"What do I do when there is conflict in my family?"

Tom Davidow and Clemens Trauttenberg go head to head on the topic of managing conflict in family businesses. Will the firm prosper if the dissidents are bought out or should the family try to overcome the conflict together? Over to you to decide . . .

BUY OUT THE DISSIDENTS

Family/shareholder harmony is critical to maintaining and/or increasing the economic value of the family business. When family members and/or shareholders are not committed to the same vision and management of the family business, their disagreement creates a distraction that can be extremely costly to the business and to family harmony.

When family members consider selling shares because they are unhappy, they are usually signalling conflicts among themselves, either acknowledged or simmering silently. Families often hesitate to air these differences for fear of making things worse. Past issues, even those believed to be settled, will resurface, accompanied by emotions powerful enough to inhibit further discussion. Agreement may seem impossible.

Conflict among shareholders, however, is a disease that will only get worse if disagreements are not addressed. When hostilities become intense enough to affect the business, it's time for family members to consider removing the strife and the distraction it causes from the business by selling or buying shares to and from each other. Otherwise, the opportunity costs can be very high.

Traditionally, the family business is structured so that all family members, whether they work in the business or not, are shareholders. Being a shareholder can be difficult as one has only a passive investment in the business with little or no control over it. But either situation - working actively in the business or being only a shareholder - can create hostility. When those differences become irreconcilable, change is necessary. A buyout can remove the pressure that is creating problems in the family business, while it relieves the very pressure that is driving the family members apart.

That being said, the buyout process is risky. Everybody knows that in family businesses, the family element never goes away. Family issues will surface during the buyout process, and will have to be managed. Because family businesses can create emotional dependence among family members, they can experience a buyout as form of separation. Even if family members understand intellectually that separation is the best solution, they will feel loss. And loss is always accompanied by hostility and sadness. Family shareholders who sell may also fear that disconnecting from the business will change the way they are perceived within the family, while those who stay in the business may feel liberated, or burdened, or both. The buyout can easily represent a sense of failure for the family. The chance to work through business differences among family members will be gone. The one thing that tied the family together and made it necessary to talk to one another will be gone.

My grandfather was the son-in-law in a family business. When he joined it, his father-in-law gave him a percentage of ownership. His brother-in-laws decided they did not want him to be an owner. After he left, my grandmother and her sister, who lived next door to each other, did not talk to each other for 20 years. The family had no communication, or any process through which family members could address the family dynamics driving the issue. Only the threat of court forced a settlement.

Shareholder/buyout discussions demand a structured process. Both buyer and seller must agree that the ultimate criteria for making decisions are what is best for the business. They must adopt the traditional best practice business model. Otherwise, if the business suffers or, worse, fails over time, it will have a dramatic impact on the family. While it is impossible to please everybody, concentrating on keeping the business strong allows a lot more flexibility to work out family differences and significantly increases the chances of a long term positive outcome.

Since the buyout process can be hazardous, family members should not embark on it by themselves. It will feel like going down white water rapids in a rubber raft. It will be critical for the family to agree on the advisors and/or consultants to guide them through the process. There are three steps: First, collective advisors and/or consultants will help create the architecture for the agreement. Secondly, an attorney whom everyone sees as neutral (this can also be one of your advisors) can write the agreement. Thirdly, each shareholder should bring the agreement to his or her attorney for review. (With all due respect to attorneys, it is wise to choose an attorney who is a "deal maker" rather than a "deal breaker." The former can usually provide insight that will ultimately make the agreement stronger for all parties.)

Although the buyout process requires time, money and patience, the investment is well worth it. From a family and business perspective, the cost of not buying out the "dissenters" will be far greater.

BREAK UP THE CONFLICT, NOT THE BUSINESS

Like in any other business disagreements within the management and/or the shareholders can occur in family businesses. The difference is that the "family factor" brings in extra momentum and conflicts often go far beyond the normal extent of disputes between shareholders outside a family setting.

In cases of severe conflicts within family businesses, a simple buyout process seems to be the most obvious and reasonable way out of such a family dispute scenario - but only at first glance. The break up of a family business does not resolve the underlying conflict, as it is only the business that is broken up - not the conflict itself. It can often happen that, in the event of a buyout, the dissident who has worked for the family business for most of his/her life will set up a new company in the same sector as the family business. Such a competitive situation within one family would be disadvantageous to both sides and cause upheavel in the respective market. Also, the business itself is weakened by losing a committed shareholder and, in some cases, a competent manager.

Whenever such conflicts arise, they are often a substantial handicap to the development of the business and a strong warning sign that things need to be changed. But apart from a buyout, there can be ways to solve the problem, maintain family unity and resolve the conflict in a productive way rather than destroying existing structures and family ties.

Alternative Dispute Resolution (ADR) methods offer a broad variety of techniques to settle a conflict productively and help the business emerge with renewed strength from this process. Methods range from mediation, moderated settlement conferences, private judging, early neutral evaluation and conciliation. Their common feature is that a neutral third party assists the parties in conflict (who are voluntarily participating) in coming to their own agreement or under- standing. Thus, there are neither losers nor winners in the process - it is simply a conflict that has been dealt with productively.

Such processes help to analyse the problem, find ways to resolve it, and show the benefits of continuing to work together. A conflict need not automatically lead to the breakup of a group of shareholders or even the collapse of a family business. If such a dispute is handled carefully, it does not destroy family ties and still leaves room to focus on the future of the business afterwards.

Resolving conflicts can prevent the business crashing

ADR often leads to creative solutions that could not be reached via pure confrontation, classic litigation and most certainly not by breaking up the business. Even if the conflicting parties reach the conclusion that any further progress is impossible without a certain partition, family and business ties do not have to be cut completely. All shareholders can be comfortable with a scenario in which various family members develop their own business activities under the same umbrella. Such an umbrella often consists of a parent company and/or a common name or trademark that is already well known on the market.

Although the buyout process may seem to be the only possible solution in the heat of a disagreement, it is worth thinking about all of the potential consequences carefully and evaluating alternative ways to resolve disagreements. In nearly every case, a buyout is an irreversible step that brings about a separation of shareholders or business partners and causes a deep rift in a family's dynamic.

Finding ways to carry on with the family business automatically strengthens the family business and creates an opportunity for growth and may result in substantial development. Finally, even if such values cannot be assessed in legal terms or financially calculated - in the long run, sticking by the family's values is more important than choosing a temporary economic advantage.

Tom Davidow is founder and principal of Thomas D Davidow& Associates, based in Brookline, MA.
Clemens Trauttenberg is Member of the Private Client Department at WOLF THEISS.