

Briefing Note

Family Charters

What is a family charter?

Family charters (sometimes also known as family constitutions, agenda or protocols) are statements of intent or agreements entered into by family members in relation to a family business.

A family charter typically deals with a number of issues which are not capable of being included in the company's articles of association or which are difficult to construe as legally binding obligations. Normally family charters are not legally binding at all or only partly legally binding but the charter does support other governance structures such as a shareholders' agreement or partnership agreement.

A family charter often includes information such as:

- Ethical guidelines to be followed by the business, including the company's policy relating to corporate social responsibility;
- How the family wishes the business to be run;
- The family's goals and the long-term strategy for the business;
- Educating, involving and providing careers for the next generation of family members;
- The family's relationship with the business; and
- How the family members should behave towards each other in the context of the business.

Parties to the charter

The parties to the charter include family members who are not necessarily shareholders. They may only be, for example, beneficiaries of a family trust which owns shares in the company. This is one of the features which distinguish family charters from shareholders' agreements.

Drawing up a family charter

The charter is drafted in the style of an informal statement of intent and is expressed not to be legally binding. In practice, however, some paragraphs in the charter may well be supplemented in another document which is legally binding such as a shareholder's agreement.

Due to the fact that family businesses range greatly in size and complexity, family charters can vary a great deal in length. Charters also vary as families have differing views on how much information and policy requires to be included in the document.

Where there are relatively few family members and the business is still young, it may be possible for the family to draw up a charter itself, with help where necessary from the family's or the company's professional advisers. Where the family is larger and has formed a family council, it is often this body which is responsible for putting together a charter. Certain issues can however arise where a family attempts to create a charter without the help of a professional adviser. Such issues include a dominant family member trying to impose views on other family members which in turn creates a charter which does not reflect all family members' views. An advantage of engaging a third party professional adviser is that such advisor will not be aligned with a particular family member.

Flexibility

A family charter can be amended easily to reflect changes in family relationships for example. Businesses that have a family charter should look to review them on a regular basis to ensure that it continues to reflect the direction and views of the business and the family members.

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Please contact Turcan Connell's Business Law team for more information on family charters on similar agreements.

Please note that this briefing note is intended as a short summary of family charters. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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