

## Chapter 15

# Family Firms and Family Constitutions in France – A General Overview

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### Abstract

*Ah la famille ...!* We tend to say that we do not choose it. But there are beautiful family stories, even in business, and particularly in France. Indeed, when it comes to business, the French take family as a serious matter – with about 80% of all companies in the country family controlled. Whether big or small, French family businesses are particularly noticeable in sectors such as food and beverages, as well as luxury.

The chapter gives a general overview of family firms in France, considering in particular their main legal structures, how diverse they are in reality, and finally their governance rules, and notably their family constitutions. It concludes that business and family stories often prove to be a good match, at least in France.

*Keywords:* Family constitution; shareholder agreement; legal forms; France; French family firms; corporate governance codes

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## 15.1. Introduction

*Ah la famille ...!* We tend to say that we do not choose it. But there are beautiful family stories, even in business, and particularly in France.<sup>1</sup>

Indeed, when it comes to business, the French take family as a serious matter – with as many as 80% of all companies in the country family controlled (see also Kitsou, 2013, p. 10 ff.). Whether big or small, French family businesses are particularly noticeable in sectors such as food and beverages. Large ones include Lactalis, the world's biggest dairy company. Much of France's wine industry is also family controlled – many are small family businesses, even though family-owned Rémy Cointreau is one of the world's leading producers and distributors of cognac, *spirits*, and liqueurs. And then there is the country's famous luxury sector, which remains almost completely linked with family: whether it is the big luxury holding companies like LVMH and Kering, or iconic brands like Hermès and Chanel, family is everything.

Some evidence shows the prevalence of family businesses in France, even if figures may vary: about 15% of companies on the CAC 40, a benchmark French stock market index, are family businesses; more than 11 family businesses in France were established more than 200 years ago;<sup>2</sup> about 83% of French businesses are family businesses; about half of all French employees work for family businesses.

This chapter gives a general overview of family firms in France, considering in particular their main legal structures (Section 15.2), how diverse they are in reality (Section 15.3), and finally their governance rules, and notably their family constitutions (Section 15.4).

## 15.2. Main Types of Legal Structures for Family Firms

There are numerous types of company structures (i.e., types of companies that can be formed) provided by French law, but most family firms take one of the following forms (even though the European Company is increasingly appreciated by families that want their company to be listed). ([https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000005634379/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/))

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<sup>1</sup>For a definition of *société familiale* or *entreprise familiale*, see Kitsou (2013, p. 15 ff.), Champaud (2009, p. 6 ff.), and Poulain-Rehm (2006, p. 77 ff). For a general presentation of family firms in France, see Daumas (2012, p. 33 ff.) and Tandeau de Marsac (2011, 2014 [L'entreprise familiale]).

<sup>2</sup>The oldest family business is, as it seems, the luxury jeweler MELLERIO called MELLER, whose first traces of activity date back to 1613; the company has been located near Place Vendôme, in Paris, for more than 200 years. Among the oldest companies in France, we find also one of the largest producers of Alsatian wines: Hugel & Fils, which was founded in 1639.

### 15.2.1 *Société à responsabilité limitée*

The *société à responsabilité limitée* (SARL), which corresponds to the German *Gesellschaft mit beschränkter Haftung* (GmbH), the UK private limited company and the US limited liability company, is in general the most attractive and widespread structure for companies in France, and in particular for family companies.

A key advantage of this structure is the relatively simple administration and the liability limited to the joint capital of the company. French law does not impose a minimum share capital (*capital social*). At least two shareholders are required to form this form of company; if there is only one shareholder, it is an *entreprise unipersonnelle à responsabilité limitée* (EURL), a single-owner limited liability company. However, not more than 100 individuals or legal entities can form a SARL. The SARL is managed by one or more managing directors (*gérant*), who may also be shareholders. The French legislature has recently further simplified and liberalized the legal framework for the SARL.

### 15.2.2. *Société anonyme*

The French *société anonyme* (SA) most closely corresponds to the German *Aktiengesellschaft*, the Public Limited Company in the UK and the US corporation. It is the structure often adopted by large (family) companies.

The *société anonyme* requires at least two shareholders (or seven if listed) and a total share capital of €37,000. It is often run by a president (of the *conseil d'administration*) and a general director (*directeur général*) (in the one-tier system), who can be the same person; the two-tier system featuring a supervisory board (*conseil de surveillance*) and a management board (*directoire*) is less widespread in France, in particular since the last financial crisis, but it nonetheless exists, even among family firms. In any case, shareholders have a liability that is limited to the extent of their share contribution.

### 15.2.3. *Société par actions simplifiée*

The *société par actions simplifiée* (SAS), which can be translated as a simplified stock company, is extremely popular in France, notably among family firms. Despite the great popularity of this structure, there are only few rules governing it.

This means that its organization can be relatively freely and flexibly designed in the articles of association (*statuts*). No legal minimum capital requirement is defined by the law. At least two shareholders are required; if only one shareholder exists, the structure is a *société par actions simplifiée unipersonnelle* (SASU). A chairman or president must be appointed by the shareholders. Financial liability is limited to the share capital.

### 15.2.4. *Société en nom collectif*

The *société en nom collectif* (SNC), what we can translate as a general partnership, is relatively rare in France for family businesses as compared to the other company types, but it can still apply to some of them.

An SNC has legal personality and holds the assets placed in it by the partners. The latter must all be merchants (*commerçant*). They are jointly and severally liable for the company's debts to an unlimited extent. At least two partners are required to form the company. No minimum capital is required for setting up a general partnership. The company is represented by one or more managing directors.

### **15.2.5. *Société en commandite simple and société en commandite par actions***

The *société en commandite simple* (SCS), which may be translated as a limited partnership, and the *société en commandite par actions* (SCA), in English a partnership limited by shares, are also interesting for family businesses.

Indeed, both of these business forms have legal personality and in both forms the company holds the assets placed in it by the partners. Above all, some of the partners (*commandité*) are jointly and severally liable for the company's debts to an unlimited extent, while other partners (*commanditaire*) benefit from a limited liability protection according to the size of their contribution.

To sum up, the *société par actions simplifiée* (SAS), the *société à responsabilité limitée* (SARL), the *société en nom collectif* (SNC), and the *société en commandite simple* (SCS) appear particularly suitable and very convenient for small and medium-sized family businesses which are set up in France. For large (family) businesses, the *société anonyme* (SA) and the *société en commandite par actions* (SCA) are usually preferred.

## **15.3. Diversity of Family Firms**

Five iconic family companies holding a major position on both the French and international markets will be briefly presented, allowing an illustration of the wide diversity of French family firms and their complex reality in practice.<sup>3</sup>

### **15.3.1. *Lactalis***

Founded by André Besnier at the beginning of the 20th century (1933), the Lactalis Group is currently one of the world leaders in the dairy industry.<sup>4</sup> It owns brands such as Galbani, Société, Bridel, Président, Rachel's Organic, and Valmont.

From its creation, the company has remained for three generations under the control of the Besnier family, with growing success. Today, it markets a large number of dairy products (butter, milk, cheese, etc.) around the world, with more than 85,000 employees working in 84 countries and 266 production sites in 51 countries. The Besnier family controls 100% of the company's capital, which has recorded a yearly turnover of more than €20 billion. Lactalis is one of the largest family businesses in France.

<sup>3</sup>For a non-legal presentation of some specific family businesses, see <https://lentreprise.lexpress.fr/entreprises-familiales/>.

<sup>4</sup>For more information about Lactalis, see <http://www.lactalis.fr/en/>.

The entire capital of the company, a *société anonyme* (with a two-tier system) is held by the Besnier family (via the Belgium-based holding company Besnier SA [BSA] International). The company was created by André Besnier, and later headed by his son Michel (1928–2000). Today, Emmanuel Besnier, the younger son of Michel, presides the supervisory board whereas his elder brother Jean-Michel holds the function of CEO of Lactalis France (their sister Marie, although without operational responsibility in the group, is consulted on the strategy of the family business). Since June 2020, the company is run by Philippe Palazzi, who is more precisely the Chairman & CEO Lactalis Group.

### 15.3.2. SEB

The group SEB (*Société d'Emboutissage de Bourgogne*) is a large French consortium that produces small appliances.<sup>5</sup> The history of SEB began in 1857 when Antoine Lescure founded his first tinware workshop (*atelier de ferblanterie*). Over the years, the company expanded into the manufacturing and distribution sector, becoming the world's leading small appliance company. SEB has indeed managed to grow, notably through numerous acquisitions, and now owns many well-known brands, such as Moulinex, Rowenta, Tefal, WMF, or Calor. Its turnover was about €7 billion, and it presently employs nearly 33,000 people worldwide.

Today, SEB is headed by its founding family; the Lescure family owns 31.9% of the group's capital, with a company capitalization of about €7 billion. It is a *société anonyme* with a *conseil d'administration* (one-tier-system) listed on Euronext.

### 15.3.3. Roquette Frères

Roquette Frères is a family-owned company which produces more than 650 products derived from the starch extracted from corn, wheat, potatoes, and peas.<sup>6</sup> Founded in 1933 by the brothers Dominique and Germain Roquette, Roquette has grown to become the leader in starch production in Europe and the fourth largest producer of starch worldwide; it is also the world leader in the production of polyols.

Today, the company, a *société anonyme* which is not publicly traded, is owned by over 300 family shareholders from the second to the fifth generation. Its turnover of around €3.5 billion currently relies on its 8,360 employees worldwide.

### 15.3.4. Bonduelle

The Bonduelle Group is at present the world's leading canned vegetable company.<sup>7</sup> It was founded by Louis Bonduelle-Dalle and Louis Lesaffre Roussel in 1853. With 11,000 employees, it has been run since 2001 by Christophe Bonduelle, a

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<sup>5</sup><https://www.groupeseb.com/en>.

<sup>6</sup><https://www.roquette.com/>.

<sup>7</sup><https://www.bonduelle.com/en/>.

member of the fifth generation. Its activity in canned, frozen, and bagged vegetables has enabled it to become a worldwide leader with a turnover of about €2.8 billion.

The Bonduelle Group is formed as a *société en commandite par actions*, a partnership limited by shares. It is listed on the Euronext Paris stock exchange.

It includes two categories of associates. The Pierre et Benoît Bonduelle SAS (held by three Bonduelle family branches) is the general partner (*commandité*) (32.4%); a board of directors composed of eight members is responsible for approving the strategic choices made by the family general partners; its members are in fact directors of Bonduelle SAS. The limited partners (*commanditaire*) are other family members (23.46%), free float (38.37%) and employees and treasury stock (5.87%). Consequently, the Bonduelle family owns the majority of its capital up until today (55.8%).

### 15.3.5. *Hermès*

Hermès Paris, or Hermès International, is a French high-fashion luxury goods manufacturer. It was established by Thierry Hermès in Paris in 1837. It has experienced growing success and is now renowned internationally. The company records a yearly turnover of more than €6 billion and has about 13,000 employees worldwide.

The company, a partnership limited by shares (*société en commandite par actions*), is listed on Euronext. But it still belongs mainly to its heirs, and the Hermès family also controls the company (Hermès is owned mainly by three families, all heirs of the founder Thierry Hermès: Guerrand, Dumas, and Puech). More precisely, the Hermès family collectively owns the majority of the share capital of Hermès International through a number of asset-holding companies and direct ownerships.<sup>8</sup>

## 15.4. Rules for the Governance of Family Firms, in Particular Family Constitutions

Regarding the governance of family businesses, three aspects have to be taken into consideration and coordinated: business, family, and ownership. Therefore, different kinds of rules, more or less legally constraining, can be observed.

### 15.4.1. *Legislation*

Legislation is the first element subject to regulation in the governance framework for family firms. However, there are generally no specific rules regarding family businesses in particular; they depend mainly on which type of company they belong to. In addition, as opposed to other company types, French limited

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<sup>8</sup>See [https://assets-finance.hermes.com/s3fs-public/node/pdf\\_file/2021-04/1619013896/hermes\\_2021\\_organisation\\_fr.pdf](https://assets-finance.hermes.com/s3fs-public/node/pdf_file/2021-04/1619013896/hermes_2021_organisation_fr.pdf).

liability companies (SARL) and simplified stock companies (SAS) are granted much party autonomy. Consequently, only little legislation exists, and the most important governance rules are found in the company's articles of association.

#### 15.4.2. Shareholder Agreements

Shareholder agreements also often contain rules about the governance of family firms (voting rights agreements, transfer restrictions and pre-emptory purchase rights, etc.).<sup>9</sup> However, those agreements – made between all or only a few shareholders – only bind those who signed them.

#### 15.4.3. Corporate Governance Codes

Concerning corporate governance codes, there is no specific code for family firms in France. The Afep-Medef Code,<sup>10</sup> which is considered as the code of reference in France, applies to all companies listed on a regulated market, whether they are a family business or not.

It should however be noted that a second corporate governance code exists in France: the MiddleNext Code.<sup>11</sup> The latter is better suited for medium or smaller listed companies. It also sometimes refers specifically to family firms.

#### 15.4.4. Family Constitutions

Last but not least, there is also the family constitution, taking different forms and being without a unique terminology: *protocole familial*, *pacte de famille*, and *charte familiale*.

A family business does not necessarily require a family constitution to be successful. Indeed, the majority of family firms in France can do without. However, the family constitution is currently used by 35% of family firms (Saubiez, 2016).

Legal discussion is rare on this topic.<sup>12</sup> There is also only very limited litigation and even less case law.

To summarize, a family constitution is a document that provides a framework for intra-family relationships and for relationships between the family and their business.<sup>13</sup> It defines the common values and objectives of the family, which characterize the *affectio familiae*, but also the family's vision of the future and the main principles governing the company's internal functioning.

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<sup>9</sup>For more details, see Champaud (2009, p. 5, and in part. 31 ff.).

<sup>10</sup>See [https://afep.com/wp-content/uploads/2020/01/Afep\\_Medef-Code-revision-2020-EN-.pdf](https://afep.com/wp-content/uploads/2020/01/Afep_Medef-Code-revision-2020-EN-.pdf).

<sup>11</sup>See [https://www.middlenext.com/IMG/pdf/c17\\_-\\_cahier\\_14\\_middlenext\\_code\\_de\\_gouvernance\\_2021-2.pdf](https://www.middlenext.com/IMG/pdf/c17_-_cahier_14_middlenext_code_de_gouvernance_2021-2.pdf).

<sup>12</sup>For a short, non-legal presentation with examples, see Daumas (2012, p. 41 ff.) and Danet (2009, p. 85 ff.).

<sup>13</sup>Tandeu de Marsac (2014 [La charte familiale]).

The exact content of a family constitution varies from one company to another, it's being specifically adapted to the concerns and history of each family. However, four main themes may be identified: (1) the philosophy of the family (values and objectives), their visions, and sometimes even their history, (2) the rules of governance, (3) the role of everyone within the family business, and (4) the rules for the integration of new members.

A family constitution is usually signed by all family members, whether they are shareholders or not. The drafting of this document is also collective; it arises from several (face-to-face) meetings. Indeed, as with any family governance process, a family constitution cannot be imposed. Finally, some families perform regular reviews of their constitutions, considering that it is a document in progress.

The family constitution is widely regarded as having no legal value, and more precisely as a gentleman's agreement carrying exclusively moral significance, even if it can sometimes contain elements of a shareholder agreement, and be binding as such. But above all, practitioners are increasingly defending the idea that family constitutions have a kind of contractual value, that is to say, dismissing the idea that the document has no legal value.<sup>14</sup> Indeed, since it entails commitments borne by those who sign it, it has a contractual value as with any commitment freely made by a legally capable person. In other words, considering it is a document signed by legally capable persons that contains commitments, it therefore falls within the scope of a contract, and thus within the framework of civil law.

Of course, sanctions for non-compliance with these commitments are rarely clearly announced or detailed in family constitutions, and the drafting is often vague, as the protagonists are unlikely to consider the circumstances that might prevent the application of such family constitutions. In addition, the family is generally reluctant to take into account such painful issues. In any case, the practice of family constitutions is still too recent to know of their actual legal use by families.

However, hypothetically, it would be possible to take legal action against family members who did not comply with the family constitution and who acted in a way that led to direct damage to another member of the family (for example, a family member could seek compensation if they were refused a job in the family business while meeting the criteria set out in the constitution).

In any event, even if family constitutions do not have the "force of law" between the parties, the judge may take them into account, according to French law. And practice has shown that judges sometimes do so, whether they were invited by law or not.

For example, even if this provision does not concern the family constitutions of companies, Art. 373-2-11 of the French Civil Code (*Code civil*) states that

When deciding on the modes of exercising parental authority, the judge shall notably take into account: 1° the way in which the parents were previously acting, or the agreements which they may have

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<sup>14</sup>Tandeau de Marsac (2014 [La charte familiale]).

previously concluded [...]. (« lorsqu'il se prononce sur les modalités d'exercice de l'autorité parentale, le juge prend notamment en considération: 1° la pratique que les parents avaient précédemment suivie ou les accords qu'ils avaient pu antérieurement conclure [...] »).

Moreover, judges may refer to such documents – in particular family constitutions – and even take them into consideration, notably in order to interpret some other document. That was evidenced in a court decision issued by the Court of Appeal of Paris (ch. 5&9, 19 June 2015, n° 14/19462, S. c/S).<sup>15</sup> In that decision, the judges based their interpretation of the company's articles of association and the reconstitution of the shareholders' will on the family constitution signed by all of the latter.

Finally, it should also be noted that French courts have sometimes recognized that a solemn commitment (*engagement sur l'honneur*) is mandatory (see, for example, Cass. com., 23 December 1968, no. 67-13.046, Bull. IV, no. 374, D. 1969, somm., p. 71, regarding a commitment taken by a person toward a bank to repay the debit balance of an account). In another court decision, the judges considered that a “commitment to take some action” (*engagement de « faire un geste »*) which appears to be a moral commitment is null because of its “indeterminate purpose” (“*indétermination de l'objet*”); this suggests that the solution to that problem would be different if the “action” was specified (Cass. com., 28 February 1983, no. 81-14.921, Bull. civ. IV, no. 86).

## 15.5. Conclusion

To conclude, as shown by the French example, family businesses can take a variety of forms. In any case, business and family stories often prove to be a good match, at least in France.

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<sup>15</sup>For a deeper analysis, see Masset (2015, p. 734).

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