Private Sector & Development

A blog coordinated by Proparco

Good governance practices: Organizing business succession

Jacques Jonathan Nyemb *lawyer – NYEMB*

February 18 2019

Not planning your succession often means planning the failure of its transfer. Consequently, a successful transfer generally entails a successful planning of the succession. To achieve this, this planning also requires establishing various good practices, both in terms of the transfer of assets and the transfer of the management of the company, according to Jacques Jonathan Nyemb.

PS&D

This article is an excerpt from Issue 30 : Corporate governance

The transfer of the company's assets may be likely to cause difficulties, hence the need to adopt good practices.

Give priority to the principle of equality

The transfer of assets for the benefit of one or several more qualified or masculine senior heirs to the detriment of the others is likely to create imbalances in the distribution of the succession, especially when the company is the main element of the predecessor's estate. When there are several heirs, it is recommended to take each heir into consideration. The principle of equality should therefore take precedence for the transfer of the company's assets, meaning the transfer in equal parts to all the descendants. To achieve this, the predecessor can proceed with the equal distribution of his estate through his will. This will is binding on all the heirs, who must respect its provisions.

Conclude a shareholders’ agreement

To ensure the company’s survival following its transfer and anticipate the difficulties that are likely to arise between heirs, a shareholders’ agreement can be concluded between the heirs, which governs the relations between the company’s new shareholders. The agreement will contribute to ensuring a smooth transition of the assets, or to minimizing conflicts when an unexpected situation occurs. There are generally operational, financial and capital clauses in this type of agreement.

> *To ensure the company’s survival following its transfer and anticipate the difficulties […] a shareholders’ agreement can be concluded between the heirs,*

Prepare a succession agreement

The predecessor can also decide to obtain the agreement of his descendants while he is alive on the way in which to divide up his estate, in the form of a succession agreement. This approach is in particular recommended in the event of a preferential transfer of the company’s assets by the predecessor to only one of his descendants, in order to avoid difficulties arising related to the violation of the reserved portion of the estate. Consequently, through this agreement, the predecessor’s heirs can agree to the family business being taken over by one of the heirs and define the terms of this takeover (free of charge or in exchange for compensation, for example). The signing of the succession agreement will thereby ensure the continuity of the company’s activity.

Managerial transfer of the company

The transfer of the company’s assets is not necessarily aligned with the transfer of managerial powers. Various practices therefore need to be implemented to ensure the latter.

Adopt a family charter

> *A family charter is an agreement established within the family, which consists of shared values and guidelines which are binding on its members.*

This instrument is even more necessary when some of the company’s shareholders are not family members. It also provides for the role of institutions which may intervene in the director’s succession process (family meeting, family council, Board of Directors, etc.). The family charter thereby fosters a common understanding of the succession rules by all the company’s stakeholders, in order to avoid any future friction that is likely to paralyze the director’s succession process and jeopardize the sustainability of the company.

Provide for an internal succession plan

The various phases of the succession process must be structured in a formal succession plan, which ensures the continuity of the company’s activity. The aim of this plan must be to ensure that the required management competencies and capacities are available to replace the outgoing director. The content of the succession plan depends on each company and the difficulties that are likely to arise during the succession process of its director. Various principles generally govern the succession of the director (initiation, phasing, intervention of external consultants, inclusive acceptance process, transition process, etc.).