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Reference: In: Family Firms and Family Constitution (2023). Emerald Publishing Limited, S. i-xv - i-xv.
<https://doi.org/10.1108/978-1-83797-200-520231020>.
doi:10.1108/978-1-83797-200-520231020.

This Version is available at:
<http://hdl.handle.net/11159/671133>

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LAW AND MANAGEMENT OF FAMILY FIRMS



FAMILY FIRMS AND FAMILY CONSTITUTION



EDITED BY

HOLGER FLEISCHER & STEFAN PRIGGE

 OPEN ACCESS
BOOK

Family Firms and Family Constitution

LAW AND MANAGEMENT OF FAMILY FIRMS

Series editors:

Holger Fleischer, Max Planck Institute for Comparative and International Private Law

Stefan Prigge, Institute for Mittelstand and Family Firms (HSBA Hamburg School of Business Administration)

The pioneering *Law and Management of Family Firms* series publishes volumes following the annual Hamburg Conference: Law and Management of Family Firms, the international and interdisciplinary forum for family business research.

Uniting two distinct and previously disconnected disciplines of law and management, it is the aim of this conference and book series to be the forum for international and interdisciplinary exchange for a given family business topic. Crossing boundaries, it brings together law and management scholars, and practitioners such as lawyers, consultants, and heads of family offices to add diverse perspectives. *Law and Management of Family Firms* unites people from different countries and continents for globally applicable research and discussion.

The first volume will be *Family Firms and Family Constitution*. Future volumes will include *Listed Family Companies* and *Enterprise Foundations and Family Firms*.

Family Firms and Family Constitution

EDITED BY

HOLGER FLEISCHER

Max Planck Institute for Comparative and International Private Law, Germany

AND

STEFAN PRIGGE

HSBA Hamburg School of Business Administration, Germany



United Kingdom – North America – Japan – India – Malaysia – China

Emerald Publishing Limited
Emerald Publishing, Floor 5, Northspring, 21-23 Wellington Street, Leeds LS1 4DL.

First edition 2024

Editorial Matter and Selection © 2024 Holger Fleischer and Stefan Prigge.
Individual chapters © 2024 The authors.
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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-83797-203-6 (Print)
ISBN: 978-1-83797-200-5 (Online)
ISBN: 978-1-83797-202-9 (Epub)



INVESTOR IN PEOPLE

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Preface

The Conference Series

The *Hamburg Conference: Law and Management of Family Firms* is a joint initiative of the Max Planck Institute for Comparative and International Private Law, Hamburg, and the Institute for Mittelstand and Family Firms (IMF), also based in Hamburg. Family firms have increasingly become object of research activities in a variety of disciplines, such as law, psychology, management, and sociology. Exchange between the disciplines has taken place in some cases; for instance, the concept of socioemotional wealth (SEW) reflects contributions from management and psychology. However, exchange between law and management has been very rare so far, although fields like law and economics, law and finance, or corporate governance have been examples of how beneficial such an exchange could be. That was the starting point to originate the *Hamburg Conference: Law and Management of Family Firms*. The conference is supposed to be a forum of exchange for legal and management scholars who share the interest in family firms. It is structured as a research conference with about 10 presentations from both fields, providing enough opportunities for discussion among the participants. Participants include, in addition to the presenters, a small group of further researchers and practitioners with an interest in family firms. In the best case, a cross-disciplinary discussion unfolds. To our great satisfaction, that is what happened in the first edition of the conference. This experience has encouraged us to define the conference as an annual event, taking up a specific topic each year that is of interest for law and management.

The family constitution was the topic of the inaugural edition of the conference. This increasingly important, but under-researched instrument is part of the family governance structure, which in turn forms, together with the business governance structure, the governance framework of family firm and owning family. As already pointed out above, governance is a subject for which the benefits of interdisciplinary exchange between law and management have already been proven. This volume assembles 12 contributions, 10 of them were presented during the conference. For these articles, the book includes a brief summary of the discussion following the presentation. Unfortunately, hurricane “Irma” made it impossible for Isabel Botero to present her paper in Hamburg. The article by Patrick Ulrich and Sarah Speidel was integrated subsequently into this collection, as it adds welcome and substantial information and facts about family constitutions in Germany.

In its entirety, this collection of articles represents the richness of family business research. There are comparative and conceptual papers as well as empirical articles analyzing either a single case or data from a large sample.

Part 1 of the book begins with two surveying articles by Fleischer, and Prigge and Mengers. Therefore, this preface could be rather brief. Fleischer considers historical development and legal nature of family constitutions in five countries. Prigge and Mengers provide an overview of the stock of research on family constitutions that management research has put forth.

Part 2 on managerial research covers conceptual and qualitative analyses. Botero and Fediuk develop further Botero's reasoning about family business governance in a framework made up of equity theory, psychological contracts, and organizational justice. In their article, they claim that governance actually involves interactions between two parties, i.e., sender and receiver. Thus, governance analyses should be aware of the existence of these two parties; their contribution explores the receiving party's perspective in greater detail. Matser and her colleagues Heeringa and van der Vloot van Vliet share their insights they derived from the very close companionship of a Dutch family and its family governance. Jungell focuses on owner families where ownership disperses more and more. She derives from in-depth interviews and her own experiences conclusions about the potential benefits of family governance systems for those families. Kormann introduces the Failure Mode and Event Analysis (FMEA) from the design of mechanical systems into the discussion of family businesses and applies this framework to explore the contribution of governance to the longevity and survival of the family firm.

Part 3, also on managerial research, is dedicated to quantitative analyses and surveys. Graves and his collaborators Caspersz and Thomas have submitted one of the very few studies that explore family constitutions empirically on a large sample, in their case of Australian family-owned businesses. They found a positive and significant relation between the existence of a family constitution or a code of conduct and financial performance, however, surprisingly, not for family-oriented performance. Ulrich and Speidel report about the results of their recent questionnaire of German family firms and provide fresh evidence about, for instance, the reasons why families develop a family constitution and the importance of the development process leading to the final document.

Part 4 focuses on legal research. Bong explores the interplay between a family constitution and the family business's binding legal agreements. In doing so, he describes four different forms of family constitutions that have evolved from different consulting approaches in German practice. Kalss concentrates on the complicated interplay between company law and succession law in family firms. Deckert gives an overview on family constitutions and their legal relevance in the French company law landscape. Holler explains in detail the complexity of family businesses from counsel's point of view. He points out that, contrary to a widespread belief, family constitutions may indeed have legal effects of one sort or the other under German law.

Fleischer and Prigge conclude the book with a brief survey of future research opportunities that were developed by the participants during the two days in Hamburg.

Acknowledgments

We would like to thank all participants for their invaluable and much appreciated contributions. Anja Hell-Mynarik was a great support in organizing the conference, Ina Freisleben took care of the editing process, their help is also gratefully acknowledged.

The Max Planck Institute is grateful for generous support by Dr Holger Otte, BDO AG Wirtschaftsprüfungsgesellschaft, toward the financing of the conference and the publication of this conference volume.

The IMF is a private research institute that is supported by the HSBA Hamburg School of Business Administration, KPMG, Esche Schümann Commichau, the Hamburg Institute of International Economics (HWWI), and the Hamburg Chamber of Commerce. The IMF particularly acknowledges Esche Schümann Commichau's invitation to the conference welcome reception in their premises.