

SUMMARY OF THE CONFERENCE: NOVEL FISCAL ISSUES FOR THE FAMILY FIRM
30th October, 2007

The family firm is one of the pillars of our business community. For this reason, it is important to further our knowledge of how it works and be aware of the legislation which has an impact on it. The family firm has a series of unique management and administration peculiarities which distinguish it from other companies since it requires combining two types of interests, the strictly business interest and the family-wealth interest. These two interests are not always easy to harmonise and must be co-ordinated and satisfy each other, oftentimes developing in parallel to avoid creating conflicts. Thus, it is important to study the legal-fiscal framework for these firms, both that relating to partnerships as well as to the firm itself, all of transcendental importance for it to work correctly. It is also extremely important to study the key points to be included in the Family Protocol so that it is a truly effective means to solve possible family conflicts which may threaten the company's very continuity. Serving as a platform to analyse and debate on all these issues, the ESADE Law School (URL) and LAVÍNIA Auditoria & Consultoría organised the conference *Novel fiscal issues for the family firm*, as part of the Continuing Education activities, a conference attended by 94 participants. "La Gaceta de los Negocios" and "La Tribuna del Derecho" also collaborated in this event.

The conference was inaugurated and presented by Dr. Pedro Miroso, Dean of the ESADE Law School (URL) **and by Mr. Jaume Pigem**, Managing Partner of Lavínia Auditoria & Consultoría. Both declared that the conference would focus on the family firm from different perspectives: the strictly mercantile aspect, by analysing issues related to patrimony, and fiscal issues. Before discussing these, however, the conference would further explore the important matter of the Family Protocol which fundamentally serves to structure power, on the one hand, and to organise the succession within the firm, on the other. The conference was thus divided into three roundtable discussions.

The first roundtable, "*Mercantile and civil aspects of the family firm*", was moderated by Dr. Sergio Llebaría, Chair of the ESADE Law School's (URL) Department of Civil Law. **The roundtable was centred on "*Family Protocol as a management tool*", offered by Ms. Silvia Di Rienzo**, Academic Assistant at the ESADE Law School (URL) and well-versed in the matter.

She began by analysing why the family firm disappears and concluded, that in the majority of cases, it is due to family problems which aren't correctly addressed and resolved when they arise. Though the family firm is the most agile and efficient type of company, it is also the most fragile because of the succession issue. For all this, it is important to have a Family Protocol, an agreement between the members of the company which details all the principles and procedures guiding relations within the family, the firm and property and includes specific clauses which aim to also engage successors. The aim of the Protocol is to facilitate company continuity and facilitate generational change. The roundtable then examined the reasons behind a

Protocol of this type, its content as well as its most common clauses, and its anticipation and treatment of family conflicts. Ms. Di Rienzo also stressed the importance of a Family Protocol in terms of generational change, given that civil and mercantile codes do not offer adequate solutions for these issues. She also reminded the audience that it is very important for the Protocol to be in line with company statutes in order to avoid any possible legal problems.

In the discussion following the presentation, various questions were dealt with such as the obligatory nature of the Protocol which has to be understood as binding for the parties though not so for third parties. By the same token, the best time to prepare the Family Protocol is when family relations are positive.

The second roundtable, entitled “*Fiscal aspects of the family firm*”, was moderated by Dr. Eduardo Berché, Chair of the ESADE Law School’s (URL) Department of Fiscal Law and the presentation “*Corporate Taxation. Partnership Taxation. Fiscal-Patrimony Planning, a special focus on succession and company transfer*” by Ms. Anabel Morcillo and Mr. Ignacio Arbués, both Academic Assistants at the ESADE Law School (URL).

Mr. Ignacio Arbués began his presentation by focusing on fiscal issues within the Family Firm, examining, first, issues regarding partnerships before moving on to examine that of corporations (holding companies, ready made companies – industrial, services, etc. – and family-held holding companies) and restructuring operations. He then offered a detailed summary of the changes introduced in personal income tax as of the Law 35/2006 dated 28 November, and changes in the personal income tax category itself, offering seven alternatives to optimise the partner-corporate flow of patrimony and analysing its effects and fiscal consequences. When referring to family-held holding companies, the speaker emphasised the future disappearance of this category of firms and the dissolution of the special scheme and transitional arrangements.

Ms. Anabel Morcillo analysed the fiscal aspects of the family firm, focusing on the optimisation of wealth tax and planning for succession. She placed special emphasis on the rules to evaluate the tax base, on settlement, and exemptions applicable to family firms, among other matters of interest. Additionally, Ms. Morcillo also offered detailed information on inheritance tax and donations, referring to Catalonia in particular and its relative disadvantage compared to other Autonomous Communities in Spain which would certainly require modifications in Catalan legislation to avoid companies changing their domicile to not pay taxes or reduce their tax burden. She ended her presentation with a practical case which showed how to achieve greater fiscal savings.

A discussion followed both presentations with several questions to clarify different matters within each presentation.

Lastly, **the roundtable entitled “*The businessmen’s perspective*”** was a good example of what concerns the family entrepreneur and the multiple ways to face the new challenges presented. **Moderated by Mr. Jaume Pigem,**

several executives from two leading family firms participated: Óptica Cottet S.A. and MRW.

Mr. Javier Cottet, Director General of Europe's leading optical firm in terms of total revenue, summarised the history of his company founded in 1902. The firm, in addition, is managed by the 4th generation which includes the participant. He described the various avatars and crises suffered by the company in its 105 years. He signalled how it was important to talk with "the big guys" regarding succession as it has to be planned well in advance, on differentiating management from ownership, on the need to create administrative bodies to guarantee the firm's continuity and to continuously train and be informed. In addition, he also signalled how the important thing within the Family Protocol is its spirit and that it has to help the family firm throughout the various generations. In this sense, companies have to know how to educate on the link with the family firm and tackle and regulate business matters in an orderly and professional fashion (for example, by means of a business plan) and that the Protocol is the appropriate instrument for this. By putting all these elements into practice, he signalled, all the shareholders will be involved while business matters will be dealt with and regulated. Additionally, the family will be more cohesive as a result and the workers will be offered greater security. And, importantly, the difficult issue of generational change will be overcome. All this has led the Óptica Cottet company to obtain the best results in its history.

The second to speak was **Mr. Francisco Sosa**, Director of External Relations for MRW, the leader in urgent transport in Spain. He began by describing the company's history. He talked about its origins in 1977 as a small courier firm now counting on more than 10,000 employees. The company's success is due, in great measure, to its founder, Martín Frías, who in 1989 during a severe crisis led the change and wagered on creating a different company. At that time, many employees went from being workers to owners and 789 franchises began to be managed by nearly 600 micro-family firms who see MRW as their own, something making the company grow with the family's involvement. The secret was knowing how to manage the passion felt for the company as well as knowing how to change an employee mentality into that of an owner. Each morning, MRW's management team meets up over coffee to discuss the problems faced by the firm, to share concerns, talk about incidences and successes: everything happening within the firm has to be shared as this helps the company work as a team. The company is characterised by a special sensitivity towards people, aiming to motivate its employees, something which has helped the development of *corporate awareness*. The shared vision of the company as a new business paradigm is based on communication and transparency and on uniting the extremes of incorporating Corporate Social Responsibility (CSR) criteria and building a model of business sustainability. MRW is especially interested in how other family firms are run (a process of *benchmarking*), sharing their own experience in business forums, collaborating with different *stakeholders*, and communicating their criteria to these groups and society at large. The speaker also highlighted how important it is to be appraised by external controllers and the publication of their social and environmental records. In terms of management, not only tangible assets have to be considered, but also non-tangibles (integration of handicapped,

reconciling work and personal life, etc.). He concluded by signalling that it is an exciting challenge to “move from the concept of family firm to familiarity within the firm”.

In the following discussion, it was determined that within family firms it was easier to share values such as hiring people with different disabilities. The important thing is to do things according to principles more than due to laws or management criteria. Mr. Francisco Sosa signalled that the person has to be recognised for who he/she is and what he/she does rather than what he/she isn't or what he/she doesn't do and that it is important to transmit optimism, something which makes the very organisation optimistic. And Mr. Javier Cottet concluded that, when proposing projects, it is very important to know which generation we are talking to. **The conference was closed by Ms. Patricia Font**, Conference Co-ordinator and Executive Director of the ESADE Law School (URL) Master of Tax Consultancy and Management.