Family Business and Malta’s example of its regulations

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The aim of this research paper is to:

- show the significance of the family business and the need to coordinate and develop coherent regulations of the family business;
- demonstrate recognition and definition of the family business in EU;
- present the EU initiatives to encourage development of family business within Member States;
- present the Malta Family Business Act and government's incentives to start a family business.
Importance of the Family business

Family businesses make up between 65 to 80% of all European companies, accounting for on average more than 40 to 50% of all jobs.

Family businesses constitute a substantial part of active European companies and have a significant role to play in the strength and dynamism of the real economy.

Family firms are important, not only because they make an essential contribution to the economy, but also because of the long-term stability they bring.

Family business generally takes a long-term view and thus balance short-term rewards with long-term sustainability and prosperity.

Family businesses use less debt and are therefore more stable.
José Manuel Durão Barroso, Former President of the European Commission

“Family firms are crucially important for Europe. They make a significant contribution to Europe’s GNP and employment, and tend to be great innovators, with a longer-term vision. They also tend to be firmly rooted in their regional and national culture, displaying the sort of European values that we all share.”

EC Guidebook

Creation of a transfer-friendly regulation framework: To help the transfer of businesses means having the right regulatory framework. The European Commission dealt with this area in its recommendation on the transfer of small and medium-sized enterprises. It invited the Member States to improve their legal and fiscal environment for business transfers. Some progress has already been made in implementing the recommendation, but there is still work to be done.
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EU initiatives:

- the Small Business Act of June 2008
- Family businesses are eligible for all support provided for SMEs such as funding under COSME with a budget of EUR 2.3bn (EU Programme for the Competitiveness of Enterprises and Small and Medium-sized Enterprises running from 2014 to 2020)
- EU also encourages national governments to adopt business-friendly taxation and company law, and support entrepreneurial education.
- The Expert Group on Family Business to consult the final report and a study 'Overview of family business relevant issues'
In the Final Report of the Expert Group on Family Business commissioned by the EU Commission, the Expert Group claimed that there is generally a consensus on three essential elements, these being the family, the business and ownership.

On the basis of the above elements the Commission created a common European definition of a family business that includes:

- The majority of the rights are in possession of the natural person(s) who established the firm, or in the possession of the natural person(s) who has/have acquired the share capital of the firm or in the possession of their spouses, parents, child, or children’s direct heirs;
- The majority of decision-making rights are indirect or direct;
- At least one representative of the family or kin is formally involved in the governance of the firm;
- Listed companies meet the definition of family enterprise if the person who established or acquired the firm (share capital) or their families or descendants possess 25% of the decision-making rights mandated by their share capital.
Main challenges faced by family businesses are:

- policy makers are unaware of the needs of family businesses and their economic and social contribution to society;
- access to finance and taxation issues;
- the importance of preparing business transfers early;
- family governance - balancing family, ownership, gender balance rules, and business represent or research family owned aspects;
- attracting and retaining a skilled workforce;
- entrepreneurship education and family-business-specific management training.
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- 300 DAYS OF SUN
- “WORLD’S BEST CLIMATE” TITLE FROM ‘INTERNATIONAL LIVING’ MAGAZINE
- 35,000 EXPATS
- DIVERSE CULTURAL BACKGROUNDS
- SAFE
- OUTDOOR LIFESTYLE
- GASTRONOMIC DELIGHT
- MEDICAL Excellence (RANKS 5th WORLDWIDE)
More than any other Member State, Malta’s economy depends on its SMEs which have so far weathered the economic crisis well.

- Around 98% of all businesses are micro, small and medium sized enterprise with the vast majority of them being family run businesses;
- 95% of these SMES are classified as micro enterprises having less than 10 employees and provide about 80% of all jobs in the business economy;
- For both variables, this is about 14 percentage points more than the EU average.
- 52% of family businesses recognised the importance of establishing new entrepreneurial ventures
- In the past 3 years Malta has doubled its economic growth, reduced unemployment to the lowest figures in history, registered the highest investment rates and lowest deficit and national debt figures.
- Last year more than 80% of family businesses in Malta reported an increased turnover over the past 12 months.
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- National Statistics Office commissioned specifically to gather key data on family businesses from amongst its business register.
- 2,500 businesses in Malta were targeted.
- First recorded official statistics in the EU on family businesses.
- Most family businesses employ between 2-5 family members.
- Nearly 83% would opt to transfer the business to the next generation.
- The major challenges faced were:
  - Taxation issues;
  - Financial problems;
  - Succession challenges and risks;
  - Family governance arising from conflict and retirement uncertainty.
Family Business Act

CHAPTER 565
FAMILY BUSINESS ACT

To encourage the regulation of family businesses, their governance and the transfer of the family business from one generation to the next; to encourage and assist family businesses to enhance their internal organisation and structure with the aim of effectively operating the business and working towards a successful succession of the family business; and for other matters consequential or ancillary thereto.

1st January, 2017*
In the process of developing the Maltese Family Business Act, a nationwide statistical survey was commissioned within the Maltese business register of the NSO which established that the vast majority (97.5%) of the major decisions within family-run businesses were taken by family members.

Article 2 starts by defining an ‘applicant’ as a business wishing to register as a family business according to the Act and ‘benefits’, as being such incentives through which any assistance or relief is given to a registered family business.

According to the Act, ‘family member’ means the family business owner’s spouse, ascendants, descendants in the direct line and their relative spouses, brothers or sisters and their descendants or as the Minister may prescribe.
Established in Malta whereby a business has a:

“Head office, agency, or branch or part of a business and includes any permanent presence of that business carried out in Malta”

This allows foreign businesses to have access and applicability to the legislation and further enhances Malta’s identity as an International Finance Centre
Definition of a family business should be by individualizing direct and indirect methods of acquisition of a family business.

The following are forms of businesses recognized as being direct methods of acquisition of a family business:
- Listed companies
- Limited liability companies;
- Registered partnerships;
- Businesses set up as trusts;
- Unregistered partnerships and;
- Those that the Minster may prescribe.

Indirect methods of acquisition of a family business, being:
- Holding companies;
- Those held in a trust and;
- Private foundations.
Incentives – Governance:

- Loan guarantee – Enhanced capping of up to €500,000 on maximum guarantee;
- Micro invest – Enhanced tax credit - of up to €50,000;
- Positive consideration of lease renewal of industrial government leased premises;
- Educational and Training – funds of €1,000 annually for family business owners and their employees;
- Advisory – Funding of up €2,500 for Legal, accountancy and notarial advice relating to business succession;
- Mediation through Arbitration – Funding of five sittings up to a value of €1,000 for the establishment of the fair value of the family business;
- Investment Aid 2014-2020 – Waivering of the condition that assets are to be bought by unrelated third parties – now applicable to family businesses allowing them greater access to investment aid;
Incentives – Fiscal:

- The Family Business Act reduced stamp duty on the value of the immoveable property - the first €500,000 will be charged at the reduced rate of 3.5%;
- Exemptions of stamp duty on a capped value of shares - the first €150,000 will not be taken into account;
- Budget 2017: Parents transferring their family business to their children during 2017 will benefit from a reduced stamp duty of 5% to 1.5%.
Thank you for your attention 😊

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