.4].
The four mentioned family business specific guidelines, as well as the Belgian recommendations to a lesser extent, make an effort to not only define the nature of these governance bodies and demarcate them from each other, but also indicate at what point in time their creation should be considered (at the latest). Another component that is given great attention in this respect is the scope of tasks and topics that these governance bodies should concern themselves with. A particularly detailed list is contained in the Spanish recommendations and includes, for instance, the functions: of determining the values and vision of the family which are to be reflected in the family business; or of generally representing the family in the wider public realm and within the business itself, especially vis-à-vis the board of directors. Within the definition of the scope of responsibility of the family governance bodies, the selected family business specific recommendations also highlight the boundaries of this responsibility and, furthermore, they stress the importance of the family’s abstaining from interfering with the business governance in this regard. The advice extends to the composition, size and preferable membership of these governance bodies.

Closely related to the governance bodies, the selected guidelines draw on the creation of family governance documents that are generally drafted by the family council. These documents capture the family policies, as elaborated by the council, in writing. They are commonly referred to as the family protocol or family charter and form another crucial aspect addressed under the notion of family governance by the majority of the guidelines. Apart from defining the term ‘family protocol’ and its nature more closely, the focus of the recommendations is primarily on the relevant contents to be included in this governance document. The remainder of the family governance sections is commonly devoted to presenting some of the most essential and common governance issues faced by the families in greater detail. One issue that is addressed by the vast majority of the selected guidelines is the problem of the change of generations in the

448 Good Corporate Governance in Family Business (Finland, 2009), 13-14. However, this body is of greater relevance to its namesake sphere.
449 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 44, 45, 52.
450 See for example: Governance Guide for Families and Their Businesses (Switzerland, 2006), [55]; Good Corporate Governance in Family Business (Finland, 2009), 14.
451 See for instance: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 54ff; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.1; Buysse Code II (Belgium, 2009), [9.5].
family business.\textsuperscript{452} The emphasis here is placed, in particular, on the importance of an early creation of a succession plan.\textsuperscript{453} Another aspect that is commonly mentioned relates to the preparation of the next generation in terms of stimulating their interest in the family business, while also devising strategies for their education and training in order to ensure they are adequately qualified for entering the business.\textsuperscript{454} In this regard, gathering experience outside the family businesses is strongly recommended by the guidelines.\textsuperscript{455} Closely related to the matter of succession, several of the selected guidelines also advise to establish criteria that family members have to meet in order to be able to take up a position in the company.\textsuperscript{456}

Another governance matter that is addressed to a varying degree in all the selected guidelines is the importance of agreeing and implementing dispute resolution mechanisms.\textsuperscript{457} While some guidelines, such as the German and Spanish, merely advise to discuss this issue and to establish a process to deal with it,\textsuperscript{458} the more substantial recommendations, in particular the Dutch, highlight the potential sources of conflict and provide various alternatives on how conflict can be either prevented in the first place or be effectively dealt with should it arise. Connected with dispute resolution mechanisms, the majority of the selected recommendations underscore the relevance of establishing and ensuring good communication not only among the family, but also in relation to the business and its governance bodies.\textsuperscript{459} According to these recommendations, good
communication entails the development of proper channels to pass on information about the business, to consult the family in business matters that impact on them and to allow a forum for different opinions to be voiced and discussed. The necessity of reaching a consensus within the family is generally stressed throughout the various guidelines. Ultimately, a further topic frequently taken up in the selected recommendations revolves around the governance issue of the family finances. The recommendations range from the requirement to establish a wealth strategy, in particular for the family assets that are not tied up in the business,\textsuperscript{460} to the importance of ensuring liquidity in case a development in the family or the business presupposes a certain amount of available capital,\textsuperscript{461} to the relevance of estate planning from a patrimonial and matrimonial point of view,\textsuperscript{462} and finally to the problem of financing expenses caused by family governance efforts and the provision of loans to the business.\textsuperscript{463} Across all of the recommendations, the focal points most consistently insisted upon as the formative governance pillars underlying a good family governance include the demand for an increasing professionalisation of the family alongside its own development and growth, together with an active engagement by family members with the family business.\textsuperscript{464}

There is an overarching feature common to all of the selected guidelines: namely, ‘business governance’. This section is included because there is the need to interlink the general corporate governance issues found in many of the standard governance codes with the family influence and involvement arising from a typical family business setting. The business governance recommendations provided in the various selected guidelines differ in the extent to which they emphasise this interrelationship. The following

\textit{Report} (The Netherlands, 2003), section 3.2.2; \textit{Good Corporate Governance in Family Business} (Finland, 2009), 14; \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 43, 50.\textsuperscript{460} \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), section 4.2.\textsuperscript{461} Compare \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 49, 59.\textsuperscript{462} In particular, see: \textit{Governance Code for Family Businesses} (Germany, 2010), [2.2.5], [6.1]; \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), [21], [39]; \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 58.\textsuperscript{463} In particular, see: \textit{Good Corporate Governance in Family Business} (Finland, 2009), section 4.4; \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 59.\textsuperscript{464} See for instance: \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), [24], [28]; \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 42, 59-61; \textit{Good Corporate Governance in Family Business} (Finland, 2009), 14-15; \textit{The Family Business Governance Report} (The Netherlands, 2003), section 3.2.3.
commentary focuses in particular on how and where the selected guidelines have considered the family impact within the business sphere.\textsuperscript{465}

With respect to the two main governance bodies in the business sphere, namely the board of directors and the executive/management team,\textsuperscript{466} it can be noted that the selected guidelines differ in their preferences of what constitutes the most crucial governance organ in the family business. The importance of the role of the board in a family business is especially pronounced in the Spanish recommendations,\textsuperscript{467} while the majority of the selected guidelines address the relevance of both governance bodies in more or less equal measure.\textsuperscript{468} In contrast, the business governance section of the Finnish recommendations imparts a predominant focus on the role of the senior executive management within the business governance section, while the board of directors is, peculiarly, addressed as part of the section on owner governance.\textsuperscript{469}

In terms of the board of directors, one governance aspect that has been frequently referred to is the initial creation of a board of directors or comparable structure.\textsuperscript{470} As part of the process of establishing a board of directors, the majority of the guidelines address the matter of the preferable composition of the board. Two key issues are given particular attention in this context. The first deals with the inclusion of family members on the board. Here, the recommendations highlight the need to establish clear and transparent criteria for their election and cessation as a board member, as well as for determining the required personal and professional capabilities of the respective family

\textsuperscript{465} The Belgian guidelines, due to their wider approach, do not include specific commentary on the business governance in family businesses, but they refer, in a few and mostly general observations, to family business specific matters in their general corporate governance recommendations for non-listed enterprises. Accordingly, these will be included in the present section. The wider governance recommendations will not be commented on due to their lack of clearly depicting the family business specific governance issues.

\textsuperscript{466} The term ‘governance body’ should be understood more loosely here in that it refers to the two main organs in the business sphere. As indicated above, a narrow definition is more closely focused on the board of directors as the governance body in a company.

\textsuperscript{467} A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 16ff.

\textsuperscript{468} The Swiss guidelines likewise give more attention to the board of directors, but include a shorter section on the company’s executives as well. Governance Guide for Families and Their Businesses (Switzerland, 2006), sections 5.2.1-5.2.2.

\textsuperscript{469} Good Corporate Governance in Family Business (Finland, 2009), 7-9 (board of directors), 11-12 (management).

\textsuperscript{470} In particular, see: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 16-17; The Family Business Governance Report (The Netherlands, 2003), section 3.3.4; Buysse Code II (Belgium, 2009), section 4; Good Corporate Governance in Family Business (Finland, 2009), 7-8; Governance Code for Family Businesses (Germany, 2010), introduction to section 3.
The second issue relates to the benefits of also recruiting non-family members for the board. The recommendations generally acquiesce on the role of these external board members and the competencies they need to bring with them. Overall, in these guidelines it is stated that these external directors require a skill set that complements that of the family board members; they should demonstrate an understanding of and a compatibility with the family values, traditions and dynamics that underpin the family business. Their independence in a family business context is, according to the selected guidelines, especially reflected in their role of providing a mediating balance and an objective opinion, in situations where a consensus cannot be reached by the family or for the assessment of a family candidate’s suitability in the business. Given their key position at the junction of family and business governance, the role of the chairman of the board of directors is detailed in several guidelines. For instance, the function of consulting or informing the family about relevant matters concerning the family and the business – and which thus should be taken on by a person with professional experience that is also trusted by the family – is particularly stressed.

While the guidelines address the broader range of the general responsibilities of the board, important board functions within the business sphere constitute, in particular, the tasks of installing and upholding the governance benchmarks and values, as elaborated by the family and its governance bodies. Further frequently mentioned tasks lie in establishing a long term strategy for the family business, determining the remuneration, and conducting the job evaluations, of family members working in the business.

With regard to the executive management, as the other important organ in the business sphere, the selected guidelines raise some comparable governance aspects to those

471 In particular, see: Governance Code for Family Businesses (Germany, 2010), [3.2.2]; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 29-30; Good Corporate Governance in Family Business (Finland, 2009), section 2.2.
472 See generally: The Family Business Governance Report (The Netherlands, 2003), section 3.3.4; Good Corporate Governance in Family Business (Finland, 2009), 8; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 24-25; Governance Code for Family Businesses (Germany, 2010), [3.2.1]; Governance Guide for Families and Their Businesses (Switzerland, 2006), [50]-[51].
473 Compare: Good Corporate Governance in Family Business (Finland, 2009), 7; Governance Code for Family Businesses (Germany, 2010), [3.2.2]; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 17-18.
474 In particular, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), [53]; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 18; Good Corporate Governance in Family Business (Finland, 2009), 8.
475 In particular, see: Good Corporate Governance in Family Business (Finland, 2009), 8-9; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 32-37; Governance Guide for Families and Their Businesses (Switzerland, 2006), [61],[67]; Buyssse Code II (Belgium, 2009), [5.20.6].
addressed under the board of directors. The recommendations further universally draw great attention to the importance of an equal and transparent treatment of family members in comparison to non-family managers, not just in terms of remuneration, but also when it comes to promotions and the weight their opinions carry in decision-making. Some guidelines stress, in addition, the possibility of offering a reward or bonus of some sort to bind the external manager to the family business or at least to ensure a competitive remuneration package since the recruitment of highly qualified non-family members is likely inevitable at some point in the evolutionary progress of the family business. Some of the guidelines further mention that regard should be given to questions concerning their compatibility with the family business and their required areas of competence. This is seen as especially important where the management team is comprised of several family members in order to help avoiding conflict and facilitate consensus. Finally, it is frequently recommended that great care is to be taken where the appointment of a non-family CEO is considered, even if only for a transitional period, with a view to the continuation of the family business as such.

Closely related to the latter point, the one business governance issue that is addressed in all of the selected family business specific guidelines is the succession of the business management. The role of the board in determining and guiding this process is accentuated and the support and collaboration of the current senior management is

---

477 This is consequential given that the board of directors as the primary governance body of the business supervises, and commonly delegates certain tasks to, management. For instance, the executive management contributes to determining the criteria and qualifications that family members have to possess in order to be considered for a management position in the business. See Good Corporate Governance in Family Business (Finland, 2009), 12.

478 In particular, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), section 5.2.2, [66]; The Family Business Governance Report (The Netherlands, 2003), 26, section 3.3.3; Governance Code for Family Businesses (Germany, 2010), [4.2.2]; Good Corporate Governance in Family Business (Finland, 2009), 11, 12.

479 In particular, see: Good Corporate Governance in Family Business (Finland, 2009), 11-12; The Family Business Governance Report (The Netherlands, 2003), 27; Governance Guide for Families and Their Businesses (Switzerland, 2006), [61]; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 33-34.

480 See for instance, The Family Business Governance Report (The Netherlands, 2003), 26-27; Good Corporate Governance in Family Business (Finland, 2009), section 3.1.

481 The Family Business Governance Report (The Netherlands, 2003), 26-27; Good Corporate Governance in Family Business (Finland, 2009), section 3.1.

482 It should be noted here that the aspect of succession in the family business is often addressed within the family and the business sphere, and also impacts on the family owner sphere. In particular, see: Good Corporate Governance in Family Business (Finland, 2009), 12; Governance Code for Family Businesses (Germany, 2010), [4.2.3]; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 5.6; The Family Business Governance Report (The Netherlands, 2003), section 3.3.7; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 21 (however, only to a limited extent).
deemed likewise crucial. The recommendations concur as to the necessity for starting to plan this changeover at an early point in time in order to allow sufficient time and space to ensure an easy transition. When developing the succession plan, the recommendations advise to assess the current situation of the business and the corresponding requirements and challenges facing the incoming management generation. This will enable the board to establish the criteria and competencies called for in the person of the new CEO. In the context of management succession, the recommendations agree on the requirement to likewise attend to the development of a so-called emergency or contingency plan. Such a plan will come into action if one of the key persons within the business is unexpectedly unable to fulfil their role. A further governance aspect within the business sphere of a family business that is identified in some of the guidelines, is the way in which the family business recognises and acts on its corporate social responsibility with regard to its local environment.

All family business specific guidelines also take the governance concerns of the owners of the family business into consideration. This sphere is likely to overlap or even coincide with that of the family to a great extent. This circumstance helps to explain why some guidelines, as highlighted above, choose to predominantly focus on the business and family spheres, and embed owner governance issues into these; in particular as part of the family governance recommendations. Overall, the selected recommendations emphasise the demand and need for encouragement of family shareholders to be committed, active and well informed in order to contribute and ensure the continuing success of the family business. An in-depth understanding of the business is

483 See for instance: The Family Business Governance Report (The Netherlands, 2003), section 3.3.7; Governance Guide for Families and Their Businesses (Switzerland, 2006), [68], [71].
484 In particular, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), section 5.6; The Family Business Governance Report (The Netherlands, 2003), section 3.3.7.
485 In particular, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), [40] (dealt with in the family part); Governance Code for Family Businesses (Germany, 2010), [4.2.3]; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 58.
486 In particular, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), section 6; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 38-39.
487 See generally: Governance Guide for Families and Their Businesses (Switzerland, 2006); A Practical Guide to Good Governance in Family Businesses (Spain, 2012).
488 In particular, see: The Family Business Governance Report (The Netherlands, 2003), section 3.4.1; Governance Code for Family Businesses (Germany, 2010), [1.2], [2.2.3]; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 5.2.3; Buysse Code II (Belgium, 2009), [7.3]-[7.4], [9.6].
considered important by the selected guidelines not only in terms of decision-making but also when determining the family shareholders’ expectations on their family business in terms of business growth and returns. Another aspect of common concern within the recommendations refers to the topic of the share distribution strategy in family businesses. There are two components that are addressed in this regard. The first dimension relates to the negotiation of the ratio in which the profits are retained in the business and distributed to the family shareholders. When negotiating the appropriate distribution, the recommendations highlight the overarching objective for the board of striking the right balance in satisfying reasonable expectations by the owners as well as meeting the financial demands of the business when viewed from a long term perspective. The second dimension involves contemplating the share distribution policy among the different generations in order to avoid dilution of the family shares. The guidelines further stress that such balancing and shaping of the family business share distribution still needs to provide an incentive for the incoming generations to engage in family ownership and become committed and active shareholders. The Spanish recommendations, in particular, highlight different models that can be implemented and also identify concerns associated with each model.

It is further advocated in the selected recommendations that the family establish the criteria for becoming or ceasing to be a shareholder. In a similar fashion, the majority of the family business specific guidelines stress the importance of agreeing on the procedure and terms of a share buy-out or transfer situation in advance. In this regard, it is generally recommended that family businesses ascertain the details of the most crucial aspects of such share transactions, such as the manner in which the shares can be offered,

[9.7] (the latter two references refer to the family governance part); Good Corporate Governance in Family Business (Finland, 2009), 10.

489 In particular, see: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 18-19; The Family Business Governance Report (The Netherlands, 2003), section 3.4.3; Governance Code for Family Businesses (Germany, 2010), [2.1.2].

490 See: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 47-48; The Family Business Governance Report (The Netherlands, 2003), section 3.4.4; Governance Guide for Families and Their Businesses (Switzerland, 2006), [38].


492 In particular, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), [39]. The Dutch recommendations underscore further that family members should be given an actual choice of whether they want to become a shareholder in the family business. The Family Business Governance Report (The Netherlands, 2003), section 3.4.2.
the method of their valuation and the determination of the price to be paid. The selected recommendations point out the value that an external assessment of the proposed transfer can have and, further, they urge family businesses to build up financial reserves to be able to meet the buy-out request of a family shareholder. All of these issues are common topics to be included in shareholders’ agreements, whose implementation is strongly commended by several guidelines. These guidelines not only define the contractual nature of these agreements but further identify relevant contents that need to be agreed on. Other examples mentioned by several recommendations as the possible content of these agreements include a decision of whether non-voting rights are to be issued to certain shareholders such as the young generation, how to balance the rights of majority and minority shareholders, and dispute resolution mechanisms or methods for ensuring that changes in the personal circumstances of a family shareholder do not impact negatively on the business.

Further governance issues drawn on by the selected recommendations focus on the requirement that the group of family owners needs to jointly come to a position regarding their will to remain a family business from an ownership perspective as well as arriving and discussing their position on whether or not to bring an external shareholder into the family business. With respect to the latter, the Dutch recommend that the family business should take a long term view on the added value brought by the outside shareholder, but also deliberate on the impact that such a step would involve and establish the criteria under which their inclusion is possible. It should be noted that the Finnish

493 See for instance: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 57-58; Governance Guide for Families and Their Businesses (Switzerland, 2006), [39]; The Family Business Governance Report (The Netherlands, 2003), section 3.4.2; Governance Code for Family Businesses (Germany, 2010), section 6.
494 For instance, see: Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.2; The Family Business Governance Report (The Netherlands, 2003), section 3.4.2; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 57-58.
495 See, The Family Business Governance Report (The Netherlands, 2003), section 3.4.5; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 46; Governance Guide for Families and Their Businesses (Switzerland, 2006), [39], [57].
496 See in particular: Governance Guide for Families and Their Businesses (Switzerland, 2006), [57]; The Family Business Governance Report (The Netherlands, 2003), section 3.4.5; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 47-48. The latter two aspects are often addressed under the notion of family governance. In this regard ‘personal changes’ refers to the need for matrimonial and patrimonial legal precautions.
497 See especially: The Family Business Governance Report (The Netherlands, 2003), section 3.3.6 (here dealt with in the business part), section 3.4.7.
recommendations suggest the creation of a separate owner governance body, called the council of owners, where its necessity is determined by the number of owners.498

While all the selected guidelines distinguish within their recommendations between the distinct governance spheres that are present in a family business in accordance with their chosen underlying structure, the situation is less consistent when it comes to the question of how to align the governance recommendations provided for each individual sphere in order to achieve a cohesive and functional overall governance structure for the family business. The Spanish and Dutch governance recommendations pursue the most detailed and specific approach when dealing with the interrelationship of the different spheres. To this end, they each include a separate section at the end of their guidelines stipulating how to bring the preceding, generally discrete recommendations into line with each other.499 While not as clearly singling out the matter of alignment as such, the Swiss and Finnish guidelines likewise address the issue of interaction between the different spheres embedded in their introductory and concluding sections respectively.500 In addition to these sections, some advice on the alignment and interaction of the various subsystems in a family business has been integrated in the recommendations that address the respective spheres specifically.

The specific proposals, in the selected guidelines, towards an alignment of the individual governance spheres begin by identifying the necessity to ensure that everyone is aware of, understands and respects the clear boundaries of the various governance roles and designated functions of all individual family business spheres on the one hand, but also to determine appropriate channels and means of communication between them.501 As indicated above, the majority of the selected governance recommendations emphasise the key role that the board of directors should play in this regard. It is

498 Good Corporate Governance in Family Business (Finland, 2009), section 4.1. The Dutch recommendations, as highlighted earlier, have been complemented with a further document that solely focuses on ownership strategies in family businesses and provides a more detailed account of all the topics addressed within the notion of family ownership. FBNed – The Dutch Association of Family Firms, Ownership Strategies for Family Businesses.
499 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 63; The Family Business Governance Report (The Netherlands, 2003), section 3.5.
500 Governance Guide for Families and Their Businesses (Switzerland, 2006), section 3; Good Corporate Governance in Family Business (Finland, 2009), 17-18.
501 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 64, 67; The Family Business Governance Report (The Netherlands, 2003), section 3.5.
considered to be the central point of intersection in the family business and thus should direct and engage in communication with both the family and the owners. On the family side, the importance of the family council as a representation of the concerted family opinion, and its collaboration with the board on matters that impact on the family, is also stressed by all of the guidelines alike.\(^{502}\) The recommendations suggest the facilitation of such joint communication, information and consultation through reports and statements by the different governance bodies, and periodical meetings of these bodies often in combination with more frequent, albeit informal, meetings of their respective chairmen.\(^{503}\) The Dutch recommendations advocate further for the establishment of an esemplastic governance document, in addition, but also corresponding to, other governance documentation within the individual spheres. This all-encompassing document is meant to provide details on the roles and responsibilities of all the governance bodies as well as the agreed rules for communication between them.\(^{504}\) The Dutch and the Swiss also accentuate the significance of all dimensions of a family business being founded and governed from a common basis.\(^{505}\) The Dutch recommendations also add that every sphere needs to work towards a uniform overall vision for the family business and support, but not hinder, each other along the way.\(^{506}\)

\(^{502}\) The Finnish recommendations, again cementing their focus on the ownership dimension, highlight the importance of the owner as the fundamental and influential organ in the family business.

\(^{503}\) *A Practical Guide to Good Governance in Family Businesses* (Spain, 2012), 64; *The Family Business Governance Report* (The Netherlands, 2003), section 3.5.

\(^{504}\) *The Family Business Governance Report* (The Netherlands, 2003), section 3.5.

\(^{505}\) Ibid; *Governance Guide for Families and Their Businesses* (Switzerland, 2006), [9], [19], [43]. The Swiss recommendations suggest a decision and careful consideration of the resulting consequences as to which sphere’s interests are overall prevailing in the course of the family business.

\(^{506}\) *The Family Business Governance Report* (The Netherlands, 2003), section 3.5.
<table>
<thead>
<tr>
<th>Country</th>
<th>Expectations on ‘Compliance’</th>
<th>Special Features</th>
<th>Changes in Revised Version</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>Introduction suggests proactive response by family businesses</td>
<td>Specific characteristics of family businesses</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Definition of family business</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Accounting for differences in size and development</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family finances</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>Explicit remark on wording choices in recommendations</td>
<td>Glossary</td>
<td>Overall guideline structure and content</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Explicit remark on wording choices in recommendations</td>
<td>Drafting committee and issuing body composition</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Updating design of recommendations</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>Explicit remark on wording choices in recommendations</td>
<td>Accentuation of specific recommendations</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>User guide suggests proactive response by family businesses</td>
<td>Use of question format</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘Stakeholder labels’</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Advice on suggested use</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reading guide</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Explicit remark on wording choices in recommendations</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Specific characteristics of family businesses</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Definition of family business</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Typology of family businesses</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Accounting for differences in size and development</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alignment of governance spheres</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Covers dispute resolution</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Emphasise flexibility in implementation</td>
<td>Use of question format</td>
<td>Comprehensive changes in overall design and content</td>
</tr>
<tr>
<td></td>
<td>Acknowledge alternatives to presented recommendations</td>
<td>Definition of family business</td>
<td>Addition of new practically oriented materials</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Accounting for differences in size and development</td>
<td>Some reorganisation of guidelines structure</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Surveys on family business opinion</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Expectations on key roles/organs</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alignment of governance spheres</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contents of family protocol</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stakeholder relations</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family finances</td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>User guide suggests proactive response by family businesses</td>
<td>Accentuation of specific recommendations</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Use of question format</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cross-referencing</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Implementation advice</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alignment of governance spheres</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Covers dispute resolution</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contents of family protocol</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stakeholder relations</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family finances</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Checklist of good governance</td>
<td></td>
</tr>
<tr>
<td>Belgium (the</td>
<td>Emphasise voluntariness of compliance</td>
<td>Covers dispute resolution</td>
<td>No significant content or structure changes in family governance part</td>
</tr>
<tr>
<td>primary focus is</td>
<td>Emphasise flexibility in implementation</td>
<td>Contents of family protocol</td>
<td>Updated design and slight rewording</td>
</tr>
<tr>
<td>on the family</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>governance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>section)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 5: Expectations on 'Compliance', Special Features, Changes in the Revision of the Guidelines
Expectations on ‘Compliance’

Given the voluntary nature of the selected recommendations combined with their focus on providing a governance tool for raising awareness and self-help for family businesses, it is not surprising that there is no primary emphasis on the aspect of compliance. Compliance with, and where necessary, enforcement of the recommendations in the traditional sense of mandatory corporate governance codes does not constitute a crucial feature of these guidelines. In the context of these family business governance guidelines, ‘compliance’ considerations are probably more accurately defined as ‘determining the intended response of family businesses to the recommendations’. The importance of looking into this aspect emanates from the fact that the guidelines are only of use if they are taken up by the family businesses and where the recommendations are implemented into their governance systems. In this regard, different approaches to signalling a desired proactive response by family businesses can be identified.

Some of the selected family business specific guidelines spell out explicitly the different degrees of importance that are attached to individual recommendations thereby specifying which recommendations should definitely be addressed and implemented. By employing a distinct terminology of the words “shall” and “it is recommended”, the German guidelines explain that the former is used to identify recommendations that are indispensable for good governance in family businesses while the latter phrase indicates recommendations from which one can deviate in justified exceptional circumstances. The Dutch guidelines contain a similar annotation with regard to the underlying weight that their individual recommendations carry. They delineate between three main degrees of relevance, differentiated via the phrases “it is recommended”, “it is advisable” and “it could be considered”. The remaining guidelines in the comparison provide no explicit declaration in this regard, but apply an akin terminology within their recommendations. The term ‘should’, in particular, frequently precedes important recommendations across all guidelines. The Swiss guidelines are the only ones that occasionally utilise the even stronger word ‘must’. In addition, several of the selected guidelines refer, or address

507 Governance Code for Family Businesses (Germany, 2010), 4.
509 It is interesting in this regard that the Dutch do not include this term within their specified gradation.
briefly, their national legal requirements where these become relevant in the guideline context.\textsuperscript{510}

A second way in which some guidelines detail their expectations on the addressed family businesses is indirectly embedded in their suggestions of how to work with and implement the provided recommendations. The Spanish recommendations include a remark stating that the recommendations have to be perceived in a flexible manner and can be also implemented through alternative ways or sometimes even informal measures. However, they indicate their expectation that these issues should be addressed overall, in a timely, adequate and objective fashion.\textsuperscript{511} The Swiss and Dutch likewise signal the need for a proactive response by family businesses in their implementation and user suggestions.\textsuperscript{512} In a similar but more comprehensive manner, the more widely applicable Belgian guidelines clarify the status and the intended role of their recommendations for the targeted non-listed enterprises specifically at the beginning of the Buysse Code. The observance of these recommendations is stated to be entirely voluntary and the code is presented as complementary to the existing legislation. The recommendations rather seek to call upon the individual business’ consciousness of the importance of responsible conduct for the long term success of their business.\textsuperscript{513} The Belgian guidelines further affirm that it is not their intention to produce a stiff set of rules. Rather, they encourage businesses to implement the suggestions to the extent that is deemed appropriate and affordable for the individual business.\textsuperscript{514} As can be gathered from these insights, while these guidelines are voluntary in nature, they have a clear expectation that a proactive attitude should be taken by the addressed family businesses to follow through with the suggestions made in the recommendations in accordance with their individual situation.

\textit{Special Features}

The previous sections have already revealed some very unique approaches by these selected guidelines with regard to their design, structure and content. The intention of this section is to highlight, by way of example, specific family business features of the

\textsuperscript{510} See, for example: \textit{The Family Business Governance Report} (The Netherlands, 2003), 29, section 3.4.6; \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 56, 57.
\textsuperscript{511} \textit{A Practical Guide to Good Governance in Family Businesses} (Spain, 2012), 13.
\textsuperscript{512} \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), section 2; \textit{The Family Business Governance Report} (The Netherlands, 2003), section 3.7.
\textsuperscript{513} Commission \textit{Buysse Code II} (Belgium, 2009), [1.9].
\textsuperscript{514} Ibid, [1.8].
selected guidelines that positively stand out in contrast to the others guidelines. The focus here is on innovative approaches to present difficult content, to increase the understanding and awareness of family businesses of the specific corporate governance issues that they might encounter, or to help them to see their proximity to the issues addressed. Furthermore, instruments to encourage and facilitate the transition from a theoretical awareness to a proactive implementation of the recommendations or insights gained, or specific ways of presentation that aid the preceding objectives are given special attention.

From a general design perspective, several mechanisms that enhance the accessibility and readability of the recommendations can be identified. A clear visual distinction of specific or overarching recommendations (at the beginning or end of a subsection) is utilised in the Dutch and Swiss guidelines. The latter recommendations, and to a lesser degree the Dutch and Spanish guidelines, also present lists of questions – as part of their family governance in particular – which are meant to be directly asked by the family businesses in order to identify their position on a certain governance issue instead of solely relying on an explanatory approach. The use of stakeholder labels that indicate which sections are relevant for which groups of stakeholders within the Dutch recommendations also facilitates the use of the recommendations. In a similar manner, the careful employment of cross-referencing, especially within the Swiss, emphasises the interconnection between certain governance issues and spheres and helps in guiding the reader through the recommendations.

Structurally, the efforts of the Dutch as well as the Swiss guidelines have to be commended. Both guidelines make an effort to provide explicit advice on how the recommendations should be used or implemented. The Dutch go even further by including a reading guide to their recommendations, while the Swiss in addition provide a checklist of good governance for family businesses that allows for an easier follow up and is structured in accordance with the guideline.\textsuperscript{515} Likewise, the German and the Dutch recommendations denote clearly at the beginning how different wording choices implicate the degree of importance of the individual recommendations. Another

\begin{footnote}
\textsuperscript{515} Governance Guide for Families and Their Businesses (Switzerland, 2006); the checklist is located at the end of the guideline. It should be noted that after the initial publication of the Belgian Buysse Code, a separate checklist was published to facilitate businesses in evaluating their governance situation against the code’s recommendations. See McCahery and Vermeulen, \textit{Corporate Governance of Non-listed Companies}, 216-217.
\end{footnote}
important structural element that was utilised by surprisingly few guidelines, namely the Swiss and the German ones, is the provision of a clarifying glossary of relevant terms at the end of the recommendations. Especially from a legal perspective, such a glossary of terms is paramount to a thorough understanding of the guidelines.

In terms of their content, some special features emerged in context of the introductory sections of certain of the selected guidelines. The Finnish and Dutch recommendations both include a detailed description of the special characteristics of family businesses as well as providing a relatively inclusive definition of this business form.\(^{516}\) The latter recommendations, which have one of the most comprehensive introductory sections of the selected guidelines,\(^{517}\) further add a general typology of family businesses, which in turn is linked to specific type-related recommendations where applicable. In a comparable fashion, it should be acknowledged that the majority of the guidelines also distinguish within their recommendations between the different developmental stages or sizes to which family businesses can accrue – making this aspect of family business guidelines one of marked importance. The Spanish guidelines comprise two further outstanding content-related features. The first involves the provision of separate sections highlighting the expectations on the holders of certain key roles in the family business and, secondly, incorporating surveys and graphs reflecting the actual governance practices and attitudes held by Spanish family businesses. A further general content matter of importance constitutes the approach in the Spanish, Dutch and to some extent also the Swiss guidelines. Each of these devotes a separate section of their respective guidelines to the alignment of the individual governance recommendations within the different governance dimensions for a concerted overall approach to family business governance.

Important governance topics that have not been addressed in all the selected guidelines form the final aspect within this section treating special guideline features. As highlighted above, a crucial aspect of family business governance that has been dealt with in detail by only a few guidelines, that is the Dutch and – less comprehensively –

\(^{516}\) Note: The Swiss guidelines also highlight some of the inherent strengths of family businesses. *Governance Guide for Families and Their Businesses* (Switzerland, 2006), 5. The Spanish recommendations, on the other hand, include a definition of family business. *A Practical Guide to Good Governance in Family Businesses* (Spain, 2012), 7.

\(^{517}\) Further parts of the introduction include an explanation of the methodology employed in developing the recommendations as well as an outline of the nature of the recommendations detailing and substantiating the chosen structure of the guidelines.
the Swiss and Belgian recommendations, refers to the issue of dispute resolution. The latter two guidelines and, especially, the Spanish recommendations also address in greater detail the similarly important topic associated with the development and contents of a family protocol or charter. Additionally, the theme of corporate social responsibility and stakeholder relations, which is of critical relevance to family businesses in particular, has only been referred to in a more comprehensive manner by the Swiss and Spanish recommendations. Finally, financial considerations within the family sphere, such as a wealth strategy, the role of family offices or the cost recovery of expenses arising from the family governance efforts, have been particularly stressed within the Swiss, Spanish and Finnish recommendations respectively.

**Changes in Revised Versions**

As already indicated above, so far only three of the selected guidelines have undergone a revision. Within the family business specific guidelines, the German and the Spanish guidelines have been revised and updated. Additionally, the wider-focused Belgian governance recommendations have been reviewed. After briefly addressing the reasons provided by the issuing bodies for the need for a revision, the actual changes made are identified for each of these three guidelines individually. These revisions occurred in the time span between June 2009 (Belgium) and March 2012 (Spain). This particular choice of review period becomes of great relevance in relation to some of the underlying rationales for undertaking these revisions. The Spanish guidelines refer most directly to the fact that the economic crisis, which commenced in 2007/2008, has been one of the main motivations for up-dating the recommendations. A similar sentiment has been expressed by the Chair of the drafting committee of the Belgian guidelines, who, although less explicitly, mentions the “volatile and difficult economic times” and new dynamics and impulses that Belgian businesses are facing and that are possibly affecting their continuity as drivers for the guideline review. A further common motivation that is mentioned in all three guidelines is the fact that many (family) businesses have made use of the recommendations during the years, and the aim is to not only reflect their practical experience with the recommendations, but also to include further insights gathered from family businesses and their individual approaches to developing a good

---

519 *Buysse Code II* (Belgium, 2009), 6.
family business governance. The Spanish emphasise that the latter aspect also provided the origin of their goal of making their recommendations of an even more practical nature than their predecessor. Germany additionally identifies the objective to incorporate the knowledge gained from the continual theoretical discussion in the field of family business governance into their recommendations.

The revision of the German family business guidelines resulted in substantial changes in the overall structure as well as in the content details. Some general points of difference lie in the expansion and diversification of the drafting committee and, related to this, both a rise in the number of the issuing bodies as well as an increase in the length of the guidelines when compared with the original recommendations. The expansion of the committee stems from an inclusion of more academics together with additional family business members. In terms of the issuing body, the original initiator INTES has now joined forces with the family business interest group association of Die Familienunternehmer (ASU). The structural changes refer primarily to a notable reorganisation of the guideline content. The section on the role and the responsibilities and rights of family owners is now primarily located at the beginning of the guidelines, which signals a greater focus on this sphere. Meanwhile, the transfer of shares and the exit from a shareholder position has been relocated to a stand-alone section. Furthermore, the overall structure is more clearly oriented to align with the different governance bodies and organs in the family business due to a revision of the headings used in the table of contents and throughout the guidelines. The revised version generally also affords a greater emphasis and, hence, more detailed coverage of the aspect of family governance, for instance by giving suggestions on how to determine the boundaries of the family. The design and format of the guidelines has also been updated. The inclusion of a short introductory paragraph at the beginning of each section as well as an improved use of bullet points provide for a clearer and more readable document. Lastly, with regard to wording choices, the new version predominantly shifted

---

520 Ibid; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 5; Governance Code for Family Businesses (Germany, 2010), 2.
521 A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 5.
522 Governance Code for Family Businesses (Germany, 2010), 2.
523 Ibid.
525 Ibid, [7.1].
the introductory phrase to specific recommendations from “should” to “shall”, likely to emphasise their importance even more.

Out of these three guidelines, the Spanish recommendations have undergone the most comprehensive revision, from both a content as well as from a design perspective. In general, the revision has been mainly driven by the Spanish Family Business Institute, while the remaining initiating organisations remain collaborators to the project but in a less prominent manner. Further, while there have been several revisions in the wording choices throughout the guidelines, the change in terminology from governance “principles” to “recommendations” reflects the nature and format of the Spanish guidelines more appropriately.526 Regarding terminology, the new edition contains a substantial increase in the number of definitions of the relevant concepts and applies them also very consistently. From a design perspective, the format of the recommendations has greatly improved. Changes such as the inclusion of headers, a better visual delineation of the individual topics as well as a simplification due to a reduced extent of numeration, all contribute to a greater readability of the guidelines. This is further facilitated by a removal of all pictures. Practical surveys and boxed frames highlighting relevant governance roles and practices in a family business have been introduced instead. This change also reflects a new thematic focal point that was introduced in the revised version.

This greater emphasis on the distinctive systems and governance bodies in family business is also visible in the amended content structure. While the overarching structure as such has not changed, within the three main sections of the guidelines a substantial overhaul can be readily observed. The original introductory section that consisted of a general introduction as well as a short section on the complexity of the family business structure has been replaced by two sections. These comprise, respectively, a definition of family businesses on the one hand, and rationales for the importance of good governance in family businesses on the other. Similarly, the final section focusing on the interrelationships of the several governance bodies has evolved from solely addressing the individual existing relationships to now emphasising the overarching means of interrelation, namely communication, and highlighting the potential relationships between these bodies in a more schematic way. The content structure of the family

526 See A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 14.
The family governance section within the Belgian guidelines, on the other hand, has been mostly modified in terms of its presentation but not so much with regard to the actual content. The new version incorporates a numeration of the individual paragraphs for an easier reference. The overall format as well as the use of bullet points has also been streamlined further to enhance the readability of the recommendations. The aspects that are addressed within the family governance sections have, however, remained the same: there have been merely some changes in the wording, resulting in a further clarification of the recommendations.

The review of the extent of the revisions undertaken in these three countries showcases a continuing effort to ensure that these family business governance guidelines are more accessible to family businesses, while at the same time providing them with up-to-date information and detailed coverage of the relevant governance issues for their particular business setting.

4.3 Summary
The above comparison has identified a great number of commonalities as well as several distinct differences among the selected guidelines and has grouped them according to the specified parameters. These parameters are especially useful for the analysis of otherwise somewhat disparate guidelines. By introducing these parameters within this chapter, suitable avenues and rationales by which the guidelines can be compared have been established. This chapter has thereby demonstrated one fruitful way of comparing such family business governance guidelines and contrasting them according to these parameters. This exercise displayed a great variety of approaches that are noteworthy in

---

527 Ibid, 43ff.
528 Ibid, 54ff.
529 See, for instance ibid, 61.
the continuing pursuit of further enlarging the benefits that can be gained by family businesses from these guidelines. Some of the particularly outstanding and innovative ideas have been extrapolated within the section covering special guideline features. But the analysis also reveals those areas which are open to further improvement. Although the chosen parameters were addressed separately, it should be noted that the relevant aspects addressed cannot be considered in isolation. To provide just one example of such interrelationships, the Spanish recommendations’ stated purpose to offer practical advice to family businesses has also been reflected in their choice of content structure and presentation in the revised 2012 guidelines. At this point, the value of including the broader-focused Belgian recommendations needs to be likewise recognised. Despite their not solely focusing on the governance concerns of family businesses, their brief account of family governance addressed important governance matters, sometimes in greater detail than some of the family business specific guidelines themselves, and contributed to extracting the relevant family business governance themes.

The comparison revealed that no two guidelines are identical and also brings to light their individual character and approach, even in areas of similarity with other family business guidelines. However, across the board, a substantial number of commonalities among the selected guidelines have been detected, thereby showcasing the potential and possibility of bringing these insights together in a general set of recommendations for drafting family business governance guidelines. These commonalities, together with the identified distinctions, allow for a valuable insight and understanding about the key elements of family business governance guidelines with regard to their goals, overall design and general content structure and governance topics.

While the focus of the comparison in this chapter has been on drawing up the characteristic features and themes of the six selected guidelines, contrasting them against each other and presenting the findings in a factual manner, the insights gained from this analysis will subsequently be used in the following chapter to develop a general set of draft recommendations on the basis of collating and evaluating the guideline elements identified in the comparison.
CHAPTER 4: FOOD FOR THOUGHT – A PROPOSAL FOR A GENERAL SET OF DRAFT RECOMMENDATIONS FOR FAMILY BUSINESS GOVERNANCE GUIDELINES AND THEIR IMPLEMENTATION

1 Introduction

The set of general draft recommendations for family business corporate governance guidelines, as presented below, is not meant to be a finalised collection of governance recommendations directed and imminently employable by family businesses. The proposals made in this chapter rather are intended to be an overview of the aspects that should be considered with regard to the presentation and content when drafting such family business guidelines. Due to this general character, the present recommendations made are not country-specific, but instead seek to provide a point of departure for organisations or networks, private or public, that plan to develop corporate governance support for family businesses in the form of voluntary corporate governance guidelines. The primary rationale for creating a more general guide of how to best draft such guidelines as opposed to presenting a model guideline already including specific governance recommendations stems from the belief that a general guide allows for a broader scope of application and hence can provide a wider range of support to family businesses. That is, by focusing on highlighting the crucial considerations and elements which should be integrated in some manner into these guidelines, this general set of recommendations constitutes a very flexible governance instrument, which can be easily adjusted to individual national and cultural contexts or to any specific purpose pursued with the respective guidelines since it is not too prescriptive with regard to the actual guideline details.


531 On the importance of guidance on regulation generally, see Office of Consumer Affairs et al, Voluntary Codes, Foreword, Preface; Department for Business Innovation & Skills, Code of Practice on Guidance on Regulation, 4.

532 On the general flexibility of corporate codes or guidelines, see for instance Helen Keller, ‘Corporate Codes of Conduct and their Implementation: The Question of Legitimacy’ in Rüdiger Wolfrum and Volker
As indicated earlier, this set of general propositions is specifically geared towards the
draft process of corporate governance guidelines that focus exclusively on the issues of
family businesses. The first chapter of this thesis elaborated in detail on why family
businesses are special, and, subsequently, why family business focused governance
guidelines are the preferred way of providing this unique form of business with
governance support. The main arguments identified there refer to the increased
complexity of family businesses arising from the significant influence of the family on
the business, as well as the disparity between these two main spheres. The preference for
family business focused guidelines has been primarily linked to these particularities, but
also relates to the general incidence of family businesses and their contribution to
national economies. The comparative analysis in the previous chapter further added to
these rationales by highlighting that those guidelines that advocate for a broader coverage
within their corporate governance guidelines, for instance an SME or unlisted companies
focus, can only provide a brief overview of family business governance concerns which
usually does not appropriately reflect the relevance and complexity that these issues
entail for family businesses themselves. The analysed family business specific
guidelines, on the other hand, demonstrated that they could better address the intricacies
of these governance matters and, in consequence, provide a more comprehensive and
workable governance tool for family businesses due to their singular focus. This
reasoning also underlies the choice for the set of general draft recommendations to be
specific to family businesses.

The presentation of the general recommendations below does not strictly follow the
order in which the parameters were organised within the comparison in the previous
chapter. This set of draft recommendations rather concentrates on capturing the proposed
overarching criteria required for developing family business governance guidelines as

Röben (eds), Legitimacy in International Law (Springer, Berlin, 2008) 294; David Seidl, ‘Regulating
Organizations Through Codes of Corporate Governance’ (Working Paper No 338, Centre for Business
Research, University of Cambridge, 2006) 5-6 <www.cbr.cam.ac.uk/pdf/WP338.pdf>; Office of Consumer
Affairs et al, Voluntary Codes, 4; Kernaghan Webb, ‘Understanding the Voluntary Codes Phenomenon’ in
Kernaghan Webb (ed), Voluntary Codes: Private Governance, the Public Interest and Innovation (Carleton
Research Unit for Innovation, Science and Environment, School of Public Policy and Administration,
Carleton University, Ottawa, 2004) 16 <http://www5.carleton.ca/sppa/research/publications/>; Holly J
Gregory and Robert T Simmelkjaer, II (Weil, Gotshal & Manges LLP), ‘Comparative Study of Corporate
Governance Codes Relevant to the European Union and its Member States’ (Research Report,
commissioned by the European Commission, Internal Market Directorate General, Study Contract
well as elaborating the underlying guideline structure and the relevant governance themes to be featured therein. Nevertheless, these elements of the general set of draft recommendations for family business governance are compiled from the insights gained in the analysis according to the chosen parameters.

This general guide for drafting family business governance guidelines is informed by two motivating premises. Each drafting effort will need to create their own version of a family business governance guideline in order to determine how to best transform the intended guideline objectives into specific recommendations which best suit their own needs. In this regard, it is, however, wise to avoid a ‘reinventing of the wheel’ and instead dedicate more time on elaborating and refining the details of the individual recommendations. This is why the following recommendations have been created. They provide prospective drafting committees with an overview into what other guideline committees have done and, where required, also which aspects could be further improved. They are meant to provide a general point of reference, to be tailored for specific use as required in each case.

2 General Guidelines Features

This first part of the draft recommendations draws attention to the overarching, fundamental considerations that should be borne in mind when embarking on the drafting process for any family business governance guidelines. Before even initiating this process, two key questions need to be addressed: who should be part of the drafting committee and what is the specific target audience?533 Beyond these two preliminary issues, further general matters of concern refer to the readability, accessibility and the clarity of the guidelines, how to optimally generate an active engagement by family businesses with the recommendations and an account of how to proceed with any future revision of the guidelines.

2.1 Who Should Be Involved in the Drafting Process?

This question requires a twofold answer. The analysis in the previous chapter showed that there is commonly a distinction between the actual issuing body of the guideline and

---

the committee that develops the concrete recommendations. Both will have a decisive impact on the contextual shape of the guidelines; but the issuing body, in particular, is also an important determinant for the distribution and promotion of the finalised guidelines. Due to this influence, careful consideration should be given to their selection.

The comparative analysis identified a strong tendency to employ family business interest group organisations in the role of the issuing body. Most commonly, these were either directly or at least indirectly related to the local chapters of the internationally operating ‘Family Business Network’. The importance of involving such family business organisations in the development of the family business governance guidelines should not be underestimated. These networks not only naturally maintain a close relationship with the general target audience of family businesses, but their membership numbers also encompass a large pool of family businesses to which the guidelines can be disseminated and publicised. Furthermore, their international interconnection provides a basis for greater collaboration and exchange of experiences with these guidelines which is already well established. Additionally, since it is their overarching mission to provide a manifold support system for family businesses, the engagement of family business organisations in such guideline development fits in well with this objective. This

---

536 It is surprising in this context, that while the Family Business Network organises international and national conferences and events for its family business members, there is no visible publication of comparable roundtable meetings of the representatives of the various local chapters. Accordingly, there seems to be, to-date, only little cross-national collaboration as the diversity among the selected family business guidelines in the comparison displays. For an overview of the aforesaid events, see The International Family Business Network, About Our Events <http://www.fbn-i.org/fbn/web.nsf/doclu/aboutevents?OpenDocument>, The only noted connection between existing family business guidelines is among the revised German and the Austrian Governance Code for Family Businesses. See also European Family Businesses – GEEF, The EU Corporate Governance Framework – Consultation Paper (July 2011) Annex I <http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/registered-organisations/efb-geef_en.pdf>. The idea advocated here is not to promote the creation of identical or uniform guidelines, but rather to share the gained knowledge and experiences, and thereby to benefit from the lessons learned by other issuing bodies and committees.
A General Set of Draft Recommendations

family business network support can then also be linked with continuative network support offers in association with the guideline recommendations, such as seminars, training or advisory sessions on the topics covered within the guidelines.537

The identified dominance of private sector initiatives in the context of developing family business governance guidelines leaves room for examining the role that the state should have in the drafting process and beyond.538 Within the analysed family business specific guidelines, only the Swiss drafting committee featured two government representatives as committee members. Although the voluntariness and specificity of the family business guidelines generally militate in favour of a more private sector driven initiative, the guideline development can still benefit from some form of government participation. For instance, the recommendations themselves can be enhanced by the regulatory knowledge within the public sector, which is best achieved through the already mentioned gateway whereby a government representative with requisite regulatory experience is included as a member of the drafting committee.539 A second reason for their participation fulfils more of a symbolic function. The high incidence of family businesses and the important role that they play in national economies should be more visibly acknowledged and supported than as of yet.540 Furthermore, an acknowledgement of this contribution might be crucial in order to reach even more


family businesses and to raise their awareness about the importance of good governance for the continuity of their business as a family business.

The latter point already touches on the subject of the composition of the drafting committee. Overall, the analysed guidelines seem to generally agree on the importance of arranging for an interdisciplinary committee. In order for the guidelines to benefit their intended audience to the greatest extent, it is crucial to bring in members with theoretical and practical knowledge of family business governance. For the input of theoretical knowledge academic committee members can contribute relevant insights gained from family business research, as has been reflected in the composition of the majority of drafting committees for the selected guidelines. These insights are not only crucial for those parts of the guidelines that provide the underlying theoretical explanations and rationales for the necessity of good governance in family businesses but also influence the practical side of the recommendations. The practical knowledge is most easily obtained by including several family business members, preferably from family businesses in different developmental stages and occupying different roles within the family business. The diversity of this group of family business members is vital as a reflection of the variety of family business settings and the different governance spheres of family, ownership and business, which are commonly referred to in family business guidelines.

Practical knowledge can further be provided by representatives coming from the family business networks together with business professionals and consultants that are experienced in advising and dealing with family businesses. Within the field of expert consultants, the role of committee members from the legal profession needs to be stressed. Several of the selected family business guidelines engage at least a few lawyers as committee members. Their contribution is meant not only to ensure compatibility with the existing corporate law regulations, but they are likewise essential in providing advice on how to best draft diverse governance documents, from shareholders’ agreements or the family protocol, to the regulations and proceedings for the individual governance bodies.\(^{541}\) It should be reiterated at this point that the involved committee members should have experience in working with family businesses and be aware of their inherent idiosyncrasies and governance concerns in order to achieve a well targeted guideline that

accounts for the actual situation of family businesses. If this were not the case, the risk of ending with theoretically sound, but practically less viable, recommendations becomes all too real.

Given this considerable spectrum of valuable committee members, the final committee composition needs to have an appropriate balance from the various professional backgrounds. Judging by the various sizes of the committee in each of the selected guidelines, committees of on average about 15 members seem to be a good middle ground. This appears to be a large enough number to accommodate a balanced but varied membership, while at the same time small enough to secure the operability and efficiency of the committee, for instance when it comes to reaching a consensus.

### 2.2 Specification of the Target Audience

This aspect appears to be quite obvious at first glance – family businesses are the natural focus group of the namesake governance guidelines. However, the more detailed explications made in several of the selected guidelines suggest that this point should be given some careful thought as well. As highlighted in the previous chapters, the guiding objective lying behind these recommendations is for them to be implemented by the family businesses themselves. Consequentially, these guidelines centre on raising the awareness of family businesses about the potential governance issues they can face and on providing them with some guidance as to how to confront these issues directly. The analysis of the selected family business governance guidelines demonstrated, however, that family businesses also occasionally require the help and advice of outside professionals. As such, the relevance of external advisers as an additional – even if subordinate – target audience likewise needs to be considered.

Those selected guidelines that elaborated more closely on the target audience of family businesses either emphasised a particular interest group within the family business, such as the family owners, or listed those who belong to the internal group of family business stakeholders. As a minimum standard, it is recommended to emphasise the importance of these governance recommendations for the family and its members in

---


their various capacities in particular, since corporate governance guidelines are more commonly associated with the business sphere and, as the existing family business governance guidelines highlight, the family governance is of equal – if not even more – importance in this business setting. The remaining non-family, internal stakeholders, especially those in central positions within the business, should also find mention as addressees, since the execution of their jobs is likely to be highly influenced by the family element of the business. Their understanding of the difference in dynamics and potential governance pitfalls is vital for the success and the continuity of the family business.

A few of the selected guidelines establish a further relevant criterion for rendering the target audience of family businesses more precisely – namely, their size or developmental stage. While narrowing the target audience to medium-sized or larger family businesses or to those that are already more established is logical in light of their growing need for more formal governance structures, the potential impact these recommendations can make on smaller or recently established family businesses should not be disregarded. As long as the business has two or more family members involved in some formal or informal capacity, there is a potential for the family element to impact on the business and thus for some family business governance issues, not necessarily restricted to a certain size or maturity level of the business, to arise. Furthermore, it would be short-sighted to lose the opportunity to create an awareness about the importance of good governance in family businesses from an early stage. Indeed, many issues that emerge in a later (developmental) stage of the family business life cycle could have been avoided, or their impact reduced, had proper mechanisms been put in place.

544 This opinion is also particularly stressed in the Swiss family business guidelines. See Governance Guide for Families and Their Businesses (Switzerland, 2006), 3, 5, [19], [43].
545 Due to the importance of this aspect, a separate section elaborates below in further detail on the relevance of the developmental stages within the content presentation.
546 The 2008 research report on family businesses by the Austrian Institute for SME Research takes a similar view by recommending that micro and small family businesses should be included in the scope of family business interest organisations and require attention to their particular governance challenges. See Mandl (Austrian Institute for SME Research), ‘Overview of Family Business Relevant Issues’, 100.
A General Set of Draft Recommendations

while the business was still in its fledgling phase. In consequence, family business governance recommendations should be inclusive of a wide range of family business sizes, developmental stages and settings. As a result, the benefits to be gained for newly incumbent family businesses should be identified in addition to highlighting the particular relevance for the more developed family businesses. In the same line, any references to the legal form or structure of the addressed family businesses should be as wide-ranging as possible.⁵⁴⁸

The integration of advisers to family businesses as a subordinate addressee should be considered alongside the predominant focus on the target audience of family businesses themselves.⁵⁴⁹ The main rationale behind this suggestion stems from the relevance of providing business advice that accounts for the inherent particularities of family businesses, a fact that is frequently underestimated.⁵⁵⁰ Without an awareness of these idiosyncrasies, there is a notable risk that the given advice – although expedient in a more general business setting – might be inappropriate or less fitting in a family business context. The significance of this point is further affirmed by the recent proliferation in accreditation programmes for family business consultants, whose objectives follow a similar train of thought.⁵⁵¹ Directing the guidelines to the group of professional advisers, such as lawyers, accountants, bankers or other consultants, thus appears useful in order to provide them with a better understanding of the dynamics and possible governance issues within family businesses which in turn will result in professional advice that caters more closely to a family business context.

2.3 Accessibility of the Family Business Governance Guidelines

Although the importance of a ready accessibility of the guidelines is a common sense criterion, the analysis of the guidelines has highlighted several ways in which to contribute to this desirable effect. The aspect of accessibility becomes of an even greater

⁵⁴⁸ As identified in the analysis, this approach has been taken by some of the selected guidelines. See Governance Guide for Families and Their Businesses (Switzerland, 2006), [5]; Baysse Code II (Belgium, 2009), [1.1].
⁵⁴⁹ Surprisingly, from the group of the selected guidelines only the Dutch recommendations extend their target audience specifically to family business advisers as well. The Family Business Governance Report (The Netherlands, 2003), 8.
importance in the context of family business guidelines, which are primarily conceptualised as a governance tool for ‘self-help’ and increased awareness for the family businesses themselves. In contrast, in other more generic corporate governance codes aimed primarily at listed companies, a high degree of professionalisation and the employment of, or outsourcing to, a great variety of specially qualified experts familiar with the governance requirements and terminology can be more readily expected. The same is commonly not the case for the majority of family businesses, especially during their early developmental stages or if they are of a smaller size. The presentation of the guidelines thus needs to cater to this target audience and enable them to work with and implement the recommendations, for the most part regardless of the availability of specially qualified staff or external advisers. The following two elements – readability and clarity – address what to bear in mind for achieving a greater accessibility of the guidelines for family businesses.

2.3.1 Readability

A general feature that impacts on the readability of the guidelines is their comprehensiveness. The analysis showed that the average length of the selected family business guidelines is approximately 40 pages. The difficulty lies in finding the right balance. If the guidelines are too long, they likely contain more information than is required to provide a sufficient starting point for family businesses and can thus function rather as a deterrent to engaging with the guidelines. Otherwise they will be daunting to read through. In contrast, if they are too brief in length, the guidelines may not be detailed enough to provide family businesses with a clear idea or explanation that they can pick up and implement into their practice. Such brevity is often found in the guidelines which take a wider approach as they can simply provide a concise overview of general family business governance issues. The shorter family business specific guidelines also reflect this concern of brevity to some extent insofar as they do not provide as many explanatory examples or other stylistic devices to illustrate the issues and enhance the understanding of family businesses.


553 See, for instance, the treatment of family business specific issues in the following guidelines: Central Chamber of Commerce of Finland, Improving Corporate Governance of Unlisted Companies (Finland, 2006) 11; Buysse Code II (Belgium, 2009), 27-29.
This need to cater directly to the family businesses already alludes to another important element of readable guidelines – the integration of supporting design elements.\textsuperscript{554} Their overall purpose is to provide some visual aid to guide the reader along the way. The analysed guidelines have displayed ample and diverse examples of how such visual facilitation can be accomplished. A simple method for emphasising the most important parts within the recommendations, but also to create a visual structure, consists in the application of a consistent colour scheme throughout the guidelines, a step that has been taken up to some extent in all of the examined guidelines. In a similar fashion, the utilisation of boxed frames to separate and emphasise certain parts of the recommendations pursues the same objective. The inclusion of survey results and diagrams can also provide a suitable and very accessible way of presenting relevant information. The common use of bullet points by all the guidelines to identify, for instance, alternative solutions or the use of enumerative listings likewise generally makes for a more straightforward and visually more user-friendly layout.

The general format of the recommendations is another factor which impacts on the readability of the family business governance guidelines. The significance of this criterion lies in achieving the proper balance between the employment of running text and a more ‘principle-based’ format.\textsuperscript{555} That is, one should aim to choose a text format that is comprehensive in its presentation without being overwhelmingly dense with information. The majority of the selected family business guidelines have demonstrated that, in order to achieve a sufficient comprehensiveness, the recommendations need to go beyond the mere ‘principle-based’ text format that is commonly displayed in the more general corporate governance codes aimed at listed companies. This ‘principle-based’ template alone, while very readable when considered cursorily, often lacks the requisite explanation for family businesses as to how the given advice can be implemented. As highlighted throughout this thesis, the nature of these governance guidelines is different from those codes that are more closely situated towards the hard law end of the legal regulatory spectrum. Their main objective is to increase self-awareness and encourage a proactive attitude of family businesses regarding their governance and, as such, the

\textsuperscript{554} Similarly advocating for the incorporation of stylistic devices (such as graphics, flow charts or videos, where appropriate) in order to enhance the general guidance on regulation is the Department for Business Innovation & Skills, \textit{Code of Practice on Guidance on Regulation}, 8.

\textsuperscript{555} For a general discussion of ‘principle based’ corporate governance codes, as opposed to rule based legislation, see Joseph A McCahery and Erik P M Vermeulen, \textit{Corporate Governance of Non-listed Companies} (Oxford University Press, Oxford, 2008) 198.
provision of some extra explanation is vital for a greater accessibility of the recommendations.

Accordingly, an appropriately compartmentalised running text format is overall preferable in this context. The running text format allows for a greater depth of information but, as indicated above, may also run the risk of a reduced readability if there is too much information in any given block of text. The selected guidelines demonstrated with varying degrees of success that the most feasible solution lies in having recommendations comprised of shorter paragraphs of running text. Some guidelines, such as the Dutch and the Swiss, have further opted to highlight some overarching or specific recommendations separately from the main recommendations to make them stand out. Similarly, the use of bullets points acts as an additional method to break up dense amounts of text.

In a similar vein, the readability of the guidelines can be enhanced by including a short introductory segment at the beginning of the main sections and the subsections to provide further guidance through the following text of the recommendations, as has been showcased in the selected guidelines. The incorporation of examples and practical insights, for instance via case studies, diagrams or surveys, is also conducive to a better readability and in turn accessibility as it helps family businesses to relate more easily to the content presented in the recommendations. Even more generally, the technique of including a reading guide at the beginning of the guidelines, as in the example of the Dutch guidelines, can be helpful if it focuses on providing the reader with an outline and explanation of the approach and format of the guidelines.

### 2.3.2 Clarity

The element of clarity describes those mechanisms which ensure that family businesses can easily identify the governance matters that affect them in their current individual situation. For instance, governance advice that pertains to specific developmental stages should clearly indicate to which stage it refers. Likewise, a logical and comprehensible content structure of the guidelines, for instance following the systems theory approach as commonly adopted by the majority of the selected guidelines, is crucial. In this regard, great attention should be paid to the question of which heading a particular topic is best

---

556 This refers to the abovementioned two or three circle model of family businesses, which is further elaborated below within the structural guideline elements.
presented under in order to avoid confusion and misunderstandings for the reader. The structure should also ensure, for the sake of improved clarity of the guidelines, that there is an unambiguous distinction between the different governance issues covered in the recommendations. A significant example for the latter suggestion is the need for a clear demarcation of the different governance bodies and governance roles in the family businesses. As will be further highlighted below, this demarcation is one of the foundational governance requirements for family businesses. The formatting choices can further aid the clarity of the recommendations if they provide for an easy reference to, and between, recommendations. This can be achieved by, for instance, providing an adequate numbering of sections and paragraphs. Closely related to the latter, cross-referencing, as suitably employed in the Swiss recommendations, enables the reader to make the connection between associated issues that impact on more than one sphere of the family business. A final general suggestion for added clarity that has surprisingly been only used in two of the selected guidelines is the inclusion of a glossary. The glossary primarily has an explanatory function for the terminology used throughout the guidelines and helps to avoid the inclusion of lengthy definitions in the recommendations, which becomes especially relevant where a guideline is already quite comprehensive in content. In doing so, it sets the foundations for a consistent use of terminology and provides, further, a well-arranged point of reference.

The analysis of the selected guidelines has identified that consistency is not only relevant with respect to the utilised terminology. Objectives, distinctions and rationales provided in the introductory section of the guidelines will need to be consequentially reflected throughout the recommendations themselves. Any specified target audiences or purposes of the guidelines, for instance, should be represented or made recognisable in the recommendations. Likewise, if a guideline explicitly defines a gradation of certain

557 The importance of using unambiguous and precise language for the provision of adequate guidance within voluntary codes is also generally expressed in Office of Consumer Affairs et al, Voluntary Codes, 22.
558 A clear distinction among the various governance roles and bodies is crucial, due to the fact that family businesses suffer more readily from blurred boundaries, not only between the family and the business sphere, but also in the context of the various positions family members occupy within these spheres. See also Ernesto J Poza, Family Business (South-Western, Mason, OH, 3rd ed, 2010) 11; Zanita Zody et al, ‘Boundaries and the Functioning of Family and Business Systems’ (2006) 27 Journal of Family and Economic Issues 185-206; Adrian Cadbury, Family Firms and their Governance: Creating Tomorrow’s Company from Today’s (Egon Zehnder International, London, 2000) 7.
559 Governance Guide for Families and Their Businesses (Switzerland, 2006); Governance Code for Family Businesses (Germany, 2010).
expressions to indicate the degree of importance of the individual recommendations, this approach should be adhered to later on. Where a guideline expresses the intention to update and revise the guidelines content, the guidelines’ authors or issuing body should also naturally follow through with this proposition in due course in order to set the right example for family businesses. Finally, a consistency in format, structure or content by way of presenting similar aspects in a comparable way will further aid the clarity of the family business governance guidelines.

Another crucial element of clear guidelines is their simplicity. The use of simple language and avoidance of unnecessary jargon are obviously pivotal in this context.\textsuperscript{560} Where the use of a certain terminology is required, a proper explanation should be provided, for instance through the inclusion of a glossary, as highlighted above. Simplicity further needs to be reflected in the table of contents in order to provide an appropriate overview. The majority of the guidelines succeeded in concentrating on the identification of the most relevant topics without anticipating too many of the specific details contained in the subsections. The simplicity of the table of contents also relates to the importance of the clarity of the headings or titles within the guidelines. These should be as specific as possible about their respective topic but at the same time uncomplicated, which also means that additional subtitles or subheadings should only be included if they are needed to elucidate the title or heading further. The aspect of simplicity also comes to bear within the content of the guidelines as such. An important factor in this regard is the inclusion of relevant legal requirements or backgrounds, which have been integrated in several of the analysed guidelines. In order to maintain an overall clarity and simplicity of the family business governance guidelines, the recommendations should abstain from merely repeating legal prerequisites already stipulated by the national corporate legislation without linking them and explaining their relevance to the family business context. Otherwise the guidelines will risk being confusing, thus reducing their accessibility to family businesses. Such confusion can arise as a result of diminishing the family business specific focus of the recommendations as well as blurring the boundaries between family business governance guidelines and other regulatory corporate governance mechanisms.

A final suggestion on the element of clarity relates to the inclusion of a ‘purpose statement’ in the guidelines. Almost all of the selected guidelines included an explicit section detailing the objectives to be accomplished with the issuance of the guidelines.\textsuperscript{561} This effort of clarifying the issuing bodies’ objectives provides additional guidance on the general direction that the guideline takes, often by further specifying individual objectives that are deemed vital for an improvement of the situation of family businesses as well as indicating generally how the recommendations set out to achieve these goals. Closely related, the analysis of the purposes stated by the selected family business governance guidelines further identified the importance of pursuing practical as well as theoretical purposes with the respective guidelines. This notion can indirectly contribute to the clarity and accessibility of the guidelines.

The relevance of linking both practical and theoretical purposes which, in turn, need to be reflected and balanced in the content of the guidelines, is founded on two considerations. On the one hand, it is not sufficient to just provide practical recommendations to family businesses without a proper explanation of the theoretical rationales underlying them as this may lead to an imprecise implementation of the recommendations or result in quick fix solutions or a mere ‘ticking of the box’ due to not facilitating family businesses in going to the heart of the matter of these issues. On the other hand, there is also the danger of a predominant focus on the theoretical side, and thus a lack of substantial practical advice on how to translate the gained theoretical understanding of the existing governance issues into an implementable solution. Although well-intentioned, an overly theoretical focus may thus end up lowering the incentive for family businesses to become proactive and address these issues. In this case, the guidelines run the risk of morphing into a piece of research literature instead of a practical governance instrument. For the clarity of the working principle of the guidelines it is important that the introductory parts of the guidelines stress to family businesses the necessity of both understanding and following up on the identified governance issues if they are to achieve an improvement in their corporate governance.

2.4 Revision

The issuing body should expressly commit to periodic reviews in order to update the family business governance guidelines regularly.\textsuperscript{562} The principal importance of such commitment lies in the confirmation of the continued importance of family business governance, in setting a positive example for the family businesses’ own governance efforts and their continuity, as well as in ensuring the topicality of the recommendations.\textsuperscript{563} Common rationales for a revision have also been identified within the selected guidelines. Revisions are deemed necessary in the light of substantial economic changes, developments in the related academic literature and feedback gathered from the target audience and the general experience with the recommendations over time. In this respect, it is wise to include the reason for a guideline review in the revised version in order to help anticipate the areas of change and thus provide guidance for family businesses, especially if they have already been using the previous guideline edition. A time span of about five years after the publication of the previous edition seems to be adequate before embarking on a revision.\textsuperscript{564} This follows from the abovementioned rationales in conjunction with the observable revision times within the selected guidelines. Such a period allows for sufficient time to gain some practical experience with the guidelines and to make them known more widely, but also considers that the review process itself will take a certain length of time.

With respect to the revision process itself, further observations can be drawn from the guideline analysis. In order to obtain some fresh insights and opinions, the revision committee can benefit from involving a few new members.\textsuperscript{565} For instance, the inclusion of family business members that have worked with the previous guideline edition may


\textsuperscript{563} Similarly, Office of Consumer Affairs et al, \textit{Voluntary Codes}, 24.

\textsuperscript{564} See also \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), [20], which suggests, for the revision of the family charter, a time span of, for example, five years to ensure topicality of the document. Comparable revision periods are further mentioned in guides to better regulation, see Better Regulation Office, \textit{Guide to Better Regulation}, 21; Australian Government, \textit{Best Practice Regulation Handbook}, 47. It is, however, acknowledged in the latter guide that certain circumstances may justify shorter or longer review periods. The Canadian guide differs from the review span suggestion above and recommends a generally shorter review period of two to three years for voluntary codes. Office of Consumer Affairs et al, \textit{Voluntary Codes}, 24.

\textsuperscript{565} Similarly, and suggesting the involvement of third parties in the review process, see Office of Consumer Affairs et al, \textit{Voluntary Codes}, 24.
prove valuable. In order to validate the efforts and resources required to undergo the revision process, the guideline review should be thorough and take into consideration the requisite format, structural and content changes. As seen in the revised selected guideline editions, a substantial reconfiguration of the guidelines may become necessary.

3 Structural Concerns and Relevant Guideline Contents

The suggestions within this section focus, first, in more detail on the structural composition of the family business guidelines themselves and of the recommendations in particular. The concerned structural elements that are addressed include an overview of valuable elements of family business governance guidelines, the structural approach of the recommendations centring on a discussion of the two or three circle model as a guideline basis, the relevance of the individual governance spheres as well as the importance of incorporating size and developmental stage distinctions.

The second focal point attends in a detailed manner to the actual content that should be included in family business guidelines. The recommendations put forth in this part of the chapter identify the topics which are regarded as indispensable for a good governance of family businesses and hence stipulate their inclusion in family business focused governance guidelines. These themes comprise a focus on relationships within a family business, the governance bodies and roles, the governance documents, the matter of dispute resolution, the relevance of adequate communication, the generational succession, concerns relating to the share ownership in the family business, as well as the alignment of the different governance spheres.

3.1 Structural Considerations

3.1.1 Elements of the Guidelines

The analysis in the previous chapter has highlighted and addressed the common elements of family business governance guidelines in considerable detail. Seeking to steer clear of a mere repetition of these facts, the emphasis here is instead on what should be included in the respective general parts of these guidelines, such as the preface and introduction, and which additional structural features should be given greater consideration.

The overarching function of the preface and the introduction is to instil in family businesses an understanding of why corporate governance and, in turn, these guidelines, are important for the functioning and longevity of their business. The preface primarily
plays a welcoming role and commonly outlines the drafting process of the guidelines and the specific target audience. It also assists with the general objective of fostering a better understanding through the inclusion of an explicit purpose statement. Along the lines discussed above, this statement should not only elucidate the general direction of the guidelines but especially the theoretical and practical goals intended to be achieved by the family businesses themselves and why both dimensions are vital for an overall governance improvement. The introduction, on the other hand, should aim specifically to clearly explicate why family businesses are prone to a different, and often additional, set of governance challenges. The shortcomings of devising a suitable but inclusive definition of family businesses militate against too much attention being devoted to formulating a detailed definition, which may even lead to an undesirable restriction of the personal scope of application.

In accordance with the structural approach unequivocally chosen by all the selected family business specific governance guidelines, a more systematic approach to explain the idiosyncrasies of family businesses should be favoured instead.\textsuperscript{566} Essentially, such a focus follows the systems theory approach which distinguishes between the various governance spheres in a family business. This approach allows not only for a wide and inclusive notion of the term family business, but also identifies the discrepancies among the different spheres. By highlighting their discrepancies, together with an account of the considerable overlap of these governance spheres, family businesses will be most easily made aware of the complexities that they naturally face as well as of the resulting increased potential for conflict. Apart from preparing the stage for the underlying content structure of the guidelines, the systematic depiction of the inner-structure of the family business form can also be easily linked with the strengths and weaknesses associated with the family business setting. These strengths and weaknesses provide further insight into the necessity of a good governance in this unique business setting.\textsuperscript{567}

\textsuperscript{566} The definitional dilemma and resulting preference of a more systematic conception of family businesses via the two and three circle model have been explicated in greater depth in chapter 1, section 3.

\textsuperscript{567} The strong and weak points commonly associated with family businesses include for instance: quicker and more informal decision making, greater flexibility and quicker response to economic or market changes, long term perspective; but also inefficiencies arising from the often very centralised decision making powers and little drawing on outside expertise and objectivity, and greater potential for conflict due to family involvement. See Cally Jordan, ‘Family Resemblances: The Family Controlled Company in Asia’ (Legal Studies Research Paper No 334, The University of Melbourne, 2008); Gersick et al, \textit{Generation to Generation}, 3; Cadbury, \textit{Family Firms and their Governance}, 6-8.
Further structural elements that are primarily intended to support family businesses in their approach to the guidelines and the potential steps taken subsequently as a result of consulting the recommendations should be taken into account as well. For completion of the introductory part, the abovementioned device of a reading guide should be considered. In addition, the inclusion of some implementation advice, which can be placed at the end of the guidelines, as in the Dutch example, or before the recommendations as displayed in the Swiss guide, is recommended. Similarly, for the reasons mentioned earlier, a glossary containing the terminology frequently used within the recommendations should likewise be integrated. The unique and innovative component that complements the Swiss family business guidelines constitutes another structural element that is of great practical importance to family businesses – namely, the integration of a governance checklist for family businesses. As indicated within the analysis in the preceding chapter, this checklist assists the family businesses by providing an overview of the relevant governance issues corresponding to the order in which these are addressed in the guidelines and thus provides a relevant point of departure for the family businesses’ own governance pursuits.

3.1.2 The Structural Approach of the Guidelines

It is well known that complex interpersonal relationships play a pronounced role in family businesses, a fact of great relevance when creating family business governance guidelines. First and foremost this is due to the influence of the family on the business. This influence is reflected in the importance attributed to family ties and the impact of the more emotionally charged way of functioning of the family. Business settings without family involvement are generally based to a greater degree of on professional relationships that are more strictly governed by organisational hierarchies and the

568 The idea of a separate checklist of the provided guidance or advice, as a tool for a better understanding and use of the longer main document, is also mentioned in the British Code of Practice on Guidance on Regulation. See Department for Business Innovation & Skills, Code of Practice on Guidance on Regulation, 8.

569 Similarly ibid, where the code also suggests that such a checklist should be linked, or provide references, to the main document.

composition of its members is more closely aligned with the achievement of the businesses’ strategic objectives. As alluded to above, the systematic conceptualisation of the involved relationships through the two or three circle model not only explains the roots of the governance issues but also provides the foundation for their solution. For this reason these models are especially apt to function as the underlying structure of the family business guidelines.

The preference of this systematic approach as the underlying content structure of the governance recommendations for family businesses is further cemented in view of the following arguments. The selected guidelines chose, in accordance with the relevant literature, to deal with each governance sphere – whether that means two or three spheres – in the family business individually. One main reason for this emanates from the demonstrated discrepancies of the functioning of the different spheres, which in turn can require a different governance approach. The distinct treatment of the governance spheres also allows one to identify and deal with the governance issues in the sphere in which they actually arise. In this way, one can address the respective issues in isolation from other dimensions prior to possibly considering how they influence other dimensions as well.

Further, this separation enables a clearer carving out of the respective roles that exist in the various spheres and of how their focal points and expectations differ in contrast to those in other spheres. This denotes one of the most important governance foundations in family businesses and thus needs special attention. The preceding arguments corroborate that the systems concept embodied in each of those two models is best equipped to achieve a clear and efficient governance structure for family business governance guidelines as opposed to, for instance, a structural approach that purely centres on the different relevant governance themes.

That leaves the remaining question of which of the two models – two or three circle model – is preferable as the underlying structure for family business governance guidelines. Summarising the choices made by the selected guidelines there seems to be a slight trend towards the three circle model as a structural basis, which cannot be taken as

---

571 For the particular characteristics of the family and business, see the discussion in chapter 1, section 3.
572 See for instance, McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 154; Cadbury, Family Firms and their Governance, 23, 32.
573 The case overview provided in chapter 1, section 2.2 has illustrated how detrimental such carrying over of governance issues can be, not only for the affected spheres but also for the persistence of the family business as such.
a very indicative sign due to the small sample size. The first chapter of this thesis has traced the developments of both models and revealed that their joint overarching purpose is aimed at dissecting and clarifying the nature of the different spheres from one another and thereby highlighting the different roles in which members of the family business, and members of the family in particular, can act. The obvious difference between the two models is the further differentiation between the ownership and the business (management) circle within the three circle model.\textsuperscript{574} As the following discussion demonstrates, arguments can be made in favour or against each of those two structural approaches to family business governance guidelines. The final decision lies with the guideline drafting committee and their preferred understanding, purpose or perception of family businesses.\textsuperscript{575}

Accordingly, the subsequent suggestions in consideration of both models should be taken more as a mnemonic aid for the drafting committee when making the decision about the structural approach of the guidelines. Drawing more on the socio-psychological underpinning of the two circle model, the main, and very distinct, identified governance spheres are the business and the family dimension.\textsuperscript{576} The ownership sphere that is added within the three circle model overlaps for the majority of family businesses greatly with the family dimension and thus does not stand as independently and distinctly from it as the business sphere does. In these kinds of family businesses the ownership component is, however, relevant in identifying the additional roles, objectives, and governance issues that may arise for family members and other external members of the family business as owners. The situation is different for the more complex and developmentally advanced family businesses. Here, the ownership component becomes increasingly relevant where family businesses are, for instance, growing or transitioning into the next developmental stage or generation. It seems therefore that the choice of the two circle model draws greater attention to the differentiation of the primary influence of the family on the business, while still being required to account for ownership-related roles and

\textsuperscript{574} For an overview of the developments in family business systems theory, see Gersick et al, \textit{Generation to Generation}, 4-7.

\textsuperscript{575} This point is suitably illustrated in the preceding analysis of the selected guidelines and their various specific focal points and guidelines objectives.

governance issues within this two-fold distinction. The three circle model on the other hand offers an even more specific and detailed, and thus more complex, account that places greater emphasis on all the possible capacities of members of the family business. In any case, it is important that committees formulating a set of guidelines for family businesses are aware of their drafting priorities and the consequences following from the model chosen.

Any decision for one of the depicted models should also bear in mind that, due to the significant overlap of the spheres, governance issues often affect more than one sphere. This situation impacts to some degree on the decision in which sphere a particular issue is best addressed. The suggestion in this regard appears, however, relatively straightforward in that it should be based on where the respective governance issue is most closely rooted. The variable placement of certain governance topics in the selected guidelines has illustrated that an agreement on this aspect may in some instances not be easily ascertained. The overlap also creates a further and likewise relevant problem of how to best link such issues to the other affected dimensions, while still maintaining the clarity of the recommendations and thus an easy accessibility of the guidelines. The more governance spheres that are included in the structural approach, the more of a challenge this latter point becomes.

3.1.3 Relevance of the Individual Governance Spheres

Another, and related, topic concerns the question of which of the identified governance dimensions of family business governance recommendations should be given a particular emphasis. Prior to contemplating this question one first must determine whether one of the dimensions should be emphasized over the others at all or whether a pluralistic approach, taking each of the dimensions as of equal importance, should prevail.\(^{577}\) The feedback gathered from the analysis of the selected guidelines provides only a general answer in this regard. Apart from the example of the Finnish recommendations which have a strong and clear focal point on the ownership perspective, the remaining family business specific guidelines by and large strive for an overall balance between the individual governance spheres. This seems to imply that granting greater attention to any individual governance sphere is not desirable or required.

\(^{577}\) See for instance Governance Guide for Families and Their Businesses (Switzerland, 2006), [9]. Poza similarly discusses the three possible priority constellations in family businesses and their associated characteristics in greater detail. See Poza, Family Business, 9-11.
A General Set of Draft Recommendations

However, upon a closer look at the more subtle implications derivable from the selected guidelines which take this rather balanced approach, one can detect a tendency towards the upholding of one governance dimension as more important than the others. The Swiss have perhaps the clearest emphasis on a singular governance sphere in that they deal in greater detail with the governance domain of the family. In addition and also more explicitly, the same guidelines stress the importance of the family and their governance for the success of the family business overall within their introductory sections. They continue this emphasis within the recommendations themselves where the business governance is built on the family resolutions and objectives. A similar trend surfaces in the revised versions of the German and, in particular, the Spanish guidelines. These revisions award greater space and detail to the aspect of family governance and thereby contribute to a better balance in the representation of the spheres than was apparent in their first editions. Apart from the Swiss guidelines, the remainder of these family business recommendations dedicate slightly more attention to the business governance dimension of family businesses.

With regard to the business governance dimension of such guidelines, a further delineation is required in order to determine the underlying focus of the specific recommendations. While these recommendations are aimed at family businesses and thus ascribe primary importance to their corporate governance, the influence of the family cannot be neglected within the business governance. That is, in order for the family businesses to benefit to the greatest extent from these guidelines, the recommendations need to address business governance issues from a perspective that accounts for the particular nature of this business form and which also creates the majority of governance issues in the first place. Accordingly, these guidelines should not get carried away in providing and repeating rather general corporate governance advice that is commonly found in the corporate governance codes aimed at listed companies. The family business governance guidelines have to instead live up to the challenge arising from the additional complexity of family businesses and tailor their governance recommendations to the family influence inherent in this form of business. An example where this has been done successfully is found in the Dutch business governance recommendations.

578 Compare Governance Guide for Families and Their Businesses (Switzerland, 2006), 3, 5, [9], [19], [43].
In sum, the importance bestowed on the family governance dimension, as found, for instance, in the Swiss recommendations, should generally be reflected in family business governance guidelines since the family element constitutes the decisive feature that makes this business form special. Secondly, since the family inevitably imprints on the business and its dynamics, it is crucial that the business governance recommendations prioritize those governance issues that arise from the family influence in the business.

3.1.4 Size and Developmental Stage Considerations

"The first generation builds it, the second grows and upholds it, the third generation squanders it."\(^{579}\)

This well-known quote that is frequently associated with family businesses already bespeaks the importance and necessity of good governance structures for the long term success of this business form. At the same time, the developmental progress of family businesses is even more complex than this quote generally seems to imply.\(^{580}\)

The governance needs of family businesses adhere closely to the developmental circumstances in which the business resides. The developmental stages in a family business can naturally be described in a twofold manner. On the one hand, the business as such can experience a growth and later on a maturity process, which commonly triggers a change in the business’ size.\(^{581}\) On the other hand, the family sphere usually experiences its own developmental process as well, which, as the above quotes alludes to, is related to the expansion of the family ultimately leading to a change of generations.\(^{582}\) Given the great overlap between the governance spheres, developmental changes occurring within one sphere are likely to have an impact on the others. Consequences of this interconnectedness and the diverse developmental processes are

---


\(^{580}\) See Gersick et al, *Generation to Generation*, 15-24, who establish a three-dimensional developmental model of family businesses, showcasing the individual developments in each of the three spheres over time. However, it needs to be acknowledged that the individual family business development can take one of a vast number of variations of these generally established developmental stages. See also ibid, 24. An equally comprehensive model is depicted in Kets de Vries, Carlock and Florent-Treacy, *Family Business on the Couch*, 66.


A General Set of Draft Recommendations

manifold. The developments within the business and the family can change the existing dynamics within the family business. The generational change and growth of the family, in particular, likely leads to a growing pool of interests that tend to diverge incrementally. In terms of the development of a governance framework within the family business, an increasing build-up and formalisation of the governance structures is required.

These remarks already reveal the importance of incorporating and catering to the different developmental stages within family business governance guidelines. The frequent references to certain developmental stages or size-related governance issues within the analysed family business specific guidelines further reinforce the relevance of this aspect. Due to the variety of possible family business scenarios, family business guidelines cannot absorb all of them in detail. Along the lines of the above twofold distinction, and in agreement with the grouping approach displayed in the selected guidelines, the recommendations should include governance advice for specific categories of family businesses; for instance, first generation family businesses, listed or larger family businesses or family businesses in their initial stages, where required.

The guideline analysis has displayed various ways in which the developmental stages can be integrated into family business governance guidelines. First, consideration should be given to the introductory sections, which should be employed to convey an understanding about these different governance needs to the family businesses. As covered in detail above, the description of the intended target audience may include certain specifications as to the developmental status of the addressed family businesses. In this regard, caution should be exercised against restricting the scope of application too narrowly to only larger family businesses. A gradual development of corporate governance structures is overall preferable and can be initiated in basic form already in the earlier stages of the family business life cycle. Similarly, the guideline purpose statement should include references to the developmental progress or level of the family

584 Similarly, in a more general regulation context, see Department for Business Innovation & Skills, Code of Practice on Guidance on Regulation, 8.
585 This holds in particular, since the blurred boundaries between family and business systems exist right from the initiation of the business. Or, where the family business is founded by several family members, such as a husband and wife or sibling team, a heightened potential for conflict cannot be denied and some (at least informal) dispute resolution measures should be agreed on.
business. For instance, some guidelines relate to family businesses with growth ambitions. Similarly, others point to the fact that family businesses at various stages will benefit from working with these governance guidelines. Guidelines including this latter observation commonly include two further objectives. One the one hand, to provide a starting point to those family businesses that have not yet implemented any, or at least no formal governance processes, and on the other, to provide a point of reference for the evaluation and guidance for the further extension for those businesses that already have certain governance mechanisms in place. As an example, the Dutch guidelines’ provision of an overarching typology of family businesses, which is then drawn upon within the recommendations, could also be considered.\(^{586}\) The difficulties of such a typology lie in determining which main types of family businesses are most relevant in such a way that the target audience can identify with one of them and that they will also be pertinent to the content of the recommendations.

Secondly, thought should be given to how the developmental stages become relevant within the recommendations’ content. The drafting committee needs to resolve in which form the specific governance recommendations for certain developmental categories will be addressed. The Dutch chose to provide specific recommendations corresponding to their established typology in addition to their general governance recommendations for family businesses. This solution would involve highlighting clearly in which circumstance certain family business stages or settings require either a more elaborate or a more simplified governance solution. This will depend on the guidelines’ chosen approach to presenting their content, but in either case the respective recommendations should explicate the relevant changes in further details. Additionally, the turning points of such developmental changes themselves often require separate contemplation within the guidelines as these transition periods involve great complexity and crucial planning and decision making in several spheres.\(^{587}\) A common example for this situation is the change of generations within the family and business, which will be further detailed within the next section on significant governance topics.

---


\(^{587}\) See generally, McCahery and Vermeulen, *Corporate Governance of Non-listed Companies*, 4.
3.2 Relevant Governance Themes

This last part of the general draft recommendations for family business governance guidelines concerns itself with an elaboration of the important governance themes that should be incorporated into these guidelines. This section thereby draws mainly on the governance issues identified and discussed in the selected guidelines. However, certain aspects that seem to be somewhat underrepresented in these guidelines compared to their importance for family business longevity will be addressed in greater detail. These themes are organised in a thematic structure instead of a division according to the governance spheres since the objective of these suggestions is to provide an overview of the relevant governance topics and the main questions to be addressed therein. A further rationale is that this approach also enables one to highlight more efficaciously exactly how the previously described overlaps can result in an issue which affects several governance spheres concurrently. This section commences by highlighting the underlying governance relationships in a family business. This is followed by an associated discussion of the required governance bodies and roles as well as of the requisite governance documents that should be drafted in order to facilitate a well-functioning governance system. A subsequent examination of certain specific governance issues, including dispute resolution, communication, succession, share-related issues and family business finances, is finally concluded with some remarks on how to align the governance recommendations provided in the context of the individual governance spheres of the family business.

3.2.1 Governance Relationships in the Family Business

The importance of the relationships of the family business members as the elementary foundation for the functioning of the family business has already been discussed above. It is clear from this discussion that the adequate governance of these relationships is crucial for the survival and longevity of the family business. Addressing this governance aspect further inures to a greater clarification of the various roles of the family business members, which is one of the overarching objectives of these family business governance guidelines. An appropriate governance of these multiple roles and relationships also contributes to the balance of the family influence in the business, with the general demands that every business operation faces.\footnote{Similarly, Cadbury, *Family Firms and their Governance*, 32-33.}
already provide the underpinning foundation to many of the subsequently addressed topics.

The selected governance guidelines do not always address the governance of the underlying family business relationships as a separate topic, but for the most part choose to embed the related discussion within the relevant governance spheres. Overall, two main sets of relationships can be distinguished within the family business. The first set refers to the relationships within the family business, while the second set focuses on the relationships of the family business with external stakeholders. As part of the internal relationships, most of the selected guidelines concentrate on two main groups of relationships: those among family members and those between family members and non-family members. The family relationships face one overarching governance problem – the prevention or adequate management of conflict among the family members. In order to avoid a building up of tension in the first place, the common recommendations within the selected guidelines all centre on the principle of transparency. This includes, for instance, an open discussion of the prospects of the next generation to become involved in the business and, related to this, an account of the expectations on the requisite educational and professional qualifications for interested family members. Other topics of importance include the determination of who has the ultimate decision making powers in the case of several family members being interested in an available position and the creation of equal opportunities and support for keen offspring. Apart from these more business focused recommendations, the family also needs to decide on the rights, responsibilities and expectations put on those family members who hold a share-ownership in the business and to determine the procedures for share transfers. All of these propositions are underpinned by the need to develop well-functioning communication and information structures within the family sphere.

Additionally, the family as such has to work towards a common understanding and position as to its long term perspective for the family business. For the family to have a concerted and well-thought out position, which can then be conveyed and realised in the business, the family needs to engage in a dialogue involving all existing generations. This

589 This crucial point is discussed in greater detail below under the heading of dispute resolution.
590 For instance, The Family Business Governance Report (The Netherlands, 2003), section 3.2.5.
591 This point is, for instance, stressed and addressed in detail in the following two guidelines: ibid, section 3.2.1; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.1.
dialogue should be guided by an experienced and respected family member. This discussion will also require a consideration of their essential family values, mission and objectives or, where the family is expanding considerably, potential changes to the family involvement after a transition of generations. A different recommendation that is relevant for achieving a joint direction, which is emphasised in several of the selected guidelines, is the encouragement of an active and informed share-ownership of the family members. This is of particular importance to family businesses due to their generally longer term investment view. Again, all of these suggestions fall back on an adequate communication and information system within the family and the family business.

As has become apparent from the analysis of the guidelines, the governance of the relationships between family and non-family members is of great importance, especially with a potential future expansion of the family business in mind.\textsuperscript{592} The family business should create an environment that is open-minded to employing and fostering external talent. Attracting outsiders into the business is a relevant hurdle that many family businesses face.\textsuperscript{593} In order to provide such an environment, fairness should be the prevailing basis for structuring the relationships between family and non-family members in the business. Fairness in this context involves ensuring an equal treatment of all parties when it comes to applying for, and remaining, in a position or for promotions. The family business needs to determine the requisite entry criteria which should apply in equal measure to candidates both internal and external to the family. Of course, where both candidates are suitably qualified, the family candidate can be preferred.\textsuperscript{594} An important governance tool for demonstrating the family business’ resolve to fair treatment is to conduct regular performance evaluations of family and non-family members active in the business and to take measures where expectations are not met. This should apply to positions of all levels.


\textsuperscript{593} See Cadbury, Family Firms and their Governance, 16-18, 34.

\textsuperscript{594} See also ibid, 16-18.
While there is a natural concentration on the internal governance structures, family businesses should also be reminded of the importance of attending to their stakeholder relationships that transcend the immediate business operation. An additional governance focus on these external relationships should thus be integrated in family business governance guidelines. Maintaining and nurturing these external links may be even more essential for family businesses than for other business forms due to their traditional proximity to their often more local communities of suppliers, customers and business advisers. The topic of stakeholder relations and the associated matter of corporate social responsibility were generally dealt with as a separate topic by the two guidelines, the Swiss and the Spanish, that elaborated on them in greater detail. With respect to corporate social responsibility, family businesses should contemplate in which ways their business can contribute to improve its social standing in the community. This gives the family the opportunity to give their family values an external dimension as well as concurrently establishing a positive reputation for the family name and the business. Environmental and philanthropic initiatives are common examples for realising such objectives.

In terms of external stakeholder relations, the group of external experts or advisers deserve special mention. Family businesses will in certain circumstances, and for specific issues, require the help of external professionals at some point in their life cycle. A thorough understanding of the governance particularities of family businesses should be one of the primary criteria when selecting experts or advisers. Further criteria include a certain objectivity and, at the same time, the respect from the family members, in order for the expert to function as a neutral sounding board and to provide a mediating influence.

### 3.2.2 Relevant Governance Bodies and Roles

The topic of governance bodies is one that is covered in some detail by all the selected guidelines. Moreover, the discussion of this aspect commonly forms the point of departure for the further governance issues discussed within the individual spheres, and

---


596 With regard to philanthropy in family business see also Denise Kenyon-Rouvinez and John L Ward, Family Business: Key Issues (Palgrave Macmillan, Houndmills, 2005) 2, 43.

A General Set of Draft Recommendations

for a good reason. In order to allow for an organised and structured corporate governance approach in the family business, the initial creation of a few governance organs which are in charge of directing and guiding the required governance measures within the individual spheres and overall is vital.\(^{598}\) Naturally, this process will frequently involve collaboration between these governance bodies. Before elaborating on those governance bodies that are considered essential as a minimum standard, it is important to stress the recommendation made by several of the analysed guidelines. They state that one should build up such governance bodies gradually in correspondence with the developments of the family business as well as of its individual governance spheres.\(^{599}\) That is to say, informal gatherings within the respective spheres may prove initially sufficient to start off the governance process in the family business.\(^{600}\) For instance, in family businesses that embark on setting up a basic governance system while still in their early developmental stages there may be no need to insist that the business members discuss governance issues at formal meetings.\(^{601}\) The governance structures should, however, advance and become more formalised over time.

Commonly, the establishment of the following two governance organs was recommended by all the selected guidelines and they thus comprise the basic governance bodies that should exist in a family business. Within the family sphere, the creation of a so-called family council is considered crucial.\(^{602}\) The overarching role of the family council is to represent the family within the family business and externally. As such, its key functions are to organise the family and its governance as well as to draw up details


\(^{600}\) Unless, of course, the legal requirements stipulate the creation of these organs by law, as is generally the case for the establishment of a board of directors in incorporated businesses. Compare for instance, *Companies Act 1993* (NZ) s 128(1).

\(^{601}\) The professionalisation process within the business sphere may involve the evolution from a single family owner-manager through to an advisory board or other external advisors to a more formal board structure. Compare *The Family Business Governance Report* (The Netherlands, 2003), 29. Less formalised governance structures, such as the mentioned establishment of an advisory board, are also referred to in family business literature. See Neubauer and Lank, *The Family Business*, 99-101; Cadbury, *Family Firms and their Governance*, 31.

regarding the family’s position on how the family influence is to be embodied in the family business and communicate this vision to the business governance organ. The composition of the family council should reflect the current constitution of the family, thus including members of all existing generations and family branches. An experienced and widely respected family member, who is preferably not concurrently occupying a leading position within the business sphere, is generally suggested for the role of the council chair.

The other crucial governance organ, the board of directors, is situated within the business sphere. The board is probably the most important governance body in the entirety of the family business. The main reason for its key role arises from its position at the junction of all three governance spheres. The board of directors is not only responsible for governing the business dimension, but it further needs to interact with and account for the expectations of the family and ownership spheres. Family business governance guidelines should strive to clearly identify the important role of the board within the overall governance of the family business in order to enable and support the board in carrying out this complex task without any considerable, inappropriate interference from the other two spheres. Due to the board’s position at the core of the business’ corporate governance system, the role of the board’s chairman is crucial and its appointment should be given careful consideration. In addition to requisite professional experience and qualifications, the chosen person should be well-respected among the members of all three spheres in order to aid in the task of liaising with the family and the shareholders and achieving a consensus in questions that impact all governance dimensions in the family business. Within the composition of the board, the inclusion of independent directors may prove beneficial to the family business and should be contemplated. In contrast to the role that independent directors generally fulfil within larger or listed companies, that is, to provide a more objective control on the operations and decisions of the business, their function in family businesses further serves the

603 In doing so, the abovementioned desirable separation of the individual governance spheres is facilitated.
605 A more detailed discussion on the role of independent directors generally can be found in John H Farrar, Corporate Governance: Theories, Principles and Practice (Oxford University Press, South Melbourne, 3rd ed, 2008) 391-396.
slightly different purpose of providing a balancing or mediating voice among the other members of the board, especially where several of them are recruited from the family’s own ranks. Beyond this, these family-external directors also provide professional experience and skills in areas where the board’s knowledge is deficient.606

Interestingly, the selected guidelines have generally only paid marginal attention to the governance bodies within the ownership sphere. Apart from referring to the legally required representation of all shareholders through the annual general meeting, only the Finnish, with their primary ownership perspective, suggest the potential creation of a separate, so-called council of owners. This council, similar to the family council in the family sphere, could denote a concentrated representation of all the different lines of shareholders and meet on a more frequent basis. However, the Finnish make clear that this role can also be subsumed under the tasks of the family council where a separate council of owners is not practicable.607 This remark likely provides the most feasible explanation for the reluctance of the remaining selected guidelines to include a recommendation for the creation of a further governance body for the ownership sphere, since the personal overlap of family members and shareholders may be substantial.

The growing family business should consider incrementally expanding the governance structures of its main governance bodies. With regard to the board of directors, the advice administered towards larger or listed companies to establish specific committees that address certain governance tasks and report in turn to the board, will gradually become relevant in family businesses as well. The expansion of the family may at some point trigger the creation of another, broader, governance body that is often referred to as the family meeting or reunion. This body encompasses the wider family circle while the family council constitutes a more concentrated representation of the family.

3.2.3 Essential Governance Documents

The relevant governance documents are closely linked to the preceding issue of the family business governance bodies, since their content is primarily determined by the functions of the individual governance organs. Generally speaking, a wide array of


607 Good Corporate Governance in Family Business (Finland, 2009), 14.
possible governance documents can be conceived. The focus within this section is to provide a concise overview of the few more essential and overarching governance documents within the individual governance spheres. As with the family business governance system in its entirety, any governance documents created in the governance process will need to be revised and adjusted in accordance with the evolution of the family and the business. This aspect should be reiterated in the respective sections within the family business governance guidelines.

The family protocol, sometimes also referred to as the family constitution or charter, comprises the most notable governance document that is mentioned in virtually all of the selected guidelines. The overarching purpose of the family protocol is to articulate the role of the family in, and its position towards, the family business as well as the agreed upon intra-family conduct. As such it generally establishes a written account of the governance structures and processes that are developed within the governance sphere of the family. Its content is primarily determined and shaped by the governance work that is carried out by the family council which, as the dominant governing body in the family sphere, should also prepare the family protocol. Accordingly, commonly covered topics include: the composition, processes, and responsibilities of the respective governance bodies in the family sphere; the values, vision and objectives that are paramount to the family and are to be reflected in the business; as well as the required family policies outlining the relevant governance mechanisms – such as those concerning dispute resolution, communication, intergenerational responsibilities and conduct – to safeguard and promote the interrelationships of the family members with one another. Additionally, topics that primarily affect the family but also impact concurrently on other

608 While the logical cohesion of the draft recommendations places the treatment of governance documents at this stage of the recommendations, it should be reiterated that they also play a vital role within the implementation process of the governance solutions devised by the individual family business. These documents are essential in recording the determined governance structures and processes, thereby providing an important point of reference for the members of the family business.

609 See for instance, Governance Guide for Families and Their Businesses (Switzerland, 2006), [20].


611 See for instance: A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 54ff; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.1.

612 For more detailed examples, see A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 54ff; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.1; Baysse Code II (Belgium, 2009), [9.5]. Further examples of family constitutions are provided in Neubauer and Lank, The Family Business, 85-95. Of course, the governance matters described within the draft recommendations in this chapter should be reflected in some form in the family protocol.
governance spheres should be incorporated into the family protocol. Examples for such topics include, for instance, the employment of family members in the business; the distribution of shares among the family members; and the change of generations in the family business. For such areas of overlap, the family council should consult with the other concerned governance bodies in the family business. Collaboration with the board of directors is especially important in this regard. Family business governance guidelines should strongly advocate for the family to reach a consensus and for subsequently putting these expectations and statements into writing to bestow a greater validity upon them.

Given the manifold possible configurations of such family protocols, the choice of which not only depends on the family dynamics but is also influenced by the developmental stage of the family and the business, it is difficult to ascribe to them only one specific legal character. The suggestions in the selected recommendations, apart from the Spanish recommendations, do not specifically address this point. Family protocols can range from very informal and oral agreements to more formal and legally potent covenants. In one example of an existing family protocol, this governance document is understood, as a guideline for the conduct within the family sphere which is not meant to create conflict with the law and the legal rights of the business’ stakeholders. But a more legally binding character is likewise possible where the family protocol is conceptualised as a contract or, to a somewhat lesser degree, in a similar vein, as a constitution. Family business governance guidelines should highlight the different legal possibilities and consequences for the drafting of family protocols.

614 Ibid; *A Practical Guide to Good Governance in Family Businesses* (Spain, 2012), 54; *Governance Guide for Families and Their Businesses* (Switzerland, 2006), [18].
615 *A Practical Guide to Good Governance in Family Businesses* (Spain, 2012), 54. These recommendations, while recognising that the legal character of the family protocol can vary, advise that the protocol should be signed by all family shareholders, notarised and even be entered into the companies’ register. It should, however, be noted here that the Spanish seem to treat the family protocol more like an overarching governance document for the entire family business, also including, for instance, a description of the other business governance bodies and numerous issues relating to the ownership sphere such as share transfers. On the legal enforceability of family constitutions, see Jurinski and Zwick, ‘How to Prevent and Solve Operating Problems in the Family Business’, 39.
616 See example in Neubauer and Lank, *The Family Business*, 90. Another way to refer to this type of governance document is as a ‘family mission statement’, which concentrates more closely on the aspect of the family traditions, values and goals. See McClain, ‘Family Constitutions and the (New) Constitution of the Family’, 866.
617 The terminology employed in naming these documents does, however, not always reflect the legal understanding of such terms.
Shareholders’ agreements constitute the second frequently mentioned governance document within the selected guidelines. Generally, shareholders’ agreements are legally binding contractual agreements among some or, if possible, all shareholders of a company. Due to their contractual nature, which requires the consent by all parties to the agreement, they are more prominent in private or smaller companies. It should be noted that, especially in smaller family businesses, the content of a shareholders’ agreement may also be incorporated into the family protocol, where there is a greater congruency between the family members and the shareholders. In the family business specific context, shareholders’ agreements commonly specify the rules of conduct among the owners of the family business, thereby setting out the legal rights and obligations of the shareholders as well as the procedures for certain share-related governance issues. These share-related governance concerns are addressed in greater detail in one of the following sections below, but include, for instance: criteria for shareholder positions with respect to family members and family-external parties; procedures and terms and conditions for share transactions; and the regulation of a share buy-out request by a family owner.

Surprisingly, given the importance of the board of directors as a governance organ, none of the analysed guidelines specify a comparable elementary governance document for the business sphere. A corporate constitution comprises the most likely overarching governance document to be drafted as part of the business governance. A possible reason for the lack of mentioning this regulatory mechanism in the selected family business governance guidelines might stem from its distinct legal character. In contrast to the family protocol and shareholders’ agreements, the corporate constitution derives its binding legal force from the respective companies’ legislation. Sometimes referred to as a ‘statutory contract’, the statute determines the rules and generally allowable content of governance documents.

619 See also FitzGerald and Muth, Shareholders’ Agreements, [1-02], [1-15]; Lynne Taylor, ‘Shareholder Agreements’ in John Farrar (ed), Company and Securities Law in New Zealand (Thomson/Brookers, Wellington, 2008) 65.
620 Further, as can be gathered from the general literature on shareholders’ agreement, they can also be incorporated in some or all parts into the corporate constitution of a company, should it exist. This is likewise conceivable for family businesses, but, as will be highlighted under the aspect of the corporate constitution, with different legal consequences. Compare Reece Thomas and Ryan, The Law and Practice of Shareholders’ Agreements, [1.12]-[1.38]; FitzGerald and Muth, Shareholders’ Agreements, [1-08]. [1-11f].
the constitution, which then becomes binding between the various stakeholders of a company, such as the board of the directors, the shareholders and the company itself as a legal entity.\textsuperscript{621} As such, family businesses need to refer to the companies’ legislation to determine possible contents and the legal consequences of adopting a corporate constitution for their family business. This approach deviates from the primary self-help character envisaged by family business governance guidelines. The corporate constitution broadly describes the internal operational and management rules of the business, in particular addressing the governance of the relationships of the various business organs.\textsuperscript{622} The constitution further becomes a public document upon its, usually required, registration as an official governance document of the company at the companies’ office. Due to this aspect, and the greater complexity in setting up such a constitution, its development should probably be undertaken by obtaining professional advice. Referring to this, where governance documents are intended to have a legally binding nature, such as shareholders’ agreements or the corporate constitution, it should be recommended that family businesses involve an expert in the drafting process in order to ensure that the documents and agreements reflect the family business’ intentions.

Further additional and more specific governance documents, such as a business or strategic plan, or a financial family strategy, can be either incorporated into the above mentioned documents or complement them.\textsuperscript{623} To some extent this will depend on the developmental stage of the business as well. The role of an esemplastic governance document for the entire family business, bringing together the governance approaches within the individual spheres, will be discussed in more depth under the aspect of the alignment of the individual governance spheres below.

\textbf{3.2.4 Dispute Resolution}

The analysis of the selected family business guidelines revealed a rather concerning status quo with regard to the extent that these recommendations address the matter of

\textsuperscript{621} See Reece Thomas and Ryan, \textit{The Law and Practice of Shareholders’ Agreements}, [1.25]-[1.26], [4.1]; Lynne Taylor, ‘Company Constitutions’ in John Farrar (ed), \textit{Company and Securities Law in New Zealand} (Thomson/Brokers, Wellington, 2008) 45-47. Note, where the corporate constitution also includes typical contents of a shareholders’ agreement, it may also become binding between the shareholders. See generally FitzGerald and Muth, \textit{Shareholders’ Agreements}, [1-21].

\textsuperscript{622} Compare generally also Reece Thomas and Ryan, \textit{The Law and Practice of Shareholders’ Agreements}, [1.15]-[1.16].

\textsuperscript{623} The Swiss guide, in particular, elaborates on a variety of specific governance documents, especially within the business sphere. See for instance, \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), section 5.
conflict resolution in family businesses.624 The issue of discord or conflict in family businesses appears rather underrepresented in the majority of the selected guidelines in proportion to the potential detrimental impact such disputes can have on the continuity of the family business.625 Often, the guidelines merely mention the issue of conflict resolution without providing any further details and explanations on the matter. Conflict within family businesses is different. If the business relationships among unrelated business partners deteriorate or break down, the partners can decide to part ways, and in the worst case have the courts determine the fair terms for doing so. The same, however, cannot be said for the relationships of family members involved in a family business. The family ties form an emotional and much stronger bond and thus cannot simply be terminated, like a business partnership, in the case of a severe dispute within the family business. As has been demonstrated in the general case review in chapter one, once such family business cases have reached the litigation stage, the likely outcome is a discontinuation of the family business and, certainly worse, a breakdown of the family relationships often beyond repair.

Salmon J appropriately describes similar observations in the family business case of Thexton v Thexton:626

This then is a dispute essentially between mother and son which, as happens so often in these cases, has set one part of the family against the other, totally splintering what had previously been a close knit relationship. … As is so often the

---


625 Highlighting the negative impact of conflict on family business longevity, compare Jurinski and Zwick, ‘How to Prevent and Solve Operating Problems in the Family Business’, 37; Gersick et al, Generation to Generation, 3; Levinson, ‘Conflicts that Plague Family Businesses’, 90; Cadbury, Family Firms and their Governance, 7-8.

626 Thexton v Thexton [2001] 1 NZLR 237 (HC) [2], [26].
case with litigation involving families the contest has become increasingly bitter as the proceedings have advanced.

This particular situation of family businesses is precisely the reason why family businesses should invest a concerted effort into agreeing, designing and implementing conflict resolution mechanisms already at an early stage. Family business governance guidelines should thus stress the importance of having such conflict resolution structures in place and allude to the potentially disastrous outcomes if this important governance issue is ignored. As part of these recommendations, it is further necessary to make family businesses aware of the more frequent underlying sources of discord in their type of business. The only selected guideline that addresses these potential sources is the Dutch report.

While the conceivable causes of conflicts are naturally manifold, the following are commonly identified in the context of family businesses. They range from family internal disputes, for instance within or between generations, to conflicts between family members and non-family members involved in the family business. Thematically, the conflicts commonly centre on disputes related to share transfers or buyouts involving family members; issues arising as part of the succession process in the family business, which can further be linked to inheritance quarrels; matrimonial property disputes affecting the family business or a part of its assets; or employment based disputes concerning family members. Not surprisingly, this exemplary list resembles many of the governance topics covered in family business guidelines. Further, the length of this list of examples already reflects the overall greater potential for conflict in family businesses due to the significant overlaps of family and business spheres. This situation only further emphasises the need to attend to this governance issue.

Interestingly, only the Belgian guidelines, despite their wider focus, acknowledge the importance of dispute resolution mechanisms within their introductory section. Buyse Code II (Belgium, 2009), 6.

Intra-generational conflicts commonly occur in the form of sibling rivalry, while inter-generational discord often arises between the incoming and retiring generation. In growing family businesses, disputes between different branches of the family become more likely. See The Family Business Governance Report (The Netherlands, 2003), section 3.2.4. See also Gordon and Nicholson, Family Wars, ch 2; Harvey and Evans, ‘Family Businesses and Multiple Levels of Conflict’, 331-348; Levinson, ‘Conflicts that Plague Family Businesses’, 90-98; Farrar, Watson and Boulle, ‘Dispute Resolution in Family Companies’, 38-39.

A General Set of Draft Recommendations

The abovementioned list of possible sources for discord in family businesses, as well as the choice of the selected guidelines to attend to this issue within the family governance part of the recommendations, further implicates a considerable likelihood for tensions to originate in the family sphere in particular. The emotional underpinning of the functioning of the family sphere undoubtedly contributes to this conflict potential. But as the family business cases have attested, these conflicts are by no means an isolated problem of the family since they can easily spill over into other governance spheres due to the generally blurred boundaries between them. This last point also provides a further justification of the importance of attending to the various governance spheres in a family business separately and the prevention of undue interference in other spheres. The family business guidelines should additionally address the fact that the potential for conflicts will likely increase with the evolution and expansion of the family and the business, since a growing family and, often simultaneously, shareholder group generally bring about a greater and more diverse pool of interests, expectations and ambitions with regard to the family business.

In order to avoid having a family business dispute end up before the courts as the ‘last resort’, family business governance guidelines can generally help family businesses in two ways. The first way in which such guidelines seek to assist family businesses lies in their governance support which can assist in preventing the emergence of the described conflicts in the first place. That is, on the basis of the governance recommendations, family businesses are encouraged and called upon to work through the governance issues that are depicted in the guidelines and to come up with individually tailored governance solutions for the relevant issues that suit their particular family and business. In that way, by dealing with these potentially contentious issues before they cause actual tensions, the family business can obviate a great deal of conflict.
In order to make this preventative concept work, the following suggestions should be borne in mind and thus included in the family business governance guidelines. These governance discussions should take place at a time when there is no tension or only little pressure from an existing or looming dispute and no substantial changes in the family or the business are impending. Within these conversations, the family business should strive to come to a general consensus on how to best deal with these governance matters. Should it become clear that a consensus is hard to achieve on a certain issue, the help of an external expert, or of a mediator, should be enlisted. It is of further importance that after such agreement, the so determined governance solutions and structure should be put down in writing. The principal rationale behind this suggestion emanates from the objective to ensure transparency of the governance system and to provide a point of reference, and by having a solution or procedure in place to fall back on, avoid the escalation of any conflicts, should they arise. Again, all affected family business members should be made aware of the agreed upon solutions, for instance by distributing the relevant written governance documents containing these structures and mechanisms among them. Finally, a continuous prevention of family business conflicts requires a regular update and, if necessary, adjustment of these governance solutions to ensure their enduring compatibility for the evolving family business.

The second, and more prominent, way in which family business governance guidelines can abate the proliferation of conflicts in the family business is by addressing the matter of dispute resolution as a specific governance issue within their recommendations. Realistically, even the best governance system will not be able to avert the emergence of tensions or conflicts at all times. The overarching recommendation by the selected guidelines centres on the necessity to determine the resolution procedures to be followed should a conflict arise. The underlying ground rule should prescribe an open and fair discussion of the contentious matter as well as

---


635 This is generally true for the development of governance structures in the family businesses. See for instance, Governance Guide for Families and Their Businesses (Switzerland, 2006), [8].


taking active steps towards its resolution.\textsuperscript{638} The discussion should take place in an appropriate forum depending on the nature of, and the parties involved in, the conflict. The resolution process should be guided by one selected and trusted member of the family or a comparable committee, the latter of which would benefit from the inclusion of a respected external board member.\textsuperscript{639} These basic rules should further impede a spreading of the conflict on to other members or spheres and a ‘taking of sides’ in the respective argument which often follows.\textsuperscript{640} The committee should also have a decisive weight in determining a balanced solution for smaller conflicts. In the case of more severe disputes, or certain complex governance situations, the resolution procedures should establish when to solicit the help of an experienced external mediator or professional expert on the issue in question.\textsuperscript{641} Ultimately, the dispute resolution committee or person should strictly apply and adhere to the determined written governance structures and resolution procedures so that these rules can become widely accepted and observed by the family business members.

3.2.5 \textit{The Importance of Communication}

The previous topic on dispute resolution has already alluded to the importance of good communication in family businesses.\textsuperscript{642} In general, adequate communication constitutes one of the fundamental governance mechanisms underpinning the entire governance framework and thus impacts on all the governance matters identified within this section. The selected family business governance guidelines likewise agree on the crucial role of communication and mostly even devote a separate section to this topic. The primary function of communication is to facilitate the exchange of information within the family business – either within a particular governance sphere or between several of them.


\textsuperscript{639} See also, Neubauer and Lank, \textit{The Family Business}, 76. Compare also \textit{The Family Business Governance Report} (The Netherlands, 2003), 19.

\textsuperscript{640} See \textit{The Family Business Governance Report} (The Netherlands, 2003), 20.

\textsuperscript{641} See also ibid, section 3.2.4; \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), [32]. On the role and benefits of mediation in family business disputes, see Jurinski and Zwick, ‘How to Prevent and Solve Operating Problems in the Family Business’, 39-42. More generally, Tillett and French, \textit{Resolving Conflict}, ch 9.

Accordingly, family businesses should be advised to establish well-working communication systems early on. Depending on their developmental stage, the family business may start out by following more informal ways to disseminate information among the members of the family business. These informal information mechanisms are diverse and include, for instance, family gatherings, after work get-togethers or the often evoked business talk at the family dinner table. The evolving family business will need to establish increasingly formalised communication channels. Commonly these take the form of periodic meetings of the individual governance bodies and reports circulated between them as well as annual family reunions, just to name a few. The family business may decide to maintain or create certain agreed upon informal means of communication. As will be detailed under the aspect of alignment below, informal meetings among the chairpersons of the main governance bodies from each sphere, as an example, can engender a concerted direction for the family business as such.

The family business further needs to determine to what extent and which information is appropriate and necessary to be distributed among the spheres in order to ensure a well-functioning and successful business. This requirement should apply to both informal as well as more formal channels of communication. The objective thereby should be to achieve a balance of the different rationales for requiring information. For instance, while certain business-related information should remain exclusively in the business sphere for strategic and competitive reasons, the family and ownership dimensions require regular information on the business activities and plans in order to encourage their respective members to become and to remain active shareholders or engaged family members. This rationale is of special relevance to those family members who are not actively involved in the business itself.

The so established communication structure should also be closely adhered to by all family business members in order to prevent the emergence and spreading of rumours or gossip across the different spheres. The latter can be detrimental to the family business since such behaviours can cause tension and distrust, which in turn impacts detrimentally

---

643 See further The Family Business Governance Report (The Netherlands, 2003), section 3.2.2; Governance Guide for Families and Their Businesses (Switzerland, 2006), [30].
644 Similarly, The Family Business Governance Report (The Netherlands, 2003), section 3.2.2; Good Corporate Governance in Family Business (Finland, 2009), 14.
645 See also, Kenyon-Rouvinez and Ward, Family Business, 43; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.4.
646 See chapter 1, section 4 on the problem of information asymmetries in family businesses.
on the harmony within the family business.\textsuperscript{647} This point further emphasises the necessity of all family business members, especially those acting in multiple capacities across the various governance spheres, to be aware of the respective position they should be representing in a given situation and to observe their responsibilities resulting from this position. The adherence to these communication channels also contributes to the desirable separation of the individual governance spheres by inhibiting undue interference from other dimensions.\textsuperscript{648}

In an opposing, yet complementary, fashion, good communication concurrently fosters the collaboration among the governance spheres. Communication here has the function of facilitating the consultation process on issues that affect more than one dimension, such as the generational succession.\textsuperscript{649} This comprehensive consultative process is a specific governance feature in family business which allows for a joint, but also aligned, participation towards common governance goals of the family business. As indicated above, the role of the board of directors is central in these consultations.

3.2.6 The Change of Generation – Family Business Succession

The succession process constitutes one of the most seminal governance matters in a family business – one that can tip its fortunes either way and thus often makes-or-breaks the family business’ future and continuity. Therefore, it does not come as a surprise that research literature and the selected family business governance guidelines alike place a strong emphasis on this governance issue.\textsuperscript{650} Family business succession carries such an important weight because it impacts on all three governance spheres of family, ownership and business, and can bring significant change to their composition and underlying

The overarching difficulty for family business governance guidelines lies in identifying the relevance and manifestation of the succession process within the individual governance spheres while concurrently drawing attention to the fact that planning and realising this process properly requires a concerted effort and ongoing collaboration of all governance dimensions in the family business.

The individual spheres thereby have quite varying roles in the process. The family dimension has the crucial task of preparing the upcoming generation for their potential roles in the business. This preparation involves finding ways of getting the younger family members interested in the business, facilitating their education and professional qualification, but also maintaining an open dialogue about the actual ambitions and plans of the younger generation. It should be stressed to family businesses that this engagement and support of the younger family members should be initiated as early as possible so that it clearly temporally precedes the actual succession planning process. A further task of the family is to determine, in collaboration with the board of directors, the entry criteria for family members who wish to join the family business and to agree on suitable candidates. The family should also discuss their position in the case that no suitable or willing family member is available at the time of the transition. The change of generations, however, should also give rise to a contemplation of the future roles or involvement of the retiring generation. Closer to the determined generational transition, the representation of the younger generation should also be gradually reflected in the composition of the family governance bodies to a greater degree.

The board of directors takes a central role in the succession planning – not only in the business sphere, but overall. The board should guide and direct the succession process, starting with the development of the succession plan. They should then see it through the transitory period to its completion. The change of generation commonly affects the business to a great extent due to the impending succession within the ranks of the board.

---

651 All the selected family business specific guidelines address the issue of succession in at least one, often in two or all, of the identified governance spheres. See also Gersick et al, *Generation to Generation*, 193-194.
653 See also *The Family Business Governance Report* (The Netherlands, 2003), 3.2.5; *Governance Guide for Families and Their Businesses* (Switzerland, 2006), [35].
members and/or senior executives. The drafting process of the succession plan should therefore include an assessment as to the skills, competencies and required character traits which the new leaders require in order to carry the current business successfully over and through to the next generation. Careful consideration should further be given to establishing a transition process that is timely but that also allows the incoming and outgoing generation to adjust and settle into these profound changes. The selected guidelines have commonly addressed a further governance issue in connection with the matter of the business succession – the necessity to develop a contingency plan in case the key personnel in the family business become suddenly unavailable to carry out their jobs. While this sentiment appears more closely associated with the foreseeable retirement of the active generation on the horizon, the creation of a contingency plan should preferably take place at a much earlier stage, since a sudden turn can happen at any given time.

The main influence of a change of generations on the ownership circle is related to an alteration in the distribution of shares among the family members. The expansion of the family by the upcoming generation entails the need for discussion among the family owners of how to integrate the younger generation, or parts thereof, without diluting the family ownership and possibly weakening the family influence. Ensuring the alignment of the individual succession procedures, the board of directors is instrumental in encouraging and maintaining an ongoing dialogue and consultation with the other two spheres.

3.2.7 Share-Related Governance Issues
This governance topic has been dealt with in great detail by the majority of the selected guidelines and was thus already extensively addressed in the analysis in the previous chapter. While no single selected guideline covered all of the ideas identified below,
their overall integration into family business guidelines is recommended. The central aim of this section is thus to carve out the key overarching themes and requirements that should be included within family business governance guidelines, since these issues are a common cause of conflict or tension in the family business as demonstrated by the New Zealand case review in the first chapter of this thesis. It should further be noted that these themes also comprise the common contents of shareholders’ agreements. Firstly, the owner group should determine the criteria outlining how to become and how to cease to be a shareholder. These may need to be reviewed in the process of a change of generations as will be highlighted further in the following.

The change of generations is often connected with the need to reassess the share distribution among the generations as part of the succession process within the family business. Drawing on the detailed example given in the Spanish guidelines, the recommendations should include possible alternatives by which a strong and engaged family ownership can be retained in a growing family business. A dilution of shares can otherwise stifle decision making among the family owners due to an excessively large owner group. For instance, one scenario of maintaining a balanced share distribution is the so-called ‘pruning the family tree’ method, which involves a simplification of the ownership structure through thinning-out and concentrating the family share ownership.663 Closely connected to the aspect of the general share distribution is the payment of dividends. Family business guidelines should draw attention to the

663 See A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 47-48; The Family Business Governance Report (The Netherlands, 2003), section 3.4.4; Lambrechts and Lievens, ‘Pruning the Family Tree’, 298-299. The latter authors present the ‘pruning of the tree method’ as an ‘alternative solution of handling family complexity” and further extend this approach to also limiting the number of family managers in the business. This is seen as an alternative to the solution of establishing an increasingly formalised family governance system to respond to this complexity. Ibid, 298. However, it appears more accurate to recognise this method as a complementary approach to establishing a well-functioning family governance which predominantly affects the share-distribution among the family members.

Other ideas for maintaining or structuring the family ownership position, such as interspersing a shares trust office or foundation holding the shares are, for instance, presented in the Dutch guidelines The Family Business Governance Report (The Netherlands, 2003), section 3.4.6. Similarly, McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 154.
importance of arriving at an adequate balance of retaining sufficient capital for the business needs and of sufficient dividend payments to the family shareholders to ensure their ongoing interest and support of the business.\textsuperscript{664} It falls within the responsibility of the board of directors to manage the expectations of both spheres, which in doing so should be able to take advantage of the generally longer-term view and investment horizon usually present in family businesses.\textsuperscript{665}

One of the most conflict-prone share-related governance issues involves the transfer of shares among family members. Family businesses need to be made aware of the importance of determining in advance the general terms and conditions under which shares in the business may be transferred.\textsuperscript{666} This includes arriving at an objective and fair method of valuation of the shares and a resulting predefined price-setting process as well as establishing further transaction terms, such as that the family has a pre-emptive right to acquire the shares on offer in order to uphold the family ownership.\textsuperscript{667} A relevant subcategory of a share transfer in a family business constitutes the case of a share buy-out.\textsuperscript{668} These are particularly complex in the family business situation, since the family business is generally strongly reliant on the capital invested by the family and the wealth of the family is often mostly tied up in the business. On the other hand, family members should likewise not be forced into a shareholder position or to remain in one. A shareholder in such a situation could hinder the development of the business by disapproving important investment decisions. Likewise, some family members may abstain from acquiring shares and investing in the business in the first place if there is no possibility of transferring their shares at a later point. Indeed, the latter scenario might trigger further payments by the family to compensate for renouncing a stake in the family business. These concerns demonstrate the need to establish some criteria of how to proceed should this case arise.

\textsuperscript{667} For a good overview of relevant matters to be addressed in this regard, see also Goldwasser, ‘Shareholder Agreements’, 279ff.
\textsuperscript{668} Compare generally, ibid; Gersick et al, \textit{Generation to Generation}, 183; Lansberg, \textit{Succeeding Generations}, 129.
A General Set of Draft Recommendations

At the same time, the buy-out, along with any other share transfer in the family business, raises a further crucial question that needs to be addressed: How to finance such share transfers? To the extent possible, the family should be working towards building up a sufficient financial reserve from which to finance these transactions so that the family business is not negatively affected by the situation. This might, for instance, require them to devise a ‘wealth strategy’ for the family, in view of assets that are not tied up in the business, a technique that is also recommended by the Swiss family business governance guidelines. The investments should further be arranged in a way that allows for sufficient liquidity in terms of the accessibility of these assets. The financial situation of the family can be further stabilised by having proper estate and matrimonial arrangements in place that free the family, and indirectly, the family business, from any claims in these circumstances.

Where sufficient funding is not available or where major investments by the family business are necessary, the possibility of taking on a shareholder external to the family needs to be raised. Family businesses should be alerted to the potential consequences in which such a move may result, including a weakening of the family ownership, possibly diverging agendas, or additional demands from the external shareholder. Further demands may arise due to the lack of an official market value of those shares,

---


670 Governance Guide for Families and Their Businesses (Switzerland, 2006), section 4.2; FBN Deutsche Schweiz, Transfer of Wealth, 7-21.


672 Similarly, Neubauer and Lank, The Family Business, 191-197; McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 156; Gersick et al, Generation to Generation, 35-36.

673 See also FBNed – The Dutch Association of Family Firms, Ownership Strategies for Family Businesses, theme 4.
especially for the large number of non-listed family businesses,\footnote{See for instance Neubauer and Lank, \textit{The Family Business}, 199.}{674} and may take the form of requesting further decision-making powers, such as a seat on the family business board of directors. The inclusion of an external shareholder can, however, prove beneficial for the family business, where such external shareholding is limited to a certain period of time and a minority ownership position; the selected shareholder should also fit in with the ways of the particular family business. It may further contribute to the professionalisation process of the business and bring in further expertise and contacts.\footnote{For further details on the potential benefits and concerns of including family external shareholders, see \textit{The Family Business Governance Report} (The Netherlands, 2003), 31-32; FBNed – The Dutch Association of Family Firms, \textit{Ownership Strategies for Family Businesses}, theme 4, especially 47-49.}{675}

Therefore, family businesses should be advised to carefully weigh all relevant factors and where necessary obtain professional advice before making such a far-reaching decision.

\subsection*{3.2.8 Alignment}

The recommended choice of the systems approach, with its distinction into individual family business spheres as the underlying structure of family business governance guidelines, necessitates, as a consequence, the incorporation of a section on how to bring these individual governance dimensions together and how to ensure that they will work together towards a joint overall governance goal and approach at the conclusion of the governance recommendations.\footnote{See for the case of separate yet aligned governance spheres in the family business, see Gersick et al, \textit{Generation to Generation}, 249-250; McEachery and Vermeulen, \textit{Corporate Governance of Non-listed Companies}, 154; Kenyon-Rouvinez and Ward, \textit{Family Business}, 56-57; Lansberg, \textit{Succeeding Generations}, 309, 321-322.}{676} Given the clear overlap of these different spheres of family, business and ownership, as well as of their governance issues, it is surprising that not all of the selected guidelines specifically highlight the importance of such alignment. On the contrary, only the Dutch and Spanish recommendations expressly identify and separately address this issue. Based on its overarching goal to provide for the overall functionality of a family business, any alignment measures intend to strike a balance between the individual spheres and their distinct needs and expectations. If one of the spheres were to prevail permanently over the others, the business may not be able to persist in the form of a family business in the long run.\footnote{Compare \textit{Governance Guide for Families and Their Businesses} (Switzerland, 2006), [9]; where they contrastingly suggest that it is possible for the family to prioritise either the family or the business dimension. See also Poza, \textit{Family Business}, 9-11; Kets de Vries, Carlock and Florent-Treacy, \textit{Family Business on the Couch}, 33-34.}{677}
Those who address the issue of alignment suggest several fundamental methods which could assist members in securing a concerted overall governance approach of the family business.\textsuperscript{678} The basis for an effective and conflict-free collaboration of all three governance spheres is firstly derived from a clear understanding by all family business members of the different governance roles and institutions, as well as their interrelationships. Secondly, such understanding should be combined with the acceptance of, and adherence to, their individual responsibilities and the inherent boundaries of their positions.\textsuperscript{679} A further vital building block for a collaborative family business governance lies in effective communication among the various spheres.\textsuperscript{680} This should not only focus on the provision of information but also include a regular consultation on intersecting governance issues. The already mentioned informal meetings of the chairpersons of the various governance bodies are an essential component of effective communication. This group of people may also create the right forum to agree on a joint overall direction of the family business and to set down some basic governance principles along the lines of the preceding suggestions that apply to all governance spheres in equal measure. Where deemed suitable, the Dutch recommendation of devising an overarching governance document for the family business can also be considered, likely at a more advanced developmental stage.

4 Ways to the Practical Implementation of Family Business Governance Guidelines

The previous considerations on how to best draft, together with the question of what content to include in the governance recommendations, represent the core of the work required in developing family business governance guidelines. However, this process constitutes only the first necessary step towards supporting family businesses in achieving longevity. The consequential second focal point in the guidelines’ developmental process needs to revolve around the question of which role family business governance guidelines can and should play in the facilitation of the respective

\textsuperscript{678} See The Family Business Governance Report (The Netherlands, 2003), section 3.5; A Practical Guide to Good Governance in Family Businesses (Spain, 2012), 63ff.

\textsuperscript{679} Similarly, Cadbury, Family Firms and their Governance, 32-33; McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 154; Lansberg, Succeeding Generations, 309, 321.

\textsuperscript{680} See also Kenyon-Rouvinez and Ward, Family Business, 56-57; Lansberg, Succeeding Generations, 322; Gersick et al, Generation to Generation, 249-250.
family businesses’ implementation of the recommended governance advice. As the example of the selected family business guidelines demonstrates, this crucial second focal point is more often than not neglected by these guidelines. For instance, from the pool of the selected guidelines solely the Swiss and Dutch have incorporated a specific section featuring guidance on how to work with these recommendations and on how to implement the advice provided therein. Such status quo is insufficient.

Reflecting on the role and overarching purpose of these family business governance guidelines as a ‘governance tool for self-help’, the essential first – albeit more theoretical – step of raising family business awareness and understanding of typical governance challenges alone might fall short of the regulatory aspirations where family businesses are not also encouraged to follow through with this governance advice. This requires some additional guidance on how to transfer their gained insights into workable and suitable solutions for their own business. This section focuses on the various ways in which family business guidelines can contribute to this second focal point of encouraging a proactive attitude in family businesses to practically engage with the identified governance challenges and supporting them in doing so.

4.1 Encouraging Family Business Engagement with the Guidelines

4.1.1 Through the Guideline Recommendations Themselves

The design and configuration of the family business guidelines themselves can already implicitly contribute to an interested and active engagement with the guideline content. The analysis of the guidelines has identified several factors that play a part in getting family businesses involved in the pursuit of good governance. The consideration and integration of the following suggestions becomes relevant already during the drafting process of the governance recommendations. While an overt encouragement of the family may prove difficult due to the likely great diversity of incentive factors present within this target audience, the selected guidelines have illustrated some indirect methods to enable and facilitate such engagement. Providing and emphasising the importance of the theoretical as well as the practical dimension to the recommendations, as indicated

681 On the general importance of the actual implementation of governance measures and respective guidance, compare Office of Consumer Affairs et al, Voluntary Codes, 14, 25-27; Department for Business Innovation & Skills, Code of Practice on Guidance on Regulation, 8-9; Lansberg, Succeeding Generations, 326-327, ch 14; McCahery and Vermeulen, Corporate Governance of Non-listed Companies, 4.

682 More generally, on the importance of providing incentives for compliance, see Office of Consumer Affairs et al, Voluntary Codes, 23.
above, denotes one of the techniques working towards encouraging a proactive family business attitude. The theoretical insights increase the understanding of family businesses about the origins and consequences of certain governance issues and thus may spark the point of departure to discussing their own situation in relation to these issues. The practically focused part of the recommendations – for instance, the provision of true-to-life examples to which the family businesses can relate or the proposition of certain standard contents to be included in the various governance documents – promotes the implementation of the theoretical solutions that the family agreed on. 683

The guideline analysis has also spawned further valuable ideas of how the engagement with such guidelines can be fostered. One approach is to clearly specify the expectations of the intended response by the target audience with regard to the governance recommendations, such as the example set by the user advice guide contained in the Dutch and Swiss governance guidelines. 684 Another general way of imparting an engaging attitude towards the guidelines comes from showcasing the flexibility of the recommendations. If the guidelines provide for alternative scenarios to address the various governance issues in a neutral manner and also identify some of the resulting consequences, family businesses are offered choices on which they can base the evaluation of their own situation. Family businesses are thereby given various ideas and are ‘not left solely to their own devices’, which makes dealing with the presented governance issues less overwhelming.

Related to the element of flexibility is also the employment of a ‘question based’ format within the recommendations, which – for instance – is intelligently utilised at the beginning of the Swiss guidelines. 685 In opposite vein, providing several possible solutions, the question format encourages and allows the family businesses to establish their own objectives, values or solutions by asking themselves the posed questions. The question format thereby engages family businesses by triggering a response that can only come from the family business itself and ensures at the same time that general governance considerations are transferred into the individual family business context. Naturally, a well-targeted use of both of these flexibility-inducing stylistic techniques is

683 Similarly, compare Department for Business Innovation & Skills, Code of Practice on Guidance on Regulation, 7, 8-9.
684 These expectations are addressed in greater detail below.
685 See generally, Governance Guide for Families and Their Businesses (Switzerland, 2006).
to be recommended for a greater response by the target audience. A further, slightly more indirect technique was showcased in the Dutch and German guidelines, where a gradation system was introduced highlighting the importance of the individual recommendations. Such a system offers family businesses a clearer starting point as to which of the given governance suggestions should be addressed as a priority and which can be focused on at a later point in the governance development process.

4.1.2 External Measures to Support the Practical Impact of the Guidelines

In addition to building motivating features into the family business governance guidelines directly, the issuing body, in particular, should further make use of possible external means to engage family businesses into creating and improving their corporate governance systems. Overall, these kinds of measures relate to increasing the awareness of family businesses about the existence of such family business governance guidelines and the advice and guidance provided therein. In accordance with the preceding recommendations regarding the guideline issuing body, great responsibility falls to the national family business networks, which should be a part of or even the driving force behind the guideline development, with respect to such efforts. These networks are well-equipped to achieve a greater distribution and promotion of the governance recommendations due to the congruency of the target audience with their own members, which in turn aids an increased awareness of the existence of these guidelines. Beyond direct distribution to their family business constituency, an electronic publication of the guidelines should also be considered to make these guidelines accessible to an even larger number of family businesses.

Furthermore, family business networks can also extend their governance assistance to family businesses by offering information, training on specific governance issues, family

---

686 On guidance for compliance, generally see Department for Business Innovation & Skills, *Code of Practice on Guidance on Regulation*, 8.
689 The majority of the selected guidelines (with the exception of the Dutch family business governance report) have employed this opportunity. Similarly on the importance of easy access to regulatory documents, see Department for Business Innovation & Skills, *Code of Practice on Guidance on Regulation*, 10.
A General Set of Draft Recommendations

business conferences or meeting for a national or international exchange of ideas among family businesses, as well as an update on the latest developments in family business research. As indicated above, these offers could be referred to in general form within the section that contains the user or implementation advice for the recommendations in order to draw the family business’ attention to them, for instance at the end of the family business governance guidelines.

A greater public recognition of the importance of good governance in family businesses may further prove important in increasing the commitment of family businesses. Local government agencies that interact with businesses on a daily basis, for instance chambers of commerce or company offices, could become involved in the distribution and endorsement of the family business guidelines. Beyond the local government levels, the support of family businesses, as one of the economic backbones of the majority of countries, by national governments or supranational institutions deserves further improvement. Increased commitment can be demonstrated, for instance, by becoming involved in the development of family business guidelines and supporting these governance initiatives on relevant government websites and documents. An extended liaison and collaboration between governments and family business interest organisations, in particular family business networks, appears vital in supporting and improving the situation of family businesses.

4.2 Guideline Implementation – General Expectations on Family Businesses

Beyond simply engaging family businesses in a corporate governance discourse, family business governance guidelines should also provide a point of departure for the

---

690 It needs to be acknowledged in this regard that the majority of the family business networks employ several or all of these instruments to support family businesses. See generally The International Family Business Network <http://www.ibn-i.org>; Family Firm Institute <http://www.ffi.org>. See also Mandl (Austrian Institute for SME Research), ‘Overview of Family Business Relevant Issues’, 74-76.


693 The former scenario occurred, for instance, in the Swiss example where government representatives formed part of the drafting committee.
implementation of the solutions found as a result of this discourse. So far this support role is clearly underdeveloped in the majority of the selected guidelines. Thus far, only the Dutch and Swiss family business governance recommendations have integrated this essential element into their guidelines. Using their ideas as a point of departure, the following suggestions outline the initial basic steps to be taken by family businesses when working with these governance recommendations.694

A user guide setting out some general implementation advice should accompany the detailed governance recommendations as a complement. Working with the family business governance guidelines entails generally three overarching stages for the individual family business. As an initial step, it is recommended that the family business assesses its current governance situation. The business should identify any existing governance structures or mechanisms, whether of an informal or more formalised nature, and establish the developmental phase in which the family business currently resides. The latter aspect will provide a useful indicator of how formalised the determined governance mechanisms need to be. Related to the developmental phase, preferably it should further be ascertained that the family business is currently not facing any major or far-reaching changes that may cause unwanted strain or pressure, at the time of the governance discussions.695 Similarly, these discussions should be held at a time when the atmosphere within the different spheres, but also among all of them, is positive and no acute turmoil or conflicts exist.

Following the determination of the family business’ governance situation, the next step involves working with the provided governance recommendations. On the basis of the governance issues highlighted in these recommendations, the family businesses should frankly identify their own current governance problems and challenges, while also establishing possibilities for further enhancing any already existing governance mechanisms or structures.696 In doing so, family businesses should determine which of these issues need to be addressed most urgently. With the help of the governance recommendations family businesses may also pinpoint the respective governance sphere

694 The Family Business Governance Report (The Netherlands, 2003), section 3.7; Governance Guide for Families and Their Businesses (Switzerland, 2006), section 2. General advice and ideas on the implementation of good corporate governance practices in family businesses is also provided in Neubauer and Lank, The Family Business, ch 10. This advice is, however, not specific to working with family business governance guidelines.
695 Governance Guide for Families and Their Businesses (Switzerland, 2006), [8].
A General Set of Draft Recommendations

or spheres that in turn will be in charge of implementing the agreed solutions. Reflecting on the established governance issues, family businesses should then discuss alternative scenarios and mechanisms for solving the matter. They should thereby draw on the practical examples or suggestions made within the recommendations and work towards reaching a generally agreeable consensus among the relevant family business members.697

The final stage of the governance process captures the implementation of the agreed solutions.698 The family business should thus draw up an implementation plan which includes all the relevant steps and also assign the implementation responsibility for the individual governance solutions to the relevant governance body or jointly agreed upon family business member. The family business should then follow up regularly on the progress of the implementation and, once in place, periodically review the governance system and amend, where necessary, to ensure that the governance system matches the demands and evolution of the family business.

As some final remarks on the governance development process, family businesses should bear in mind that this process is ongoing and involves a gradual professionalisation of the family business, and thus can include more informal governance structures and mechanisms in its initial stages where this reflects the current family business dynamics most suitably. A common point that is made in all the family business guidelines, as well as in the related literature, is, however, to put these agreed governance solutions and structures down in writing, even if in initially very basic form.699 As highlighted as part of the dispute resolution segment of the general draft recommendations above, the main rationale underlying this suggestion is to provide a point of reference as well as a transparency of the governance system, both of which are crucial in avoiding the emergence of conflict over the agreed upon governance terms.

5 Conclusion – The Essence of the Draft Recommendations

The general governance recommendations presented above have been primarily devised as a point of departure and reference for committees setting out to draft or revise family

---

697 In this regard, Neubauer and Lank suggest the establishment of a working group in the family business to develop basic governance structures and describe a similar process for assessing relevant governance issues. Neubauer and Lank, The Family Business, 237-244.

698 See also Governance Guide for Families and Their Businesses (Switzerland, 2006), [8].

business governance guidelines. The focus of these suggestions is to identify and highlight those drafting considerations and governance issues that have a profound impact on family businesses and that should thus become part of any guideline seeking to improve the governance of family businesses. The above recommendations distinguish, first of all, the general guideline features that are concerned with considerations that arise either prior to the drafting process or relate more closely to the technical design and format choices of such guidelines. The second part of these recommendations concentrates in greater detail on the structural approach to family business governance guidelines and, further, on depicting the predominant governance challenges faced by family businesses. The recommendations focus on bringing together the insights gained from the analysis of the selected family business governance guidelines and the relevant literature on these topics. The taxonomical approach taken within these recommendations purposefully leaves the individual realisation and configuration to the respective drafting committees in an effort to provide for greater drafting flexibility as well as suitability of the developed guidelines.\footnote{700 The recommendations presented in this chapter remain a draft form of the recommendations proper due to the nature of the thesis medium. A next step would involve formulating and reformatting these draft recommendations into a more appropriate guideline format directed at the drafting committees of family business governance guidelines.}

How the governance recommendations are actually implemented ultimately remains the choice of the individual family business. The implementation advice provided in the guidelines can only function as a starting point and general guide by giving family businesses an overview of the basic elements of the implementation process to set them off in the right direction. Combined with further efforts conducive to encouraging family businesses to commit to good governance, any potential reluctance or uncertainty by the targeted businesses can hopefully be substantially reduced.
CONCLUSION AND OUTLOOK

Since their emergence just a decade ago, family business governance guidelines are incrementally developing into a ‘permanent’ fixture of the regulatory corporate governance framework, with new guidelines continuing to surface and existing ones starting to be revised. Reflecting their growing importance, this thesis has investigated the role and potential of this new form of voluntary corporate governance guidelines in greater detail with the ultimate goal of developing a set of guiding recommendations on how such guidelines should be best set up and what governance content matters they should contain. This set of guiding recommendations is meant to support prospective drafting committees and issuing bodies in their efforts of drafting or revising family business governance guidelines.

Setting the stage, the first chapter demonstrated that family businesses feature idiosyncratic characteristics in comparison to other business forms and structures. It was shown that family businesses thereby warrant and even necessitate a separate corporate governance approach and perspective. Highlighting their factual situation and practical experiences as revealed in case law and surveys examining family businesses, the particularities of this business form have been elaborated from a systems theory angle. This exploration outlined not only the different behavioural underpinnings of the family and the business system, but also drew attention to the elevated complexity that is created by combining these distinct systems with each other. While this situation on its own already provides a telling argument for the necessity of good governance in family businesses, the further rationales discussed in chapter one additionally strengthen the case for family business governance support. In this regard, the thesis showed that corporate governance theory, such as agency theory and stewardship theory, also applies in a family business setting, although the form and relationships in which these theories become manifest can differ when compared to non-family businesses. The focus here was on showing the interplay between these governance theories in family businesses as well as the role that altruism assumes in this context.

On the basis of this demonstrated necessity, chapter one then analysed whether the existing general corporate governance codes, which primarily focus on publicly listed companies, are suitable for family businesses as well. The thesis argued that this ‘one size fits all’ approach does not cater appropriately to the needs and governance
idiosyncrasies of family businesses. The discussion then consequentially turned on juxtaposing more specific governance approaches in the form of family business specific governance measures and more broadly scoped governance guidelines for SMEs or unlisted companies. Making a point for the necessary distinction between the business forms of family business and SMEs from a corporate governance point of view, the reasons brought forward in this chapter militate in favour of providing an individual set of governance guidelines for family businesses.

Building on the argument for a separate governance treatment of family businesses, the second chapter concentrated on situating and analysing family business governance guidelines in the regulatory space. This second step of uncovering the regulatory background and objectives of these guidelines sheds further light on their overall role as a corporate governance instrument. In order to explicate the regulatory purposes of family business governance guidelines, a systematic account of self-regulation within the legal regulation was first outlined and then applied to the regulatory corporate governance framework. From this starting point this thesis showed that, while generally coming under the notion of corporate governance codes and guidelines within the governance framework, governance guidelines focusing on family businesses require a somewhat varied self-regulatory approach. This approach can be best labelled as ‘enabling self-regulation’. In contrast to more generic corporate governance codes with a predominant emphasis on the aspect of compliance, these family business governance guidelines should primarily pursue the general regulatory goal of supporting family businesses in their corporate governance efforts. As such, it was argued that their two main regulatory objectives are: 1) to create a better awareness of family businesses about their peculiar situation and the governance challenges that result from this situation; and 2) to provide them with some tools for self-help to assist family businesses to translate this greater awareness into good corporate governance practices and mechanisms. The voluntary nature of these guidelines has also been validated on the basis of these objectives. The final part of this chapter substantiated how and why these theoretical regulatory objectives befit the practical family business environment and thus make them the preferable governance mechanism for this business form.

The foundational work within the first two chapters informed and shaped the content of the remaining chapters. Chapters three and four assessed the potential of family
business governance guidelines in a two-stage progress. Chapter three presented a comprehensive comparative study of six selected family business guidelines. In a first step, the parameters for the comparison were devised to suit a family business as well as a corporate governance guideline context. They were grouped into the overarching categories of general guideline features, and structural and content guideline elements. The selected guidelines were then analysed against these parameters in order to determine their practical potential. Chapter four of this thesis subsequently developed a detailed set of guiding recommendations intended for drafting committees and issuing bodies of family business governance guidelines. The content of this guide was derived from the evaluation of the results of the comparative analysis in chapter three and the inclusion of relevant research literature. The guide makes specific recommendations on the essential design, structural components and important governance themes that should be integrated into family business governance guidelines. It also further specifies a concrete step-by-step process for the implementation of the relevant governance context by the family businesses themselves.

As a general result of this investigation, the thesis has aimed to demonstrate the great degree to which the existing family business governance guidelines already live up to their identified regulatory objectives. But in conjunction with the legal reality, for instance reflected in the case review and the relevant family business governance literature, the analysis also revealed certain areas in which these guidelines are still falling short of their immanent potential. The existing guidelines seek to respond to the established particularities of family businesses and the resulting regulatory objectives placed on them. This thesis has highlighted the manifold ways in which the guidelines achieve this positive outcome. First, they cater to the complexities and distinct systems within family businesses already by their choice of guideline structure, which mirrors the dominant conception of family businesses employed in systems theory approaches. In the same light, they account for the particularities by further distinguishing and separately treating the various subsystems in a family business to untangle the increased complexity inherent to this business form. Concurrently, this approach facilitates the location of the origins of the specified governance issues in order to treat and solve them in the appropriate family business sphere. The guidelines thereby also clarify the individual governance roles – their responsibilities and boundaries – within the overall family business governance system. In this way they especially aid the regulatory objective of
Creating greater governance awareness among family businesses. This regulatory objective is further observed by also utilising multiple format and design devices to enhance the understanding of family businesses. By additionally including examples, targeted questions, and alternative solution scenarios to various governance issues, these guidelines are further enabled to actually function as a tool for self-help in practice as their recommendations already indicate the pathway along which family businesses can best address and solve these issues. The majority of the analysed guidelines, by presenting the relevant governance issues with detailed explanations, not only draw attention to these issues but also help to make them more comprehensible to the family business target audience.

While most of the investigated family business governance guidelines incorporate and display the abovementioned elements that are valuable for improving family business governance, the set of guiding suggestions developed in chapter four also identifies and highlights some key areas in which the guidelines can and need to be improved further to cater even more appropriately to the governance needs of family businesses. Probably the most crucial area in this regard is the coverage of dispute resolution in family businesses. This thesis has extrapolated throughout that conflict in family businesses acts as one of the most common factors contributing to the failure of this business form. But at the same time the analysis has also established that there has been an insufficient coverage of this topic within the selected guidelines. The suggested improvement refers particularly to a greater emphasis on a well-functioning corporate governance system for the prevention of conflict. Furthermore, in terms of resolution, the necessity of drawing family businesses’ attention to the common sources of conflict and the importance of creating a procedure to solve disputes have been stressed. Another vital element that has not been incorporated into all of the family business governance guidelines is the issue of how to align the individual governance mechanisms in the various spheres into one overall family business governance system. In this regard, it has been argued that improvements could be achieved, if this topic were, first of all, included in all family business governance guidelines and also if mechanisms that contribute to balancing the individual spheres and enabling their collaboration were specified in greater detail. From a practical point of view and in light of the regulatory objective to provide family businesses with a tool for self-help, this investigation found that few guidelines have included a section on how family businesses should use these governance
recommendations. To respond to this deficiency, this thesis has incorporated a specific implementation procedure for family businesses as part of the guiding suggestions in addition to explicating other external measures that could enhance the possible practical impact of these guidelines.

The set of guiding suggestions developed within this thesis has been purposefully geared towards drafting committees instead of providing an improved sample version of a family business governance guideline, arguing that this approach will provide the desirable and necessary flexibility to drafting committees to respond to their specific national and cultural backgrounds as well as to their economic developmental standards. At the same time, through this set of guiding suggestions, innovative approaches of how to best bring these governance issues and their relevancy closer to the primary target audience of family businesses, are less likely to be stifled. Additionally, this format fosters and allows the drafting committee to connect their recommendations to other complementary corporate governance instruments such as shareholders’ agreements or corporate constitutions.

The detailed account and evaluation of family business governance guidelines at the heart of this thesis, attests to the importance of these voluntary guidelines as such and of family businesses taking up the governance recommendations provided therein. This thesis brings together the wide array of ideas for the governance content and its presentation that are employed in the individual family business governance guidelines. By further assessing their interplay and remaining shortcomings, it thereby hopes to contribute to making these family business governance guidelines of even greater value to family businesses and their members and to help prevent family business failure due to treatable corporate governance issues. In addition to the continuing efforts of improving family business governance guidelines, a greater public support and recognition of these regulatory governance instruments, and of family businesses themselves, is critical. Drawing greater public awareness to the existence and practical relevance of family business governance guidelines not only makes more family businesses aware of these governance initiatives, but also provides greater encouragement to family businesses to incorporate them into their own business practices. Family business governance guidelines can thereby facilitate family businesses in maintaining a competitive edge in these fast-changing economic times by assisting them in drawing on their immanent
strengths and in controlling their inherent weaknesses, while also directing greater public attention to their crucial significance and contributions to national economies worldwide.
Bibliography

A. Books, Chapters in Edited Books, Journal Articles and other Research Resources


Baldwin, Robert, Colin Scott and Christopher Hood (eds), A Reader on Regulation (Oxford University Press, Oxford, 1998)


Black, Julia, ‘Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a Post-Regulatory World’ (2001) 54 *Current Legal Problems* 103-146


Bumpass, Larry L, ‘What’s Happening to the Family? Interactions Between Demographic and Institutional Change’ (1990) 27 *Demography* 483-498


Cosgrove, Clayton (Minister for Small Business), ‘Engaging with SMEs: Key Challenges for Policymakers’ (Speech delivered at the Annual Research Symposium at the NZ Centre for SME Research, Massey University, Wellington, 27 August 2008) <www.scoop.co.nz/stories/PA0808/S00416.htm>

Covey, Stephen R, *The 7 Habits of Highly Effective Families* (St. Martin’s Griffin, New York, 1997)


Davis, Peter, ‘Realizing the Potential of the Family Business’ (1983) 12 Organizational Dynamics 47-56


Eijlander, Philip, ‘Possibilities and Constraints in the Use of Self-Regulation and Co-
Regulation in Legislative Policy: Experiences in the Netherlands – Lessons to be 
Learned for the EU?’ (2005) 9.1 Electronic Journal of Comparative Law
<http://ejcl.org/91/art91-1.PDF>

Eisenberg, Melvin Aron, ‘Overview of the Principles of Corporate Governance’ (1993) 48 The Business Lawyer 1271-1296


FBNed – The Dutch Association of Family Firms, *Ownership Strategies for Family Businesses* (Bilthoven, June 2005)


Harvey, Michael and Rodney E Evans, ‘Family Business and Multiple Levels of Conflict’ (1994) 7 Family Business Review 331-348


Keller, Helen, ‘Corporate Codes of Conduct and their Implementation: The Question of Legitimacy’ in Rüdiger Wolfrum and Volker Röben (eds), Legitimacy in International Law (Springer, Berlin, 2008) 219-298


Luo, Yadong, Global Dimensions of Corporate Governance (Blackwell Publishing, Malden, MA, 2007)


O’Neal, Forest Hodge, Close Corporations (Callaghan, Mundelein, IL, 2nd ed, 1971)


Parker, Christine, ‘Reinventing Regulation Within the Corporation: Compliance-Oriented Regulatory Innovation’ (2000) 32 Administration and Society 529-565


Poza, Ernesto J, Family Business (South-Western, Mason, OH, 3rd ed, 2010)


Report of the Committee on the Financial Aspects of Corporate Governance (United Kingdom, 1992), (‘Cadbury Report’)


Simmons, Frederick L, ‘Estate Planning Considerations When the Family Business is the Principal Asset’ (1972) 8 California Western Law Review 235-253


Supple, Barry, ‘Scale and Scope: Alfred Chandler and the Dynamics of Industrial Capitalism’ (1991) 44 Economic History Review 500-514


Taylor, Lynne, ‘Company Constitutions’ in John Farrar (ed), Company and Securities Law in New Zealand (Thomson/Brookers, Wellington, 2008) 41-64


Webb, Kernaghan, ‘Understanding the Voluntary Codes Phenomenon’ in Kernaghan Webb (ed), Voluntary Codes: Private Governance, the Public Interest and Innovation (Carleton Research Unit for Innovation, Science and Environment, School of Public Policy and Administration, Carleton University, Ottawa, 2004) 3-31 <http://www5.carleton.ca/sppa/research/publications/>

Webb, Kernaghan, ‘Voluntary Codes: Where to From Here?’ in Kernaghan Webb (ed), Voluntary Codes: Private Governance, the Public Interest and Innovation (Carleton Research Unit for Innovation, Science and Environment, School of Public Policy and Administration, Carleton University, Ottawa, 2004), 379-403 <http://www5.carleton.ca/sppa/research/publications/>

Webb, Kernaghan (ed), Voluntary Codes: Private Governance, the Public Interest and Innovation (Carleton Research Unit for Innovation, Science and Environment, School of Public Policy and Administration, Carleton University, Ottawa, 2004) <http://www5.carleton.ca/sppa/research/publications/>


B. Cases

Burrows v Rental Space Ltd; Burrows v Hemming HC Auckland M1405/98; CP402/98, 7 June 2001

Collie v Collie HC Auckland CP465/98, 18 June 1999

Coleman v Myers [1977] 2 NZLR 225 (CA)
Doyle v Doyle HC Wellington CP9/02, 24 April 2002
Fitzpatrick & Co Ltd v Fitzpatrick (1989) 4 NZCLC 64,861 (HC)
Thexton v Thexton [2001] 1 NZLR 237 (HC)
Thexton v Thexton [2002] 1 NZLR 780 (CA)
Thomas v HW Thomas Ltd [1984] 1 NZLR 686 (CA)
Vujnovich v Vujnovich [1988] 2 NZLR 129 (CA)
Williams v Alfred Holt & Co Ltd Employment Relations Authority Auckland AEA-1-1/00, 29 November 2000
Windsor Trading Co Ltd, Re; Doyle v Doyle HC Wellington CP9/02, 24 April 2002
Yovich & Sons Ltd v Yovich (2001) 9 NZCLC 262,490 (CA)

C. Legislation

Companies Act 1993 (NZ)
Corporations Act 2001 (Cth)

D. Family Business Inclusive Corporate Governance Guidelines


INTES (Academy for Family Businesses) and Die Familienunternehmer (ASU), *Governance Kodex für Familienunternehmen: Leitlinien für die verantwortungsvolle Führung von Familienunternehmen* (Governance Code for Family Businesses: Guidelines for the Responsible Governance of Family Businesses) (Germany, 2nd ed, 2010) <http://www.intes-online.de/kodex/Governance_Kodex.pdf>


E. Internet Resources


Committees of Advertising Practice, *The History of Self-Regulation* <http://www.copyadvice.org.uk/cap-code/-/media/7E64C9E9936D4782A0950CA301061854.ashx>


European Corporate Governance Institute, *Index of Codes* <http://www.ecgi.org/codes/all_codes.php>


Family Business Australia, *Adviser Education and Accreditation*  

Family Firm Institute  
<http://www.ffi.org/>

Family Firm Institute, *Global Education Network: Educational Programs of the Family Firm Institute*  
<http://www.ffi.org/page/ffigenhomepage>

FBN Deutsche Schweiz (Switzerland), *Transfer of Wealth: Opportunities and Limits*  


<http://www.fbn-i.org/fbn/web.nsf/doclue/chapters>

The International Family Business Network, *About Our Events*  

The International Family Business Network  
<http://www.fbn-i.org/>


International Finance Corporation (World Bank Group), *Global Corporate Governance Forum*  
<http://www.gcgf.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Global+Corporate+Governance+Forum>


231


*Punic Wars*, TV Tropes <http://tvtropes.org/pmwiki/pmwiki.php/Main/PunicWars>


