DECODING FAMILY BUSINESSES – THE POTENTIAL OF CORPORATE GOVERNANCE GUIDELINES FOR FAMILY BUSINESSES

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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. This article takes up this current trend and investigates whether there is an actual need for such governance guidelines aimed at family businesses.

Examining why family businesses might deserve greater attention within the corporate governance debate is a fundamental question that needs to be addressed. An investigation into the subsystems constituting the family business highlights idiosyncrasies that provide an important rationale for the need for corporate governance regimes in family businesses. Additionally, the common corporate governance rationale stemming from agency problems is pitted against the notion of altruism, reinforcing the demand for governance recommendations targeting family businesses. Another relevant issue concerns the analysis of existing governance approaches in order to identify which concept might be the most viable to provide corporate governance support to family businesses.

1 INTRODUCTION

Corporate governance guidelines are undoubtedly recognised nowadays as a vital and significant part of the legal regulation of companies (cf. OECD, 2004). Due to the corporate scandals occurring worldwide during the past decades, their importance has been further emphasised – reflected in an establishment and revision of guidelines and codes of corporate governance for listed companies in an increasing number of jurisdictions (cf. Hirsch & Watson, 2010).[1] 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 article is interested in the justification and implementation of this new – family business oriented – direction of the corporate governance movement.[2] New Zealand is used as an example

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[1] For instance: revision of the OECD Principles of Corporate Governance from 2002-2004 and enactment of the Sarbanes-Oxley Act of 2002.

[2] The primary focus here is on the theoretical justification of a need for corporate governance guidelines aimed at family businesses from a legal perspective. This approach is complemented by highlighting some illustrative examples of the realities faced by family businesses. When referring to corporate governance guidelines and recommendations in the context of family businesses within this article, such corporate governance regulation should be understood as a voluntary form of self-regulation. Corporate governance in the form of self-regulation covers the regulatory spectrum also known as soft law. In contrast, regulation through legislation as so-called hard law is located at the other end of the spectrum and not within the scope of this article. The latter aspect will, however, be addressed in a separate paper within this PhD project. This article also emphasises that a different

to illustrate the practical potential 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 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, the article initially elaborates on why family businesses take a special place within the business landscape. Two questions follow: 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.

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. The article 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 listed companies, could also cater for 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 Small and Medium Enterprise (SME) oriented guidelines including particular sections on family businesses. The article argues in favour of the former alternative.[3]

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 (Farrar, 2008a; KMU Forschung Austria, 2008).[4] This impressive incidence of family businesses, however, is contrasted by only a low number of countries actively attending to the corporate governance issues of family businesses.[5] 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

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governance approach is needed in the context of family businesses focusing on raising awareness about potential pitfalls for family businesses.

[3] The legal perspective taken in this article concentrates on a solution through governance guidelines as a supportive and preventative tool that enables widespread awareness of family business governance issues and increased accessibility of the guidelines, both of which are crucial when considering that family businesses themselves are the primary target group of the guidelines.

[4] These sources provide the following incidences of family businesses: Europe 70-80 per cent, Australia 83 per cent, United Kingdom 76 per cent, United States 90 per cent.

[5] See for instance: FBNED – The Dutch Association of Family Firms (2003); Continuum AG, Prager Dreifuss & Vereinigung der Privaten Aktiengesellschaften (VPAG) (2006); Commission Corporate Governance pour les entreprises non cotées (2005); The Hong Kong Institute of Directors (2009); Institute of Directors & European Confederation of Directors' Associations (2010).

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 article.

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 (Grant Thornton, 2002; Lord, Shanahan & Robb, 2003; Hickman, 2010; Nicholson, Shepherd & Woods, 2009).[6] Further, 80 per cent of all employment is in family businesses and family businesses contribute 65 per cent to the Gross Domestic Product (GDP) (Hickman, 2010). Despite these impressive figures, the state of affairs for New 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 (cf. Grant Thornton, 2002; Smyrnios & Dana, 2007).[7] This is also reflected in an average lifespan of New Zealand family businesses of 31 years (Smyrnios & Dana, 2007). 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 (cf. Grant Thornton, 2002).

Another issue involves the existence of only a few larger or listed family businesses, with the majority of family businesses remaining in the developmental stage of an SME.[8] 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 (cf. Smyrnios & Dana, 2007). 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 (Slade, 2009b; Cosgrove, 2008; New Zealand Trade & Enterprise, 2009). This philosophy of ‘satisficing’ refers to a certain lack of ambition within New Zealand businesses (New Zealand Trade & Enterprise, 2009; Slade, 2009b; Kloeten, 2009). 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 (New Zealand Trade & Enterprise, 2009; Slade, 2009b).

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 (cf. Smyrnios & Dana, 2007). Similarly, almost half of the responding businesses wish to relinquish family control in the future (Smyrnios & Dana, 2007). A struggle over the business priorities becomes apparent from these diverging views. A lack of longevity of New Zealand family businesses detrimentally impacts on

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[6] The above study results are based on the perception of study respondents who considered their business to be a family business. This likely explains the wide margin in the incidence of family businesses.

[7] Smyrnios and Dana (2007: 3) estimate it “optimistic to expect that more than a third of family businesses in New Zealand would pass to the next generation”.

[8] 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 (cf. Slade, 2009a; Cosgrove, 2008).

the country's economy in terms of provision of employment, GDP per capita as well as business growth (New Zealand Trade & Enterprise, 2009; Hickman, 2010; Slade, 2009b).

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 (cf. Smyrnios & Dana, 2007). 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 (Smyrnios & Dana, 2007). On the other hand, over 80 per cent consider, for instance, succession planning as an important measure (Smyrnios & Dana, 2007). 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 (cf. Smyrnios & Dana, 2007; Nicholson et al., 2009). 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 (Smyrnios & Dana, 2007). Irrespective of the type of advice sought, there is a general feeling that advisers should account more for the particular needs and issues, which arise from being a *family* business (cf. Grant Thornton, 2002; Lord et al., 2003; Nicholson et al., 2009).

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 (Nicholson et al., 2009), 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.[9] 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

[9] 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 (2007); Williams v Alfred Holt & Co Ltd (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.

disagreement about the valuation of the shares.[10] In these types of cases, section 149 of the Companies Act 1993, which deals with the requirement to pay fair value in share transfers involving a director, was often invoked. The second frequently encountered situation is where a family member brings an action under the oppression remedy pursuant to section 174 of the Companies Act 1993 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.[11] Others use the remedy in situations of power struggles in the company.[12]

Additionally, in many cases the conflicts originate in one sphere and are then carried over into the other.[13] 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.[14] 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.[15] 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.[16] 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 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

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[10] See for instance: Thexton v Thexton (2002); Fong v Wong (2010); Collie v Collie (1999); Fitzpatrick & Co Ltd v Fitzpatrick (1989); Coleman v Myers (1977).
[11] See for example: Thomas v HW Thomas Ltd (1984); Yovich & Sons Ltd v Yovich (2001); Burrows v Rental Space Ltd; Burrows v Hemming (2001).
[12] See for instance: Windsor Trading Co Ltd, Re; Doyle v Doyle (2002); Vujnovich v Vujnovich (1988).
[13] See Fitzpatrick & Co Ltd v Fitzpatrick (1989); Windsor Trading Co Ltd, Re; Doyle v Doyle (2002); Thexton v Thexton (2002).
[14] Compare Fong v Wong (2010); Thexton v Thexton (2002); Fitzpatrick & Co Ltd v Fitzpatrick (1989).
[15] See Thexton v Thexton (2002: [2], [26]).
[16] Compare Fong v Wong (2010); Vujnovich v Vujnovich (1988).

unique form of business to which corporate governance should attend separately (cf. Handler, 1989).[17]

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.[18] 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 emerged as the predominant models within the systems approach (cf. Gersick, Davis, McCollom Hampton & Lansberg, 1997; Poza, 2007; Rosenblatt et al., 1985). 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 (cf. Lansberg, 1983; Beckhard & Dyer, 1983; Davis & Stern, 1988). 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 (Taguiri & Davis, 1996; Gersick et al., 1997; Poza, 2007; Distelberg & Sorenson, 2009).[19] In the following the article 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 (cf. Handler, 1989; Litz, 1995; Lansberg et al., 1988). 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 (cf. Farrar, 2009; Gersick et al., 1997). The resulting variety of family businesses might also have

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[17] For management-based research on family businesses, Handler (1989: 262) 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”.

[18] See for instance, definition by Rosenblatt, de Mik, Anderson and Johnson (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 Donnelley (1988: 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 Lansberg, Perrow and Rogolsky (1988: 2): “… [A] family firm is … a business in which the members of a family have legal control over ownership.”

[19] As a clarification, some authors simply refer to the business system as one of the three circles while others focus on the management component within the business system.

been conducive to producing the wide array of diverse criteria to be found in the family business definitions.

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 (cf. Rosenblatt et al., 1985; Lansberg, 1983; Beckhard & Dyer, 1983). 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 (Taguiri & Davis, 1996).[20] 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 (Lansberg, 1983; Beckhard & Dyer, 1983; Gersick et al., 1997). 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 (Lansberg, 1983; Kepner, 1983). 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 (Lansberg, 1983; Kepner, 1983; Rosenblatt et al., 1985).

Looking at the functioning of the family system, the family works on the basis of emotional ties between the family members (Kepner, 1983; Davis & Stern, 1988). Affective behaviour influences the give and take in a family in a way that supports the individual needs of family members (Lansberg, 1983). Similarly, the realisation of fairness in the family is guided by the concepts of need or equality (Lansberg, 1983). Overall, the emphasis is on the individual, who is regarded as an end in itself with individual success generally not being determined on the basis of material parameters (Lansberg, 1983; Kepner, 1983). 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 (Kepner, 1983).

In contrast, the business system is oriented towards organised task behaviour and the display of a professional attitude (Lansberg, 1983; Davis & Stern, 1988). Behaviour in the business system is therefore governed by rational considerations and focuses on the contributions made to the operational objectives and processes (Lansberg, 1983; Davis & Stern, 1988). The principle of give and take in the business context depends on the economic maxim of market value (Lansberg, 1983). Corresponding to the task orientation, merit forms the foundation of the fairness principle in the business system (Lansberg, 1983). Here, the individual is mainly regarded as an essential means for accomplishing the operational goals (Lansberg, 1983; Davis & Stern, 1988). Accordingly, success in the business system is predicated on measurable criteria such as profits (Kepner, 1983). The task focus of the business system entails a specified

[20] See also example in Gersick et al. (1997: 7-11).

definition of roles, responsibilities and business objectives and thereby principally predetermines an overt business pattern (Kepner, 1983).

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 (cf. Kepner, 1983; Poza, 2007; Davis & Stern, 1988). This situation is reflected in the fact that the same individuals have to fulfil responsibilities in both systems (cf. Gersick et al., 1997). 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 (Rosenblatt et al., 1985). 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 subsystem (Rosenblatt et al., 1985). 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 the family lays on the business (cf. Gersick et al., 1997; Davis & Stern, 1988). The difficulty of this task is exacerbated where goals, values or needs in both systems rival each other (Rosenblatt et al., 1985; Beckhard & Dyer, 1983).

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 the 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 (cf. Gersick et al., 1997). Additionally, this model allows for the consideration of the viewpoint of non-family members who are involved in the business (Gersick et al., 1997). The distinction into ownership and management circles thus becomes increasingly relevant where the family business is growing (cf. Cadbury, 2000). 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 (cf. OECD, 2004). The legal status varies among the existing corporate governance codes – ranging from purely voluntary recommendations to codes that are linked more closely with corporate legislation or regulatory authorities (cf. Wymeersch, 2006). The focal point of the majority of these guidelines, however, is alike – governance concerns associated with listed companies (Wymeersch, 2006; Farrar, 2008a).[21] Featuring a more dispersed ownership, the primary issues in listed companies are commonly related to the separation of ownership and control (cf. Farrar, 2008a; Shleifer & Vishny, 1997; OECD, 2004; Cadbury Report, 1992). Accordingly, the main topics embodied in corporate governance codes centre on the accountability of boards and management, corporate control, informational and

[21] This also reflects the primary focus of major governance reports or guidelines. See for instance: Cadbury Report (1992); OECD (2004).

reporting transparency and investor protection (cf. Coombes & Wong, 2004; Calder, 2008; Tricker, 1984).

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),[22] 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 consequences arising from this separation – commonly known as agency theory (Berle & Means, 1932; Jensen & Meckling, 1976). This agency model still constitutes one of the prevailing rationales underlying the corporate governance debate (cf. Shleifer & Vishny, 1997; Calder, 2008).[23] 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 management (agents) instead of fulfilling this task themselves (Eisenhardt, 1989; Jensen & Meckling, 1976). 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 (cf. Amour, Hansmann & Kraakman, 2009). Another problem is principals and agents having differing objectives and, possibly, also different risk profiles (Eisenhardt, 1989). 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 (Amour et al., 2009). 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 (Calder, 2008; Pratt & Zeckhauser, 1985). The costs thereby incurred are known as agency costs (Jensen & Meckling, 1976; Pratt & Zeckhauser, 1985).

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

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[22] For instance: FBNED – The Dutch Association of Family Firms (2003); Continuum AG, Prager Dreifuss & Vereinigung der Privaten Aktiengesellschaften (VPAG) (2006); Commission Corporate Governance pour les entreprises non cotées (2005); The Hong Kong Institute of Directors (2009); Central Chamber of Commerce of Finland (2006); Lebanese Transparency Association (2006); Institute of Directors & European Confederation of Directors' Associations (2010).

[23] It is beyond the scope of this article to investigate the merits of agency theory.

accrual of agency costs can be avoided or at least significantly decreased (cf. Schulze, Lubatkin & Dino, 2002; Van den Berghe & Carchon, 2003; Daily & Dollinger, 1992; Jensen & Meckling 1976; Fama & Jensen, 1983a). 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 (Fama & Jensen, 1983a; Fama & Jensen, 1983b). This situation reflects the general setting found in privately owned companies where the owners are involved in the management of the company (cf. Schulze et al., 2002). 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 (Fama & Jensen, 1983a; Fama & Jensen, 1983b).

(2) As Fama and Jensen (1983b: 305-306) 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 (cf. Shleifer & Vishny, 1997; Van den Berghe & Carchon, 2003).[24]

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 (cf. Schulze, Lubatkin, Dino, & Buchholtz, 2001; Daily & Dollinger, 1992; Jensen & Meckling, 1976; Fama & Jensen, 1983a).

Opposing this traditional view, some researchers offer a different perspective on the relevance of agency problems in family businesses (cf. Karra, Tracey & Phillips, 2006; Chrisman, Chua & Sharma, 2005; Van den Berghe & Carchon, 2003; Schulze et al., 2001). 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 (cf. Schulze et al., 2002; Morck, 1996). 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

[24] 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 (cf. Ang, Cole & Lin, 2000; Grossman & Hart, 1980).

members (cf. Morck, 1996). This in turn can result in having to hire less able people (Schulze et al., 2002; Van den Berghe & Carchon, 2003).

(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 (cf. Morck, 1996; Van den Berghe & Carchon, 2003). 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 (Schulze et al., 2002).

(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 (Schulze, 2002; Craig, Dibrell & Neubaum, 2008; Chrisman, Chua & Litz, 2004; Karra et al., 2006). This diversity of motivations makes an alignment of interests more difficult, especially where these preferences cannot be reflected in monetary value (Schulze et al., 2002). 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 (cf. Banks, 2004). 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 (cf. Cadbury, 2000; McCracken, 2009).

These two perspectives on the relevancy of agency issues in family businesses seem to be coloured by a third approach – stewardship theory. This model is often referred to as a contrasting view to agency theory (cf. Davis, Schoorman & Donaldson, 1997; Clarke, 2004; Calder, 2008; Tricker, 1984), 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 (Craig et al., 2008).[25] The notion of altruistic behaviour by corporate executives is also important within

[25] Davis et al. (1997: 21, 24) 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."

stewardship considerations (see Davis et al., 1997; Miller & Le-Breton Miller, 2006; Corbetta & Salvato, 2004).

Family business researchers are devoting increasing attention to the idea of altruism as it appears particularly relevant where families are involved in corporations (cf. Craig et al., 2008; Schulze et al., 2002; Van den Berghe & Carchon, 2003; Corbetta & Salvato, 2004; Karra et al., 2006). Various definitions of altruism are proposed by different strands of research. The economic definition of altruism is prominently used in family business research (Karra et al., 2006). 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" (Lubatkin, Schulze, Ling & Dino, 2005: 319). This notion of altruism thereby allows for the fulfilment of self-interested motivations, which coincide with benefiting others (cf. Schulze et al., 2002; Corbetta & Salvato, 2004).

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 (Davis et al., 1997; Craig et al., 2008). The steward's personal interests recede due to identifying closely with the organisation (cf. Greenwood, 2003; Davis et al., 1997). The self-giving of the steward can even lead to a personal sacrifice in order to arrive at organisational success (Craig et al., 2008; Miller & Le-Breton Miller, 2006). 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 (Davis et al., 1997). 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 (Davis et al., 1997). 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 (Macaulay & Berkowitz, 1970: 3; Staub, 1978).[26]

A mediating view seems to be the most appropriate when evaluating the two definitions. Stewardship theory altruism reflects the situation of family businesses better in as far 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 (cf. Corbetta & Salvato, 2004; Davis & Stern, 1988). On a different note, the approach of the economic definition relying on family household research as a foundation is an important aspect that deserves more attention within the stewardship approach to altruism. The family factor of a family business is a primary focal point and the dynamics of the particular family will impact on the dynamics in the business (cf. Davis & Stern, 1988; Corbetta & Salvato, 2004). Stewardship theory currently focuses on the family members being stewards who pursue the organisational objectives of the family business (cf. Miller & Le-Breton, 2006; Craig et al., 2008). Taking the idea from household economics as well as the systems approaches to family business, the role of the family and the relationships

[26] See for further definitions Sorrentino and Rushton (1981). Similar comments for the notion of altruism in stewardship theory can be found in Corbetta and Salvato (2004).

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 (cf. Corbetta & Salvato, 2004). 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 prolem 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 (Corbetta & Salvato, 2004; Miller & Le-Breton Miller, 2006). Family businesses commonly strive for longevity and provide employment for family members – goals that are not always compatible with pure profit considerations (cf. Karra et al., 2006). Accordingly, altruistic influences in 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 (Karra et al., 2006; Schulze et al., 2001; Van den Berghe & Carchon, 2003; Corbetta & Salvato, 2004). 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 (cf. Van den Berghe & Carchon, 2003; Schulze et al., 2001). These altruistic behaviours thereby support communication and decision making, and in turn reduce information asymmetries experienced as part of the agency problem within family businesses (cf. Karra et al., 2006; Van den Berghe & Carchon, 2003; Schulze et al., 2002).

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 (see Schulze et al., 2002; Van den Berghe & Carchon, 2003).[27] 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 (Schulze et al., 2002). 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 long term becomes more pronounced.

[27] 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.

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.[28] 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.

4.1.2 *Growth and investment*

A further important objective of corporate governance codes is to enable and promote growth in companies (cf. OECD, 2004; Bruno & Claessens, 2007). 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 (cf. Cadbury, 2000; Tan & Tan, 2004). Associated with corporate growth is another focal point of corporate governance – investor confidence (Coombes & Wong, 2004; OECD, 2004). Growing firms will at some stage face the challenge to attract external investors to secure additional funding where internal capital resources are insufficient (cf. McCahery & Vermeulen, 2008). The implementation of governance structures fosters a good reputation for the business and enhances investor trust in the company and its operation (cf. Tan & Tan, 2004).

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 (Ward, 1997; Miller & Le-Breton Miller, 2006). Family businesses also commonly struggle to evolve from their original small setting to the next developmental stage (cf. Ward, 1997). 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 (cf. Tan & Tan, 2004). 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.

4.2 Particularities of Family Businesses as 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 family businesses. 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.

[28] As a side note, in accordance with Dyer (2003), the emotional family ties which on the one hand foster the existence of altruism in the family business can also destroy altruism where family conflicts create negative feelings, such as antipathy. In consequence, an even greater demand for corporate governance regimes in family businesses emerges.

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 (cf. McCahery & Vermeulen, 2008; Cadbury, 2000). 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 set out clearly 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 (cf. Cadbury, 2000). Similar considerations also apply with respect to the different positions individuals can hold in comparison to other family members (cf. Cadbury, 2000). 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 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 (cf. Farrar, 2008b). 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.[29] Accordingly, it appears sensible for the purposes of this article to focus primarily on the area of unlisted companies and discuss the impact on listed family businesses separately for each of the concepts investigated below.

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

[29] Cf. Farrar (2008a) states 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.

size fits all' approach (cf. McCahery & Vermeulen, 2008; Barnes, 2007; Dallas & Scott, 2006).[30] Considering the 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 (cf. McCahery & Vermeulen, 2008; Barnes, 2007). 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 (McCahery & Vermeulen, 2008). Corporate governance principles drafted for listed companies are thus considered to enhance the corporate governance structures and mechanisms in unlisted companies as well (McCahery & Vermeulen, 2008; Clarke, 2006). 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 (Seidl, 2006; McCahery & Vermeulen, 2008). This arguably diminishes the complexity of the code and allows corporations to diverge from the provisions which do not fit their particular setting (cf. Seidl, 2006). The flexibility inherent to corporate governance codes thereby attempts to augment the receptiveness of companies towards the code (Seidl, 2006).

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 increased efficiency of the board (Barnes, 2007; McCahery & Vermeulen, 2008; Farrar, 2008b). The possible deviation from the code corresponds to 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 (cf. McCahery & Vermeulen, 2008). 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.[31] 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 (similar Farrar, 2008b; McCahery & Vermeulen, 2008). For example, provisions

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[30] For clarification, some authors use the term 'one size fits all' when referring to the debate about the convergence of corporate governance regimes in different countries, as seen in Iskander and Chamlou (2000). Throughout this paper the phrase will be only used in the context of corporate governance regimes for listed and unlisted companies.

[31] 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 measure would not be required if the adoption of only individual provisions was intended by the code.

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 (McCahery & Vermeulen, 2008; Farrar, 2008b).

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 (Barnes, 2007; McCahery & Vermeulen, 2008). For instance, the abovementioned idiosyncrasies of family businesses 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 diverging interests between the family and the business perspective (cf. Cadbury, 2000; McCahery & Vermeulen, 2008; Farrar, 2008a). 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 (McCahery & Vermeulen, 2008). 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 shareholder agreements – within a cohesive corporate governance approach.

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 (cf. McCahery & Vermeulen, 2008). Similarly, the members of 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 (McCahery & Vermeulen, 2008). Finally, it can be argued that the positive impact 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 (McCahery & Vermeulen, 2008).

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 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.[32] The prevalent concept in the majority of the emerging corporate

[32] Examples for these drafting efforts: Commission Corporate Governance pour les entreprises non cotées (2005); Central Chamber of Commerce of Finland (2006); The Hong Kong Institute of Directors (2009); Lebanese Transparency Association (2006); FBNED – The Dutch Association of Family Firms (2003); Continuum AG,

governance guidelines focuses on the corporate governance of SMEs.[33] 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 high incidence of SMEs as the prevailing business type worldwide, often accounting for 90 per cent or higher of existing businesses (Barnes, 2007). SMEs contribute a comparably significant proportion to a country's economy while also being an important source of employment (Barnes, 2007). An argument in favour of the dominance of recommendations directed 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 few additional issues (cf. Litz, 1995; Handler, 1989). 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 that family businesses simply constitute a good example of SMEs.[34] 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.[35]

By contrast, few of the established guidelines adopt a reverse approach.[36] 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 article 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 of an exclusive family business focus.

This conception of family businesses can be disputed. Incorporating only some family business recommendations into an SME focused governance guideline creates the impression that family businesses are always small corporations. 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 (cf. Litz, 1995; Colli, 2003). 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 the true business potential as they do not

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Prager Dreifuss & Vereinigung der Privaten Aktiengesellschaften (VPAG) (2006); Institute of Directors & European Confederation of Directors' Associations (2010).

[33] Compare: Commission Corporate Governance pour les entreprises non cotées (2005); Central Chamber of Commerce of Finland (2006); The Hong Kong Institute of Directors (2009); Lebanese Transparency Association (2006).

[34] See for instance Barnes (2007) who mentions family businesses while talking about the SME sector.

[35] An example can be found on the EU-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' (cf. European Commission, 2011a). 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 (cf. European Commission, 2011b).

[36] See: FBNED – The Dutch Association of Family Firms (2003); Continuum AG, Prager Dreifuss &d Vereinigung der Privaten Aktiengesellschaften (VPAG) (2006).

restrain family businesses through provisions that presuppose an expected size and structure (cf. Colli, 2003).

Furthermore, SMEs are usually defined with respect to their size in terms of the number of employees and/or turnover (cf. OECD Glossary of Statistical Terms, 2005). 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. Such guidelines allow for the challenges faced by family businesses to be addressed according to the developmental stage in which they are likely to arise.[37] 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.[38] They are more likely to be attributed to a concentrated ownership structure, owner involvement in the business and close-knit relationships between business participants - especially where family members are involved. The existing focus on SMEs seems to be less appropriate. As these issues closely relate to family business specific problems and are also simple to integrate into the different developmental stages, family business guidelines 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 business when compared to the abovementioned percentages of SMEs (cf. Farrar, 2008a; KMU Forschung Austria, 2008). 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 the focal point for corporate governance guidelines within the sphere of unlisted companies.

The approach advocated in this article ultimately amounts to the establishment of only one set of corporate governance recommendations for the entire sphere of unlisted companies. The aim of preventing overregulation in the form of too many governance guidelines provides the main rationale for this approach (cf. OECD, 2004). 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 (cf. Hamid & Kozhich, 2006). 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

[37] Compare Farrar (2008b) who argues for the need of a developmental stage approach within an SME/family business governance framework.

[38] See Barnes (2007: 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".

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 in the context of SMEs and family businesses.

An integrative approach within one set of recommendations appears to be the best solution in order to avoid the aforesaid disadvantages. Such recommendations, however, have to ensure that the minority of businesses that do not fit the definition of family business can easily determine to which of the outlined stages of development they belong. Businesses have to be able to identify the governance recommendations applicable to them without difficulty, which in turn demands clear structure and language in the particular guidelines.

A further overlap is created with respect to listed family businesses. Their integration in the proposed corporate governance regime needs to be ensured as well by accounting for governance problems related to the family aspect in listed companies within the relevant developmental stage. Their situation will be mostly comparable to those unlisted family businesses preparing for their listing. 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 remain relevant for listed family businesses, as the family governance issues are not abrogated due to a listing of the company. Additionally, the importance of a proper integration of family and business governance becomes even more pronounced at this stage.

6 CONCLUSION AND PERSPECTIVES

The objective of this article 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 because the complex dimension of the family is 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 do 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.

Overall, the article seeks to spark a greater discussion and research interest in the legal – in particular corporate law – research on family businesses. The instigative approach of this article reflects the demand for more in-depth research in order to arrive at a comprehensive understanding of family businesses from a legal perspective.

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