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**ITALIAN FAMILY AGREEMENTS AND
BUSINESS CONTINUITY**

Abstract

Italian family firms comprise 80% of all business enterprises belonging to all economic sectors¹ and their main distinctive feature is the founder's will to transfer ownership and management to the heirs so that family traditions are transmitted together with corporate values. Less than half of all family-owned firms, however, survive into the second generation and less than a fifth are still viable into the third generation.²

The risk of a failure in generational transitions is linked to many variables often operating jointly, as for example:

- lack of a clear succession plan;
- lack of agreement among stakeholders;
- lack of skills on the part of the chosen successor;
- dissension within the family;
- infragenerational jealousy;
- lack of a clear outline of roles;
- a fragmented decision-making power;

Thanks to a stronger attention to the generational transition, some of these problems could be pre-emptively recognized so that it would be possible to identify solutions apt to hold back or solve them.

Scholars and insiders have shown concern for the critical succession phase and encouraged legislators to modify the transition system allowing entrepreneurs to make a choice regarding the future of their family business through an agreement which is not only an informal one. Therefore, family agreements arise out of the need to allow the founder to transmit ownership and management to one or more heirs. Such new prerogative presents positive implications both for corporate continuity and the reinforcement of a succession plan.

Key words:

Family Agreements, Succession, Family Business, Continuity, Corporate Governance, Ownership.

Jel: K36, M21

¹ C. Devecchi, *Problemi, criticità e prospettive dell'impresa di famiglia*, Vita e Pensiero, Milano 2007, p. 13. (*Problems, Critical Elements and Perspectives of Family Firms*)

² J. P. Rosa, *Continuity, Entrepreneurship and Family Business*, Inaugural lecture, Edimburgh, May 2006, p. 3; P. Singer, *Il passaggio generazionale nell'impresa familiare tra continuità e cambiamento*, Giappichelli, Torino 2005, p. 65. (*Generational Transition in Family Firms Between Continuity and Change*)

1. Introduction

Studies of family-owned businesses³, in particular those focused on the survival of family firms during the transition to the next generation, aim at pointing out solutions apt to reduce risks of dissension within the family, fragmentation of decision-making power, loss of firm value, incoherent management choices even with the risk of a business failure.

According to a few scholars⁴ or insiders⁵, a family agreement⁶ is a solution capable of solving all these problems, at least partially. A family agreement⁷ should express

³ Si veda G. Corbetta, *Le imprese familiari. Caratteri generali, varietà e condizioni di sviluppo*, Egea, Milano 1995 (*Family Firms. Main Features, Variety and Development Conditions*); G. Jones and M. B. Rose, *Family Capitalism*, Frank Cass, 1993 London; R. Amit – B. Villalonga, *How do family ownership, control, and management affect firm value?*, 20 August, 2004, *Journal of Financial Economics*, pp. 385-417; G. Corbetta - C. A. Salvato, *The board of directors in family firms: one size fits all?*, *Family Business Review*, Family Firm Institute, vol. XVII, n. 2, June 2004, pp. 119-134; A. Dell'Atti, *Il passaggio generazionale nelle imprese familiari*, Cacucci, Bari 2007 (*The Generation Transition in Family Firms*); E. Viganò, (a cura di), *La sensibilità al valore nell'impresa familiare*, Cedam, Padova 2006 (*Concern for Value in Family Firms*); G. Invernizzi, *Gli assetti istituzionali delle aziende*, (*Corporate Institutional Structures*) in G. Airoidi, G. Amatori, G. Invernizzi, *Proprietà e governo delle aziende italiane*, Egea, Milano 1995 (*Ownership and Corporate Management in the Italian Firms*); J. Lee, *Impact of Family Relationships on attitudes of the second generation in Family business*, in *Family Business Review*, vol. XIX n. 3, September 2006; J. Tokarczyk, E. Hansen, M. Green, J. Down *A resource-based view and market orientation theory examination for the role of "Familianness" in family business success*, in *Family Business Review*, vol. XX, n.1, March 2007; G. Piantoni, *La successione familiare in azienda: continuità d'impresa e ricambio generazionale*, Etas Libri, Milano 1990 (*Family Succession in a Firm: Corporate Continuity and Generation Turnover*); P. Rosa "Family background and entrepreneurial attitudes and activity in British graduates", in R. Atkin, E. Chell and C. Mason, *New Directions in Small Business Research*, Aldershot Avebury 1993.

⁴ Si veda J. L. Ward, *Keeping the Family Healthy. How to Plan for Continuing Growth, Profitability, and Family Leadership*, trad. it. *Di padre in figlio: l'impresa di famiglia*, Franco Angeli, Milano 1990; D. Montemerlo, *Il governo delle imprese familiari*, Giuffrè, Milano 2000 (*The Management of Family Firms*); G. Corbetta, *La gestione strategica del passaggio generazionale*, in *Rivista dei dottori commercialisti*, n. 5/1996 (*Strategic Management of Generational Transitions*); C. Bianchi, *Continuità e ricambio generazionale*, Giuffrè Milano 1995 (*Continuity and Generation Turnover*); V. Bertella, *La pianificazione del ricambio generazionale nell'impresa familiare*, Cedam, Padova 1995 (*Planning the Generational Transition in Family Firms*); B. Inzitari, *Il patto di famiglia*, Giappichelli, Torino 2006, p. 128 (*The Family Agreement*); P. Manes, *Prime considerazioni sul patto di famiglia nella gestione del passaggio*

the will of the business owner who plan a transition to the heir possessing all the skills the business activity requires, legitimizing the chosen successor in front of all stakeholders.⁸

In the absence of a family agreement, that is of a preventive agreement, the ownership of the firm would be transmitted and equally divided among the heirs (children), upon the death of the owner, according to the law or testament, therefore the generational transition would happen by chance, without a precise succession plan.⁹ All this could imply an unsuccessful transition and a fragmentation of the ownership stakes, engendering confusion in the leadership management, without forgetting that such a context can provoke the collapse of the firm.¹⁰

Legislators, aware of the economic consequences generated by a business collapse, reformed the succession rules through a law (nr. 55, February 14 2006) introducing family agreements and adding paragraph V-bis to Title IV of the 2nd volume of the Civil Code.

generazionale della ricchezza familiare, in *Contratto e impresa*, Cedam, n. 2 marzo - aprile 2006 (*First Remarks on Family Agreements as regards the Transition to the Next Generation*).

⁵ Report to the President, April 23, 2002, draft bill nr. 1353, XIV Parliament, Senate of the Republic, on the initiative of Senators Pastore, Pontone, Tatò and others, on "New Rules Regarding Succession Agreements Concerning Businesses", in www.senato.it.

⁶ In the 1990's informal agreements were stipulated among the members of the family in order to share values and targets concerning different aspects of the relationship between family and firm and they were usually called "family agreements". See D. Montemerlo, *Il governo delle imprese familiari*, Giuffrè, Milano 2000, pp. 159 e ss. (*The Management of Family Firms*)

⁷ See on p. 12 an example of Family agreement, taken from *Le guide del professionista*, Il sole 24 ore, 30/03/06.

⁸ On the institutional and non-institutional stakeholders see C. Masini, *Lavoro e risparmio*, Utet, Torino 1979, pp. 41 e ss. (*Work and Savings*).

⁹ J. L. Ward, in *Keeping the Family Healthy*, *op. cit.*, pp. 31 and 32, suggests that "the setting of any plan means that specific questions must be asked to the family members and top managers of the firm. The simple fact of asking these questions produces a series of positive effects: not only it promotes the development of new ideas, but it also supports a common and shared perception of corporate requirements [...]. All this increases the firm's capacity of accepting changes."

¹⁰ J. L. Ward, *Keeping the Family Healthy*, *op. cit.*, pp. 27 e ss., underlines that "there is a further cause to blame for the unsuccess of succession attempts and, moreover, such cause is much more significant than the other ones so far examined: many business owners cannot count on a clear reference frame apt to situate the future of their firm. Therefore, they do not avail themselves of an entire series of modern analytical solutions able to help confronting challenges coming from the market and the family context. The most important instrument is a *plan* to guide both the firm and the family. "

This intervention provides for the possibility of transferring business management to a single heir, thus *inter vivos* agreements are legitimized, departing from the general principle forbidding succession agreements, as provided by art. 458 c.c.

The issue of family agreements is rather complex as it implies interrelations among different fields such as law, business economics, sociology, ecc. Succession agreements become instruments for the regulation of the private autonomy and relationships between settlor and heirs, and security instruments of a stable corporate organization. This paper aims simply at submitting a few remarks on the changed succession framework and the continuity of family-owned businesses.

2. Brief outline of the succession system before the 2006 reform

According to the Italian law, two elements are fit to regulate succession: the testament and, in the absence of a testament, the legislative articles 457 and 458; the civil law forbids succession agreements, that is agreements between two parties for the transfer of assets after the death of the settlor. The *ratio legis* of this prohibition¹¹ is first of all the safeguard of the choice made by the legislators who established that the inheritance is given according to the law or a testament, excluding contracts or negotiations. Moreover, it is based on the need to respect the will of the settlor. In case of a contract, it is therefore possible to prevent that a succeeding dispute or interpretation of the act can place on the same level the settlor's will and the heirs' will. In other words, in a potential litigation in court, the settlor's will would be placed on the same level of the interests of other parties, failing to give preeminent valorisation to the settlor's "last will".

It must be said that it is however the settlor's will at stake when considering his/her desire to plan a succession without shocks or uncertainties in order to avoid hasty choices in case of sudden death. The generational transition implies uncontestedly¹² a series of problems and cannot be improvised, but rather it should be in fact the result of harmonious decisions among family members as it affects significantly corporate performances. It is not a matter of defending the last will of the entrepreneur as a choice free from the desire to safeguard the family's interests and, least of all, the survival of the firm, but rather combining these needs in a family agreement, shared by all the members and apt to encourage an atmosphere conducive to change in order to preserve corporate continuity.

As regards the denial of contracts for the transfer of assets, apparently the economic, social and cultural development is urging people in the opposite

¹¹ On the underlying reasoning for prohibiting succession agreements, see C. Caccavale – F. Tassinari, *Il divieto dei patti successori tra diritto positivo e prospettive di riforma*, (*The prohibition of succession agreements between positive law and reform*) in *Rivista di Diritto Privato*, January-March 1997, n. 1, pp. 74 ss.; V. G. Porcelli, *Successioni e Trust (Succession and Trust)*, *Collana Interdisciplinare di Studi Economici dell'Università degli Studi di Foggia-Napoli*, Edizioni Scientifiche Italiane, 2005, p. 38 e ss.

¹² A. Mezzadri, *Il passaggio del testimone*, Franco Angeli, Milano 2005, p. 28 e ss. (*Passing the Baton*)

direction, that is towards choices that are more adequate to the circulation of wealth. In fact, when considering that the succession system is based on a close correlation with the institutions of property and family, which are today in incessant evolution and transformation, it is easy to understand the need to reform¹³, in order to adjust to such changes. Testaments are less and less employed¹⁴ and succession processes are more and more settled through agreements or contracts capable of answering the need of flexibility and rapidity in transferring assets.

Moreover, the institution of the family, a theme of frequent debates today, is undergoing the deepest changes, passing from a patriarchal model to “para-familial” forms of non institutionalized cohabiting.¹⁵ The metamorphosis of such institutions affects the rigidity of the succession system and engenders the need of faster instruments, more adequate to different contexts.

3. Present regulatory framework

The new articles 768-*bis*/768-*octies* of the civil code (Law nr. 55, 14 February 2006) provide for a “family agreement” departing from the general principle forbidding succession agreements, as specified by the article 458 c.c. The family agreement is a contract through which, compatibly with the rules governing family firms¹⁶ and in obedience to the different company types, the entrepreneur transfers the firm, wholly or partially, and the stakeholder transfers, wholly or partially, his stakes to one or more descendants.¹⁷

Such contract must be conceived as a registered deed¹⁸, on pain of nullity and all legitimate heirs and the spouse of the entrepreneur must participate in it.¹⁹ The recipient of the firm (or of the stakes) is duty-bound to pay the other legitimate heirs a sum equal to the value of their respective stakes of legal portion.²⁰ On this issue remarks have already been made as regards the possibility of the recipient to compensate autonomously, with personal funds, the other contracting parties; moreover, should the recipient disregard the settlement there is no coercive measure

¹³ G. Porcelli, *Successioni e Trust, op. cit.*, on the crisis of the succession system before the reform, p. 10 e ss.

¹⁴ G. Porcelli, *Successioni e Trust, op. cit.*, p. 42 e ss

¹⁵ G. Porcelli, *Successioni e Trust, op. cit.*, p. 14.

¹⁶ Family firms are provided for in Art. 230-*bis* c.c., introduced by art. 89 of the family law reform of 19 May 1975, n. 151, aiming at the safeguard of family activity.

¹⁷ Art. 768-*bis*, Capo V-*bis*, title IV, c.c.

¹⁸ Art. 768-*ter*, c.c.

¹⁹ Art. 768-*quater*, c.c. 1° paragraph.

²⁰ Art. 768-*quater*, c.c. 2° paragraph.

except the invalidity of the agreement.²¹ It is however likely that the assignor engages himself in the settlement of the other legitimate heirs on the basis of the family's estate; besides, apparently the law does not exclude the possibility of attributing legitimate heirs a right to payment against the recipient of the enterprise or stakes.²²

This departure from the rules aims at making the succession easier, in conformity with the suggestions formulated by the European Commission²³, allowing the entrepreneur to plan the generational transition of the individual firm (when the business is not carried as a collective entrepreneurship) or the future organisation of the family-owned firm²⁴.

4. Comments on the concepts of enterprise and corporate continuity

The civil code of 1942 defines the enterprise (art. 2555) as a "complex of assets organized by an entrepreneur in order to run an enterprise". Juridical studies²⁵ consider the enterprise as a body of assets and, while recognizing its functional unity, do not acknowledge a real right on the enterprise, but rather on its components. In other words, an atomistic thesis prevails reducing the enterprise to the sum of single elements, considered apart.

The definition of enterprise according to the civil code was the expression of the economic context of those days, when a dominant role was played by Besta's theories, defining the enterprise as a sum of phenomena, transactions and relationships; the estate as an aggregate of elements; and profits as a sum of results.²⁶ In particular, Besta argued that "the entire business wealth or a portion, that is a any

²¹ P. Manes, *Prime considerazioni sul patto di famiglia*, op. cit., p. 564. (*First Remarks on Family Agreements*)

²² Fondazione Luca Pacioli, *Il Patto di Famiglia*, legge 14 febbraio 2006, n. 55, (*Family Agreement*) document nr. 7, 29 March 2006, www.fondazioneelucapacioli.it

²³ European Commission, Dec. 1994, on succession in SME, (GU L. 385): "Member States are invited to take the necessary measures to facilitate the transfer of small and medium-sized enterprises in order to ensure their survival and to safeguard the jobs which depend upon them."

²⁴ T. Bogod, P. Leach and R. Merson, "*Across the generation*", BDO Centre for Family Business, 2004 London.

²⁵ G. Alpa-P. Gaggero, *Profili istituzionali del Diritto Privato, Persona e Famiglia, Successioni-Diritti reali*, (*Institutional Profiles of Private Law, Individual and Family, Successions – Real Rights*) Cedam, Padova 2006, p. 833; P. Trimarchi, *Istituzioni di Diritto Privato*, Giuffrè, Milano, 2003, p. 613 (*Elements of Private Law*); A. Torrente – P. Schlesinger, *Manuale di Diritto Privato (Private Law Guide)*, Giuffrè, Milano, 2004, p. 683.

²⁶ F. Besta, *La ragioneria (Accounting)*, Vol. I, Villardi, Milano 1909, second edition, pp. 3 - 4.

estate, is measurable as it is formed by valuable elements."²⁷ This definition was then overtaken thanks to Zappa's studies on economic capital in tune with the new idea of "enterprise-economic co-ordination", later more exhaustively studied. In fact, Zappa emphasizes that the enterprise, as any economically co-ordinated unit, is something more than the simple sum of its elements; the whole has qualities of which each single element is lacking. Moreover, the features of an organized body is not the result of the mere addition of the features of the different elements.²⁸

However, some law scholars²⁹ go beyond the atomistic thesis and approach a unitary theory of the enterprise, being considered not as an aggregate of single elements, but rather as something more than the simple sum, and consisting in the organization and co-ordination value of different assets.

However, only a few aspects of the corporate legal discipline contribute to strengthen this definition, in particular the rules governing the transfer and preserving goodwill³⁰, in confirmation of the fact that the idea of unity is not linked to the enterprise as such, but rather to the goal the enterprise is intended for. Thanks to the introduction of family agreements we may say that succession rules as well contribute to strengthen this approach, or to put it better they confirm the thesis asserting that an enterprise does not represent only a "container of individually measurable elements", but rather a complex entity, an inseparable expression of interests which are superior to single elements, such as economic and social growth³¹, social responsibility³², stability of employment, etc.

The new legislative reform shows a progressive success of the unity theory reaffirming the importance of corporate survival that must go together with corporate continuity. Therefore, the fact that the enterprise can be wholly inherited by the person who possess the strongest entrepreneurial skills is an advance towards an economic-corporate theory³³, regarding the enterprise as an organized complex bound to last long³⁴ and therefore to be protected.

²⁷ F. Besta, *La ragioneria, (Accounting)* Vol. I, Villardi, Milano 1909, second edition, p. 72.

²⁸ G. Zappa, *Il reddito d'impresa (Business Income)*, Giuffrè. Milano 1939, p. 14 e ss.

²⁹ V. Roppo, *Istituzioni di Diritto Privato (Principles of Private Law)*, Monduzzi, Bologna, 2005, p. 603; P. Zatti-V. Colussi, *Lineamenti di Diritto Privato (General Features of Private Law)*, Cedam, Padova, p. 703.

³⁰ V. Roppo, *Istituzioni di Diritto Privato, op. cit.* p. 604.

³¹ G. Bruni, *Saggi di Economia Aziendale, (Essays on Business Administration)*, Giappichelli, Torino, 2005, p. 48, writes "the enterprise receives growing consideration in present times as an economic protagonist and an interlocutor that cannot be renounced, to whom society delegates the task of creating and spreading the value of wealth for individual and collective welfare".

³² Cfr. P. Orlandini, *La responsabilità sociale d'impresa (Corporate Social Responsibility)*, Consumatori, Diritti e Mercato, n. 2, 2006, pp. 114 - 128, in part. p. 115; M. A. Gallo, *The Family Business and its social responsibilities*, Family Business Review, vol. XVII, n. 2, June 2004, pp. 135 - 149.

³³ A. Amaduzzi, *L'azienda nel suo sistema e nei suoi principi (The Enterprise inside Its System and Principles)*, Utet, Torino 1992, p. 30; R. Ferraris Franceschi, *L'azienda: forme, aspetti*

According to the corporate theory, the enterprise is “an elementary unit of a general economic order, endowed with its own life and also a reflected life, and constituted by a system of operations, originating from the combination of peculiar factors and composition of inside and outside forces, where production, distribution, consumption phenomena are planned in order to accomplish a certain long-lasting economic equilibrium”.³⁵ This definition shows immediately the main and usually accepted characters of an enterprise: unity, autonomy and durability. The inseparable *unity* of the enterprise is indicated by the complementarity of property and personal factors contributing to the achievement of a common goal. “The autonomy of an enterprise should be understood in relative terms, as regards the manifold relationships through which it is inserted, as an elementary economic unit, into a general economic order”³⁶. Finally, the enterprise is not an institution created with temporary purposes, but rather it is bound to last long³⁷, combining individual

caratteri e criteri discriminanti (The Enterprise: Forms, Features and Discerning Standards), in E. Cavalieri (a cura di), *Appunti di economia aziendale (Notes of Business Administration)*, vol. 1, Roma, Edizioni Kappa, 1995; G. Catturi, *Lezioni di economia aziendale (Lessons of Business Administration)*, Cedam, Padova 1997; L. Marchi, *Introduzione all'economia aziendale: il sistema delle operazioni e le condizioni di equilibrio aziendale (Introduction to Business Administration)*, Giappichelli, Torino, 2000; U. Bertini, *Il sistema d'azienda (The enterprise as a System)*, Giappichelli, Torino 1990.

³⁴ G. Ceriani, *Lezioni di Economia Aziendale (Lessons of Business Administration)*, Cedam, Padova, 1996, p. 12, emphasizes that “the institutional idea of the enterprise as an ‘economic institution bound to last’ permits to go beyond its merely juridical notion and reminds its main features: unity, autonomy and strength. The relationships revealing the indivisible corporate unity are rooted in the inviolable complementarity of property and personal factors contributing to its achievements. [...] The enterprise is not an institution created for achieving temporary goals, but it is bound to last in connection with goals that during the firm’s life can change, without interrupting or attenuating its continuous evolution”; P. Onida, *Economia Aziendale (Business Administration)*, Utet, Torino 1971, p. 4, says that “the enterprise appears as a complex asset or a dynamic system, in which unity and multiplicity, continuity and mutability are achieved in a vital synthesis”.

³⁵ E. Giannessi, *Le aziende di produzione originaria*, Vol. I, *Le aziende agricole*, Colombo Cursi, Pisa 1960, p. 51.

³⁶ G. Ceriani, *Lezioni di economia aziendale, op. cit.*, p. 12.

³⁷ See C. Masini, *Lavoro e risparmio*, Utet, Torino 1978, p. 10; E. Giannessi, *Le aziende di produzione originaria*, Vol. I, *op. cit.*, p. 51; G. Ceriani, *Lezioni di economia aziendale, op. cit.*, pp. 12 e 13; p. Onida, *Economia aziendale, op. cit.*, p. 4. G. Gonnella, *Il fenomeno azienda*, pp. 30-31.

interests of the entrepreneur and collective interests of employees, suppliers, banks³⁸, ect., arousing a social consensus³⁹.

With the introduction of family agreements, legislators allow the entrepreneur to transmit the proprietorship of the firm to a single heir, leaving different assets to the other heirs or settling the legal portion secured to each heir. The new rules modify considerably the principle of “unity of the succession” on which the succession system is based. In fact, such principle means the denial of any distinction, in the succession process, among different assets and personal qualities of the heirs.

In other words, the law⁴⁰ emphasizes that the inheritance division must respect rules of quantitative and qualitative equality of the shares⁴¹. With family agreements, however, legislators apparently accept with a certain compliance the safeguard of corporate continuity, even before the interests of heirs whose shares lose “quality” for the benefit of an interest which is today considered more important, that is corporate continuity.

The analysis of a sample of 200 enterprises highlights that long-lived firms that have successfully overcome the generational transition have common characteristics: they were managed and owned by a single heir or a small group of heirs⁴². Research findings emphasize a tendency towards a stronger leadership which is clearly legitimized, i.e. it exerts its power through the majority of capital thus simplifying management and favoring a clear expression of authority and goals.⁴³ Hence we may infer that concentrating at the maximum management and ownership can be considered as a strategic success factor.

In fact, the choice of leaving decision-making power in the hands of a single heir or a small group of heirs allows a lower dispersion of resources, a clearer outline of goals and a faster decision-making process for the strategies involving corporate resources.

³⁸ M. Saita, *I fondamentali dell'economia e strategia aziendale (Elements of Corporate Administration and Strategy)*, Giuffrè, Milano 2006, p.27 e ss., in particular the system of social interlocutors.

³⁹ Cfr. L. Caselli, *Neppure le imprese possono fare a meno dell'etica (Even Enterprises Cannot Do Without Ethics)*, in G. Rusconi (a cura di), *La responsabilità sociale di impresa*, Franco Angeli, Milano 2004, p. 44; A. Paletta, *Etica, Responsabilità e bilancio sociale (Ethics, Responsibility and Social Report)*, in A. Paletta, M. Tieghi, (editors), *Il bilancio sociale su base territoriale (Social Budgets on a Territorial Basis)*, De Agostini SpA, Novara, 2007.

⁴⁰ Artt. 718, 727 c.c.

⁴¹ G. Porcelli, *op. cit.* pp. 28 ss, on the issue of unity in succession and on the departing from this principle thanks to the recent extension to anomalous legal successions.

⁴² The author's definition is "pruning the family tree" in J. L. Ward, *Keeping the Family Healthy, op. cit.*, pp. 39 - 40.

⁴³ A. Nobolo, *Continuità e sistemi di governo economico, nelle aziende di produzione a proprietà familiare (Continuity and Systems of Economic Governance in Family-Owned Production Firms)*, Egea, Milano 2000, p. 95; R. S. Carlock and J. L. Ward, “*Strategic planning for the Family Business*”, Palgrave, 2001 New York.

Concentration of power in the hands of a single heir becomes therefore a requirement for corporate continuity; obviously it is not a guarantee for survival in absolute terms as it depends on the individual competence of the chosen heir, corporate risks and challenges deriving from the outside context, however, as shown by research findings, the collapse risk is reduced.

Draft of a Family Agreement

Family Agreement⁴⁴

ITALIAN REPUBLIC

whereas:

On the year, day..... month
.....

In Milan, piazza Leopardi, nr. 1,

before dottor Orazio Visconti, notary in Milan,
(with the assistance of the witnesses...)⁴⁵ :

- 1) [...]
- 2) [...]

At the presence of:

- 1) Rossi Nicola, born in [...], date: [...],
tax code [...];
- 2) Bianchi Irene, born in [...], date [...],
tax code [...];

married in regime of separation as to property,
domiciled in [...], in [...], n.;

- 3) Rossi Carlo, born in [...], date [...],
domiciled in [...], address [...], tax code
[...] married in regime of separation as
to property;
- 4) Rossi Marco, born in [...], date [...],
domiciled in [...], address [...], tax code
[...], single;

whose identities the notary confirms:

⁴⁴ Source: adapted from: *I patti di famiglia e il trust*, Le guide del professionista, il sole 24 ore, 30/03/06, pp. 15 e 16. (*Family Agreements and Trust*)

⁴⁵ The presence of witnesses is not required on pain of nullity, as it is not strictly a donation.

- a) Rossi Nicola and Bianchi Irene are Rossi Carlo and Rossi Marco's parents;
- b) Apart from Bianchi Irene, Rossi Carlo and Rossi Marco, there is no other individual who can be defined as legitimate heir in case of a succession to Rossi Nicola;
- c) Rossi Nicola is the sole owner, having founded it, of the firm managed under the form of the homonym individual firm (address...., registered...with code nr) whose consistence is described in the assessment here after;
- d) The above-mentioned business activity is not carried out in the form of a family firm as described in the article 230-bis of the Civil Code;
- e) Rossi Nicola is the sole owner (having bought it) of the estate (address) and precisely: the intere building, from ground to roof, used for habitation, with annexed appurtenances, adjoining ..., and registered at the land Office as follows ...;
- f) Rossi Nicola, with the consent of Bianchi Irene, Rossi Carlo and Rossi Marco, retaining the right to life usufruct, under articles 768-bis and ff. of the Civil Code, intends to trasfer the remainder interest of the above mentioned firm to his son Rossi Carlo and simultanously settle the other son Rossi Marco, attributing him an equal value through the assignement of the ownership of the above mentioned building and a amount as a compensation;
- g) Mrs. Bianchi Irene intends to consent to the above mentioned attributions and waives any attribution in her favour;
- h) for the above mentioned purposes the appearing parties by common consent (committing jointly the task to a business consultant [...]), have proceeded to the inventory and financial position of the

above-said firm, with reference to February 28, 200n; and, again with reference to that date, have proceeded by common consent (committing jointly the task to a surveyor [...]), to an assessment of the aforesaid building;

- i) these documents (enclosed under the letter "A") show that the value of the remainder interest amounts to € 800.000 and that the value of the ownership of the building amounts to € 650.000;

therefore, they agree and contract as follows:

ARTICLE 1) Premises.

The above expressed premises are an integral part of this contract and are here integrally reported and transcribed.

ARTICLE 2) Attribution of the remainder interest of Rossi Carlo's firm.

2.1. Under the articles 268-bis and ff. of the Civil Code, Rossi Nicola, with the approval of Bianchi Irene and Rossi Marco, retaining the right to a life usufruct, transfers to his son Rossi Carlo the remainder interest of the firm above-mentioned at point c).

2.2. The appearing parties assign unanimously to the transfer the value of € 800.000.

ARTICLE 3) Settlement of Rossi Marco.

3.1. Under the article 768-quater of the Civil Code, Rossi Nicola, with the approval of Bianchi Irene and Rossi Marco, transfers to Rossi Marco, the ownership of the building above-mentioned at point e) of the premises.

3.2. The appearing parties assign unanimously to this transfer the value of € 650.000.

3.3. In order to equalize the attributions in favour of Rossi Carlo and Rossi Marco, Mr. Rossi Nicola, with the approval of Bianchi Irene and Rossi Marco, transfers to Rossi Marco the amount of € 150.000 presenting a registered non-transferable cheque of this amount issued by the Bank [...] in date [...], with the number [...].

ARTICLE 4) Waiver of Mrs. Bianchi Irene

4.1. Under the article 768-quater del Codice Civile, Mrs. Bianchi Irene consents to the above

mentioned attributions and waives any attribution in her favour.

ARTICLE 5) In case of heirs at law.

5.1. Rossi Carlo and Rossi Marco agree to consider themselves as joint debtors for the settlement of any possible sum due, under the article 768-sexies of the Civil Code, to those non included in the present contract, who can qualify as heirs at law at the moment of the succession of Rossi Nicola.

ARTICLE 6) Withdrawal

6.1. In case the business activity in the next five years should not reach an average income after taxes superior to € [...], Rossi Nicola can exert the right to withdraw from this contract.

6.2. The withdrawal mentioned in the preceding paragraph can be exerted through public act sent as registered letter to all contracting parties, as below indicated, by the last day of the sixth month following the closing date of the fifth year succeeding the current year.

6.3. In case of withdrawal:

6.3. a) the ownership of the firm mentioned in point c) of the premises will be returned to Rossi Nicola (or his assignees);

6.3. b) the ownership of the building mentioned at point 2) of the premises will be returned to Rossi Nicola;

6.3. c) Rossi Marco will have to pay back to Rossi Nicola (or his assignees) the amount of € 150.000 plus the monthly interests equal to points [...].

ARTICLE 7) statements under the law 47/1985 and Dpr 380/2001.

(this article should include all references to the ordinances enabling the construction of the building cited).

ARTICLE 8) Delivery – inventory and caution money.

8.1. The contracting parties agree and acknowledge that the transfer of the rights transferred with this contract takes place with the signature of this same contract; and that the delivery of the assets take place as well at the signature of the contract.

8.2. The usufruct is exempt from setting of inventory and caution money.

ARTICLE 9) Guaranties.

(this article include the guaranties offered by the contracting parties: freedom from mortgage, immunity to defects, in addition to the tipycal guaranties of corporate tranfers, solidity of business wealth, ect.)

ARTICLE 10) Legal mortgage.

10.1. The transferor, if necessary, renounces the registration of the legal mortgage that can originate from the present contract.

ARTICLE 11) Domicile of choice.

11.1. The contracting parties, as regard this contract and the communications among themselves connected to the contract, chose as domicile: [...]

11.2. Any communication connected to the present contract must take place through registered letter to all contracting parties.

11.3. Any communication that is not sent according to the above mentioned terms can be considered as invalid.

11.4. Any change to the above mentioned domiciles and terms of communication will not come into effect unless communicated through registered letter to all contracting parties; in such case, the change will come into effect on the 30th day after the receipt of the above said registered letter on the part of the receiver.

ARTICLE 12) Place of jurisdiction.

12.1. The place of jurisdiction for the possible disputes arising from the interpretation or implementation of this contract is [...].

ARTICLE 13) Conciliation or arbitration

13.1. Any dispute relating or concerning the interpretation and/or implementation of this contract and/or concerning or developing from it, which arise among the contracting parties or their heirs and can be object of conciliation, will object of a preliminary attempt of settlement through conciliation, on the basis of the conciliation procedure of the chamber of commerce of [...].

(in case of an unsuccessful conciliation attempt, it is possible to go to arbitration)

(notarial act's closing paragraph)

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