

FAMILY PROTOCOL

FAMILY CHARTER – FAMILY CONSTITUTION

*A Global View
on Family-Owned
Businesses and the
Impact on Family Offices
in Multiple Jurisdictions*

PREFACE

What is a Family Protocol?

Is it the same as a Family Charter or a Family Constitution?

The answer is **Yes**.

As global commerce expands into all aspects of the business world, so too do the family-owned businesses that are pushing the boundaries of their traditional territories and reaching into new markets. Unfortunately the intimate relationships and ways of conducting business that worked so well in the past may not translate seamlessly into a global corporate enterprise. As families begin to contemplate their business expansion, it is essential to have an overarching framework and strategy to guide the family through this unfamiliar territory.

This strategy is the Family Protocol.

The Family Protocol will:

- set out rules and responsibilities for each interested party involved in the operations of the business;
- thoughtfully structure an inheritance plan that looks at the family as a whole and takes the wishes and needs of individuals into account; and
- stipulate profit-sharing arrangements.

This document will serve as a guide in providing the information needed to begin a candid discussion with members of a global family business. Using the information contained here, family trustees and external advisors can begin to work together to thoughtfully maintain and increase family wealth while simultaneously expanding the business' footprint. The keys to the preservation and growth of the family business lies within the knowledge and understanding of the different regulations in different parts of the world.

How is a family business different from a traditional company comprised of shareholders and directors?

In addition to the traditional considerations of liability and corporate taxes, family owned businesses must consider a structure that also addresses needs unique to the family such as succession planning, confidentiality, and estate taxes. When the laws of multiple countries are added to this equation, a big-picture strategy is critical to ensuring that the family members maximize their opportunities in each location.

The Family Protocol in practice.

The Family Protocol will:

- After the death of the founder of a multi-billion dollar global family business, the heirs disagreed about the continuation of the operation of the business. Using a Family Protocol, the advisors guiding the family through this transition period were able to look to the document which detailed the rules and procedures that the founder set out to guide this process.
- A prominent family averted a public legal battle over the operation of the family trusts because a Family Protocol prohibited a public law suit in that country.

It is now with great pleasure that BridgeAlliance e.V. presents this Handbook on Family Protocol for global family businesses.

BridgeAlliance e.V. is an association of 14 member law firms located throughout the world with a total of 80 uniquely experienced, specialized and qualified lawyers. With firms in some of the world's biggest financial hubs, organizations like BridgeAlliance, have become increasingly essential to families and their businesses expanding into the global marketplace. As a family business itself, BridgeAlliance has the unique advantage of providing insight to its clients that few other firms can replicate.

This Handbook is intended to provide an overview of the legal and tax considerations in several of the countries where BridgeAlliance member firms are located.

Before we let you explore the differences and nuances in family protocols regulations throughout the world, we would like to thank all law firms, partners and colleagues, assistants and designers who have contributed to this Handbook. Special thanks to Paulo da Silva Almeida, Jeanette Lüftner, Lisa Pytel, Nori Senouci, Arthur Blanton, Nicole Murphey, Andrew Howe, Henriette Morton, Kristin Whalen and Irina Bakalenko. Thank you!

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"It is important to emphasize that the estate planning by Brazilian families is not restricted to structures established on the national soil. We can and must consider a certain portion of the wealth can be allocated to other countries for the sole purpose of reducing liability, by means of the creation of trusts and family foundations, which are consolidated in many countries, but some of them are not even provided for in the Brazilian law."

Fernando Azevedo Pimenta, Brazil

"The key to reach a successful balance between family and company, such as to guarantee the survival of the company throughout generations, implies, necessarily, an understanding of the differences and dynamics within the family, together with the creation of adequate compensation packages and career paths for outside management, in order to attract, and keep, outside talents within the company."

Monica Boccia, Italy

"The basis of the family protocol is grounded upon a cross-generational way of thinking, while the key objectives are (i) to ensure the continuity of the family business and company, (ii) to prevent and/or resolve conflicts between members of the family and others, (iii) to ensure the purpose(s) to be achieved by the family and its respective members, all while taking into account the psychological and emotional aspects of those involved."

Errol Cohen, France & Fabien Leger, Luxembourg

"Shariah created the Waqf system to preserve continuity and establish a precise institutional system and way of management. The Waqf is protected from being sold or confiscated except in the narrowest extent and provided that it is replaced by an equivalent. Shariah also puts judiciary supervision on the Waqf."

Dr. Ali Alburidi, Saudi Arabia

"We believe that a lack of a formal family protocol is one of the main reasons why only 30% of Spanish family businesses survive to the second generation and only 15% survive to the third."

Guillermo Jimenez Astorga, Spain

"As will be apparent from this Handbook, without a formal structure in place to govern the future ownership, management, and control of the various companies under the common ownership of the family, there could well be serious family inheritance and control disagreements, jealousy, friction, and mismanagement issues relating to the family businesses, all leading to the breakdown of harmonious relations in the family to the detriment of the success of the businesses. In short, however large and successful the businesses, there will come a point where there are too many mouths to feed!"

Michael Steinfeld, UK

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