

Fair process

Striving for justice and fairness in the family firm

FACED WITH DECISIONS regarding ownership or leadership in the family firm, one is inevitably confronted with issues of “justice” and “fairness”. These questions arise in any human context, but are of particular importance in the context of family firms. Family firms are at the same time the place where fairness is terribly needed, and yet where it is most difficult to assess. Is it fair to manage the business because one was born first, and thus ready to take responsibilities earlier? Is an equal split of the shares amongst some shareholders who do not care for the family business fairer than giving the one who is going to manage the firm a majority of these shares? Are restricted shares for family members fair to non-family investors? Is it fair to entice children into the business at a young age, when they might be better served by gaining outside experience? Is it not unfair to family members and non-family managers to keep an incompetent family member in a position of responsibility?

Those questions are generic to most family firms and they are meant to illustrate that fairness is actually key to the survival and performance of the family firm. Disgruntled shareholders sell out, disappointed managers leave, but unhappy family members too often stay, are frustrated, lose commitment, and sometimes even seek retribution for decisions they were subjected to and received as very unfair. The disgruntled employee or shareholder can always leave his employer, or sell his shares, but leaving a family is extremely difficult and painful – and selling it is impossible. The market system exercises justice in a very clear and direct way: if you don't like it, get out or sell – find a better match! The fact that the same is not as easy or even feasible in a family makes the issues of fairness in family firms even more prevalent and complex than they already are in non-family firms. Families live with unfair decisions for years, if not generations, and this legacy can be a poison for the family firm.

Our experience with both successful and unsuccessful multi-generational family firms, as well as with next generation members, has led us to understand the critical importance of

fairness in the decisions made in the family firm.

An analogy with the courts of law

The concept of fair process stems from the courts of justice, where research evidenced that the perception of the fairness of a judgment is heavily influenced by the perception of the fairness of the procedure. Typically, a procedure where the parties cannot express themselves (inquisitorial or dictatorial procedure) is considered less fair than a procedure where both parties have a voice (the adversarial procedure where each party's lawyer can freely plead is the typical example). Even in adversarial procedures, the judicial decision making process can be perceived as unfair – as when the judge withdraws relevant testimony or evidence from the court room. For decisions to be perceived as fair, they must be derived from a decision-making process that is viewed as fair. People have an innate sense for justice

and fairness, and react strongly in support of justice, or against prolonged violations of it. In sum, what is true for the court room, is true for society: a fair implementation of justice is a society's essential glue. Fairness in firm decision making is an essential glue for the firm.

For instance, our INSEAD colleagues Chan Kim and Renée Mauborgne examined the processes applied in the strategic planning of multinationals and their subsidiaries. They showed the link between what they termed fair process and the employees' commitment and trust.

In family firms, the concept of fair process strikes as being particularly relevant and intriguing. For one, there truly is no fairness in outcomes (also called distributive justice) in the family: as children, we did not get to make, let alone participate, in the most important decision pertaining to our lives – the choice of our parents, our position in the family and our genetic make-up. Non-

Distributive justice vs procedural justice

Distributive justice is about the fairness of the outcome. Procedural justice is about fairness of the process. Three main forms of distributive justice can be distinguished:

1. Equality: the outcome is evenly distributed between all. Equality is often used as a basis for distribution for wealth succession, where the same amount of wealth is given to each child. More generally, equality is typically the norm amongst shareholders.
2. Equity: those who deserve more will receive more. This notion underlines most career management systems. The ones who perform better will have higher salaries and more promotions than others.
3. Needs: what people receive is based on their needs. This would typically be applied in a family, where parents try and give to their children what they need: for instance more time to the one who has learning difficulties, more money to pay for art lessons for a gifted one etc.

There is rarely one single right way to distribute outcome, and often discussions about outcomes require the resolution of different perceptions about the way distributive justice should be applied.

We believe that paying attention to the fairness of the process – rather than focusing on the fairness of the outcome – will help find a better-accepted and better-implemented solution. The decision reached by a fair process will be viewed as fair by participants if the process meets the conditions described in the text.

Fair process in family firms

Communication and voice
Clarity
Consistency
Changeability
Charter or family law
Commitment to fairness

Best practices enhancing fair process

Family meetings with an agenda (with input from all) and minutes – and where information is shared and all can speak.
Outside experience, directors, bosses.
Family policies (and changes to policies) regarding ownership, the recruitment, evaluation and compensation of family managers, board members, and a statement of family values.

family managers never “decided” not to be part of the family, it simply was decided for them. All these outcomes are fundamental – yet we had no part of it. In short, fair process is particularly relevant for family firms – for our family firms need to be places of fairness and, yet, we struggle with unfair initial outcomes such as child position, branch membership, intellectual inheritance, economic inheritance, etc.

The complexity of fairness

What is particularly intriguing in the family firm is that the three pillars of the family firm (family, patrimony, business) have different perceptions as to what fair outcomes might mean for each of them. Let us take these in turn.

In the family, as indicated above, the notion of fairness is more one of giving the children (and adults, but children typically first) what they need to develop, grow, succeed, etc. A mother will typically give more attention to a child with particular deficiencies, and less attention to a rapidly maturing and autonomous child. The former children might be privileged further in inheritance, and that would be viewed as “fair”. Naturally, the typical notion is equality – give all children the same – but increasingly this recipe is viewed as too constraining, and not corresponding to the individual needs of each child.

The fact that some needy shareholders might be given more than others would be anathema to financial markets – where typically things are fair if all have the same opportunity and the same information. Equality of opportunity is the notion of fairness – equal rights for all is typically the motto.

Finally, in the business, there exists neither equality of rights, nor particular attention to needs. The overriding concern inside firms would be that of a meritocracy – let the best prove themselves and earn the right to have more rights over the rest of us.

It is in the deep divergence between these notions of justice that lie many

difficulties for the family firm that only the practice of fair processes in decision making can overcome. Our research has evidenced six conditions of fair process, which we now present.

Communication and voice

The first principle of fairness in decision-making processes is giving those concerned with a decision a voice, so that they can have their views heard before the decision is finalised. Giving young family members a voice in family meetings is the best way to both engage their participation on issues related to the business or to the family, and for them to develop their opinions. In larger family firms the general assembly of shareholders may be the place to engage family members. Internships are another under-utilised tool for informing the younger members about the reality of the family business in a way that is helpful for their own professional development or for when they join the family firm later on, or more simply when they inherit shares. Non-family managers and minority investors ought to be given a proper forum for expressing their views – if they are to trust the family firm. Communication amongst all members is essential to fair process.

Clarity

An important family business theme is the need to clarify individual, family and management expectations, in a way that includes all family members, in-laws and non-family managers. Some of the nastier issues that business-owning families face are too often the result of misunderstandings of individual or family goals, or of particular aspects of the family firm’s decision-making processes. This lack of clarity is very negatively perceived by young generation members. A statement, or at least a good understanding, of family principles affecting decision-making in the family firm is an integral part of clarity.

Consistency

Consistency is particularly important in

the context of a family business to counteract perceived or real feelings of injustice, whether in the family – “my brother was treated differently than me” – or in the business – “we are treated differently than non-family members, or than members from other branches.” Decisions, and the processes through which they are reached, should be consistent between people, over time and with agreed upon family firm principles. Young family members want a process that ensures employment or other decisions based consistently on capability and performance. Consistency in professional feedback is a critical element in the development of self-esteem in the young generation. Explicit family agreements and policies related to roles, employment and ownership ensure consistency too.

Changeability

All family businesses must be prepared to address changing business conditions, new information, or family life cycle transitions. The ability to adapt and to change is a critical success factor for all organisations. Even more so in that family life cycles continually interfere with business life cycles. The need for changeability is best demonstrated by regularly reviewing ownership or employment agreements agreed previously. The idea of limiting ownership to the eldest male or employment to males only is now unacceptable to most families. Persistence with the practice will affect the survival of the firm, no doubt – as we have seen many family firms recently managed very successfully by women. Changeability acknowledges the family’s need to make changes to previous family agreements so as to better reflect current family values and interests, as well as current business needs.

Charter or “family law”

In a court of law, decisions are taken in accordance to a set of laws – whether written or not. Similarly, the development of a book of rules and guidelines serves to

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Next generation members calling for fair process

The following examples are three among many, illustrating the need for fair process as expressed by next generation members.

Story 1

George is a management consultant and also a sixth generation shareholder in an industrial family corporation. And a lone voice. He feels that changes in strategy are required if the firm is to develop. He even believes that without these changes the future of the business may be in jeopardy. Yet the family views his attitude as negative and against family cohesion: "For years, all shareholders' votes have been unanimous, until I voted against a proposal," he explains. "Eighty percent of the family have not spoken to me since. I no longer have the right to speak at family meetings!"

Story 2

After gaining his MBA, Steve received several offers from large public companies. One option was not open to him: working in the firm founded by his great-great grandfather. Ownership and management were traditionally restricted to the male heirs with the family name. Steve lacked the "right" name. There seemed to be no option to change the family rule.

Story 3

François' problem was different. When asked by his uncle to join the family firm, he felt it was important that his appointment and career advancement be subject to the same decisions applied to a non-family member. His concern was for clarity and consistency among all the managers of the firm.

clarify the family's conduct towards its family firm. A formal "family firm law" governing the major events and decisions of family firms (succession, recruitment of family managers, appointment of family and non-family board members) is a desired and logical outcome of our drive for fair process.

Families having survived multiple generations often seem to have precisely such "laws" – under a variety of different names, such as family charters, protocols, handbooks, constitutions, they serve the same purpose. Quite critical for continued survival then is the possibility of amending these "laws," typically with the consent of a sufficiently large number of family members. We see the establishment of a "family firm law" as a desirable and necessary step to increased fair process in family firms.

Commitment to fairness

In our efforts to characterise fair process, we identified communication, clarity, consistency, and changeability as essential features of the decision-making processes. However, we have discovered that a family business can have clear procedures and principles, can communicate, act consistently and allow for changes, and yet still fall short of good fair process

practice. This is the case when either family or business members' actions seem to reflect fair process practice, but do so in a mechanical way, without espousing a deep commitment to fairness and justice.

People tend to view justice too often as an absolute concept whose essence can only be aimed at in practice, and never fully attained. Fair process has to be looked at in a relative sense, as its absolute application can only be an ideal to strive for. Fair process, if it is to last, must be driven by a deep commitment to the principle of fairness as a value in itself. It is this commitment that allows the continued improvement in the fairness governing the planning and decision-making processes of the family business system.

Conclusion

Improving the degree of fair process in family firms brings many benefits. Having a voice allows family members to feel recognised and valued. It allows them to accept more readily decisions that do not favour them and that are even unfavourable to them – for they have heard the arguments on the other side, and could not overturn them. Fair process also allows more solutions to be considered. By looking more broadly,

families give energies and ideas more opportunity to surface. Fair process increases the performance of the "next generation" team: they will execute things more superbly if they have them in themselves, if they made them "their cause" and contributed to shape them. Finally, fair process minimises the reasons for the "alliance" between the family and the business to break down: every bit of unfairness chips away the alliance, every bit of fairness glues it and yields commitment. Given as we stated above, that the alliance lives on different perceptions of fairness (needs, equality, equity or meritocracy), fair process is critical to continue to glue the alliance amongst family members, shareholders, and managers to its common purpose. ■

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This article draws on an INSEAD working paper written by Christine Blondel, Randel Carlock and Ludo Van der Heyden, "Fair Process: Striving for Justice in Family Firms". Copies of the paper can be sent upon request.

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This is a regular column. The authors look forward to debating the topics addressed and welcome comments and suggestions.

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