

The Family Constitution

*[Gesellschaftsrechtliche Wirkungen einer Familienverfassung–
Zur rechtlichen Relevanz einer tatsächlichen Willenseinigung mit
Rechtsgeschäftsbezug in Familiengesellschaften]*

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Abstract

The modern family constitution is a written declaration summarizing a process of agreement and decision making within an entrepreneurial family regarding the motives, guidelines, and regulations for the family members' cooperation within the family and the family business association. A family constitution serves to strengthen the family's shared identity and it supplements the contractual framework of a family company. In practice, consultants have established distinct forms of family constitutions, which implement these purposes to varying degrees.

Thus far, the family constitution's legal nature and its effects on the contractual framework of a family business have not been examined comprehensively. This doctoral thesis addresses these questions: It provides a legal classification for the common intent of the parties to a family constitution, and it assesses the company-law effects of a family constitution on the organizational statute and the legal position of members to partnerships and limited liability companies.

The thesis first identifies specific legal characteristics that distinguish family companies as a particular form of association. It summarizes the concept of family business governance, from which consultants have developed competing approaches to the process of drafting a family constitution. As a factual basis for the legal classification of family constitutions, the thesis describes their diverse reality in practice. At the same time, it identifies distinct forms of family constitutions that can be traced back to different consulting approaches. The factual assessment of family constitutions concludes with first findings about the functional relationship between a family constitution and the family business' contractual framework. The subsequent legal analysis of family constitutions aims to determine the common intent of the parties involved, to classify this intent in legal terms and to elaborate the company-law effects of family constitutions. The thesis concludes with considerations on the extent to which these company-law effects may be reinforced or excluded.