

CARRIZO AGUADO, David, *La empresa familiar y su protocolo en el tráfico jurídico externo* (Aranzadi La Ley, Madrid 2024)

Family businesses are an important part of the business in Spain and in other European countries. The figures show this: the Institute for Family Businesses indicates that 89% of companies in Spain are family businesses, reaching 17 million companies run by families in Europe¹. This translates into jobs and wealth, making family businesses one of the main drivers of employment in the European Union.

In addition to being synonymous with employment and productivity, family businesses are also, at times, synonymous with conflict and lack of understanding. One of the reasons is that the same people have different roles, both business and family (grandfather, father, father-in-law, advisor, administrator...) generating problems in the governance of the company. This means that in many cases the business does not survive in the second generation. What's more, according to certain studies, more than 90% of family businesses do not make it to the third generation. However, it is also possible to reverse this trend, family and business can coexist and become increasingly stronger, but for this to happen, anticipation plays a crucial role.

The book that we have the opportunity to write the recension to reflects this perfectly. Family and business require anticipation and foresight from a legal perspective. When different and diverse events occur in a business family, such as marriages, births, divorces or deaths, the grounds of the company can be shaken to the point of its disappearance. In this way, the agreements between family members who are also businessmen play a crucial role, especially when there is a foreign element in these relationships and events that arise. One of the most important that Dr. Carrizo studies is the family protocol. This is a legal instrument that allows the family business to be in a certain way "shielded" against certain personal events of its members.

The book "La empresa familiar y su protocolo en el tráfico jurídico externo" is a rigorous, suggestive and above all very necessary work. This is because there are few studies like this book that rigorously analyze the family business and its external legal traffic from a private international perspective. One of the reasons for the scarce bibliography on the subject is its complexity. For this reason, one of the first statements we can highlight about this publication is the courage of its author.

The author has divided the book into six chapters. The first two provide an introduction to the topic, answering questions that are essential to understanding the legal problems that are intended to be solved in later chapters. Thus, these initial chapters deal with aspects such as the importance of the family business in economic transactions and its challenges, why the family business has not been characterized by

¹ Vid www.iefamiliar.com/cifras/1 (retrieved December 1 2024).

internationalization until more recently or the essential characteristics that accompany this type of corporation.

Chapter three is devoted to the study of the family protocol. In this part of the work, the author offers an exhaustive development of a legal business with little legal regulation at both national and European level but which is of great importance for the good governance of the family business. Due to its *interpartes* nature, the provisions of the family protocol cannot be opposed to the company, however, despite its parasocial nature, indirectly the existence of a family protocol can affect greatly the company in times of change and uncertainty in the family, such as a death or a divorce. Thus, as Dr. Carrizo points out in this third chapter, in order for the family protocol to be effective for the purposes for which it is carried out, it is necessary to find the legal way for those provisions contained in the family protocol to transcend the mere agreement and can have effects on the company. For this, the business family can rely on other legal instruments such as the social statutes, the marriage settlements or the will.

Thus, chapters four, five and six are dedicated to three thematic blocks that are different from each other but that have a direct impact on a family company, these are: issues related to the family economic regime, shareholder agreements and the *mortis causa* transmission of the family business. These three chapters are the core of the work and are of great interest to understand the problems and, above all, the solutions that the author seeks to convey with it.

Chapter four is largely concerned with addressing aspects relating to the autonomy of the spouses' will in the light of *Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes* (OJ No. 183 of 8 July 2016). The author is a great expert on European family law and on this Regulation in particular, as demonstrated by his previous works. In particular, the author focuses his study on one type of agreement between spouses: marital contracts, not addressing the fit in the family business of other agreements, which are increasingly common, such as those concluded before marriage or after the break-up has occurred.

In relation to the chapter five on shareholders' agreements, the author addresses a legally complex issue but resolves the thorny issues that arise in a simple and direct way. Doctor Carrizo's support in the most recent jurisprudence and in different authors makes this chapter a must-read for any jurist who needs to know how a family protocol can be a binding agreement for a company despite its private nature. The author is not afraid of Spanish material law, analyzing different doctrinal theses on the effectiveness of shareholders' agreements vis-à-vis the company. This analysis of material law is more than necessary because depending on the consideration of the nature of the family protocol, it will have a full impact on private international law. The author advocates an intermediate thesis, thus starting from a material position in which the family protocol is a contract but which could also benefit from the effectiveness of corporate law and affect the company and its partners as provided therein. This position leads the author to study in a very accurate way forums of international judicial competence and connecting factors in corporate law but also contractual matters.

Finally, in relation to the chapter six, another European Regulation on family matters takes centre stage: *Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession* (OJ No. 201, of 27 July 2012). This chapter highlights aspects that are of key importance in the continuity of the company. These may range from the temporary management of the company to the determination of its ownership due to succession *mortis causa*. Issues that should be foreseen in advance and aligned with the business objectives but which are not always done, or if they are agreed in a family protocol, they still pose problems in practice because said protocol must be drawn up taking into account not only the family business, its partners, family members but also the existence of other assets and other family members who may not be part of the business but are part of the succession.

To conclude, we can simply congratulate the author on two fronts. On the one hand, for the topic chosen. It is a timely topic, little developed and which raises important legal questions. On the other hand, we congratulate him for how he studies the topic. The author has developed it exhaustively, without hesitation and with precision. Therefore, we can only end by recommending this book, not only to those jurists, whether they are students or practitioners of law, who need to know about the legal problems raised by family businesses from a cross-border perspective, but also to all those jurists who love private international law and who want to immerse themselves in a reading on a topic that does not leave anyone indifferent.

Isabel ANTÓN JUÁREZ

Profesora titular de Derecho internacional privado
Universidad Carlos III de Madrid

