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THE MORTALITY OF ECUADORIAN FAMILY BUSINESSES DUE TO LACK OF SUCCESSION PLANNING

Cecilia Elizabeth Duarte Estévez

Universidad Internacional Indoamericana (Mexico)

ceci.duartee@gmail.com - <https://orcid.org/0000-0002-4622-5286>

Summary. Ecuadorian family businesses contribute to the country's development and generate employment. Despite their importance, no comprehensive legal regulations have been established in this regard and they have had to adapt to their environment. This study articulates the dispersed regulations of succession legislation in order to understand the early mortality of this type of companies that cannot achieve generational transmission, because they do not have a perfectly determined succession planning that allows the predecessors to transmit their business legacy to their successors in an organized, defined and legally adequate manner to the requirements and specifications of the family businesses that they must face at any given moment. In the introduction, studies related to the subject are collected from other approaches, while this research is from the perspective of law, for which legal and conceptual aspects of the lack of an inheritance plan that allows it to be maintained over time for generations are expressed. The methodology used is a non-experimental qualitative approach, using documentary, bibliographic, constitutional and legal instruments through the socio-legal method. As a result, the lack of succession planning is one of the reasons for the mortality of this type of companies. In relation to the discussion and conclusion, public policies are needed, where the State establishes mechanisms so that these companies do not disappear during generational changes. And that for its growth and development, not only an organizational structure is required, it must react to the generational changeover as a change that can occur at any time, so it is necessary to have a succession plan to support it

Key words: Succession, family business, planning, mortality, generational succession, generational replacement

LA MORTALIDAD DE LAS EMPRESAS FAMILIARES ECUATORIANAS POR FALTA DE PLANIFICACIÓN SUCESORIA

Resumen. Las empresas familiares ecuatorianas, contribuyen al desarrollo del país y son generadores de empleos. A pesar de la importancia que tienen no se ha establecido de manera integral normativa

jurídica al respecto y han tenido que adaptarse a su entorno. En el presente estudio se articula la normativa dispersa que tiene la legislación sobre la sucesión para poder entender la mortalidad temprana de este tipo de sociedades que no pueden alcanzar la transmisión generacional, por no contar con una planificación sucesoria perfectamente determinada que permite a los antecesores transmitir su legado empresarial a sus sucesores de manera organizada, definida y jurídicamente adecuada a los requerimientos y especiaciones de las empresas familiares que deben afrontar en cualquier instante. En la introducción, se recogen estudios relacionados al tema desde otros enfoques, mientras que esta investigación es desde la perspectiva del derecho, para lo cual se expresan aspectos jurídicos y conceptuales de carecer de un plan sucesorio que permita mantenerse en el tiempo por generaciones. La metodología utilizada es con enfoque cualitativo del tipo no experimental, empleando los instrumentos documentales, bibliográficos, Constitucionales y legales a través del método socio-jurídico. Obteniendo como resultado que la falta de planificación sucesoria es una de las razones de mortalidad de este tipo de empresas. En relación a la discusión y conclusión se necesita políticas públicas, donde el Estado establezca mecanismos para que estas empresas no desaparezcan en los cambios generacionales. Y que para su crecimiento y desarrollo no solo se requiere de una estructura organizacional, debe reaccionar frente al relevo generacional como un cambio que se puede producir en cualquier momento por lo que se requiere tener un plan sucesorio que lo sustente

Palabras clave: Sucesión, empresas familiares, planificación, mortalidad, relevo generacional

Introduction

One of the constitutional precepts of a State of Law and justice such as Ecuador, is to respect the right to property in all its forms; a guarantee that all people have with social and environmental responsibility. However, in order to do so, public policies and other mechanisms must be adopted. Thus, when family businesses are analyzed with regard to this right of succession transfer, their regulations are found to be disintegrated in this legislation. The importance of their study is that these companies contribute to the development of the country's economy and generate employment, which is why it is vital for these organizations to survive over time.

From the analysis of family businesses in Ecuador, by Espinoza, C., Salinas, A., Camino-Mogro, S.& Portalanza,A.(2021), it can be seen that 90% of the jobs are generated by family businesses and they contribute approximately 40% of the Gross Value Added (GVA) of the economy. The study shows the importance of family businesses in its economy with a strong local focus. It would be a strategic plan where the governmental muscle accompanies the creation and dissemination of these evolution policies.

The exponential growth of family businesses is worldwide, an event that has been occurring for many decades, and also entails the need for Ecuador to have a succession planning that allows the transfer to the new generation, since this incorporation is not an isolated event but a process that will occur at any time and will produce a change in these companies.

For Machado, L. (2010), the moment of transition is critical because parent-employer-entrepreneur problems arise, who despite having to totally relinquish control of the company, does not do so. The founders tend to remain within the organization, ordering, controlling and deciding, even when the successors have taken over, which causes discomfort not only within the company and its collaborators, but also causes friction within the family. While for Belausteguigoitia, R. (2012) succession involves the three subsystems of the family business (Family, Company and Ownership), which undergo important changes, the mere possibility of

a change in the power structures of companies generates uncertainty.

Changes that should not be traumatic, but in an organized manner within an evolutionary process that takes time to develop, without this, the uncertainty arises from not having an adequate succession planning for the change of command; organizational and administrative strengthening, decision making, family conflict resolution and established legal regulations that allow a smooth and adequate transition, since this involves crucial aspects for future generations as well as for the founders. Inevitable situation that these companies must go through, where the conditions for this transition must be analyzed, such as clear family rules that allow it to last over time.

The professor of the Pontifical Catholic University of the Dominican Republic, Justo, M. (2004) points to several authors who have conducted studies of the family business in different areas of observation, such as: (Adeyemi-Bello, 2001) and (Sorenson, 2000) who have opened great debates on the leadership of the founders in comparison to their successors. Indeed, the study of each family member is fundamental to determine the behavior transmitted from the family to the company and vice versa. One of the most peculiar mysteries is the failure of these companies when they attempt their continuity, despite the fact that there are countless guides on this subject, they are still pigeonholed within a high mortality rate.

While the 2014/2210 European Parliament report (INI), on family businesses in Europe, the rapporteur being Niebler, A. (2015) indicates: sooner or later all family businesses have to face a momentous decision: the question of the handover at the head of the company. Every year, some 450,000 businesses are sold throughout Europe, which in turn employ around two million employees. Given the multitude of difficulties associated with these transfers, it is estimated that up to 150,000 companies may close their doors each year and some 600,000 jobs may be lost. Policy must take action and establish the right framework conditions to prevent this loss of jobs. National inheritance, gift and corporate tax regimes make it particularly difficult to transfer businesses between family members. Even so, the family thus loses most of the control of the company, even though retaining it is, from the company's point of view, one of the key factors for success.

The objective of this research is to legally determine the circumstances that, due to lack of succession planning, Ecuadorian family businesses have a high mortality rate, considering the constitutional mandates of Ecuador and the laws that deal with family, property and business, internal regulations that must be analyzed to establish the lack of a succession plan for the sustainability of these companies and that allows them to be maintained for generations.

The transfer of the predecessor's command decision to his descendant affects the structure of the company and the family, as well as its survival and ownership. Thus determining the problem that exists on this issue, not knowing if the successor is interested in continuing with the business, knows about it, as well as if he/she is capable of making decisions for the benefit of the company or if it is an imposition of the outgoing partner who wants continuity through his/her family line.

Article 67 of the Constitution of the Republic of Ecuador (CRE) recognizes the different types of families and protects them as the nucleus of society, with equal rights and opportunities, as well as their members. While the Ecuadorian Civil Code in force on the company, recognizes its juridical person, with capacity of enjoyment as of exercise to contract rights and obligations being a juridical person that can be

represented extrajudicially or judicially, called administrator or manager according to the social contract in accordance with the established in Art. 113 of the Law of Companies. The Superintendence of Companies, Securities and Insurance is in charge of all commercial companies and their corporate control, including family businesses.

According to Art. 213 of the CRE (2008), the superintendencies are: the "technical bodies of surveillance, auditing, intervention and control of economic, social and environmental activities, and of the services provided by public and private entities, with the purpose of ensuring that these activities and services are subject to the legal system and serve the general interest; in application of Art. 430 of the Law of Companies.

With respect to the property according to Art. 321 CRE: "The State recognizes and guarantees the right to property in its public, private, community, state, associative, cooperative and mixed forms, and that it shall fulfill its social and environmental function", in accordance with paragraph 26 of Article 66 (*ibidem*)

And as for the succession, this can be intestate or testamentary, as established by the Ecuadorian Civil Code in its Book III of the succession by cause of death, and of the donations between living persons, Title I on the definitions and general rules and according to what is determined in Art. 231: The rules contained in Title II, Book Three of this Code, referring to the various orders of intestate succession with respect to the spouse, shall apply to the intestate succession of the spouse intestate succession with respect to the spouse, shall apply to the surviving cohabitant, in the same manner as surviving cohabitant, in the same manner as the precepts related to the marital portion. Considering in the same way if it is the *de facto* union, which is recognized in the Constitution of the Republic of Ecuador in its Art. 68.

Although the Constitution and the internal laws recognize the family and property, as well as the association (company), independently, when these three subsystems merge, a family company is formed that legally exists, however, the lack of planning in the business succession, would lead to conflicts and individual interests of the family members, power struggles, arbitrariness in decision making, which would affect the organizational and administrative structure, management and control. For Valenzuela, López and Moreno (2015) planning: "is presented as a challenge in this type of organization, because it is at this stage where the two component subsystems (family-company) must be harmoniously integrated with a view to the growth of the business". Y according to information issued by the Superintendency of Companies, Securities and Insurance of Ecuador: "Of the companies incorporated, a high percentage belong to the group of family companies, due to the fact that many capitals in the country are linked by consanguinity or affinity".

This refers us to the Civil Code in force which in its Art. 22 states: The degrees of consanguinity between two persons are counted by the number of generations. Thus, the grandson is in the second degree of consanguinity with the grandfather; and the (*sic*) first cousins, in the fourth degree of consanguinity with each other. When one of the two persons is an ascendant of the other, the consanguinity is in the straight line; and when the two persons come from a common ascendant, and one of them is not an ascendant of the other, the consanguinity is in the collateral or transverse line. In accordance with Art. 23 *ibidem*: Affinity is the kinship that exists between a person who is "or has been" married and the blood relatives of his or her husband or wife, or

between one of the parents of a child and the blood relatives of a child of his or her husband or wife, or between one of the parents of a child and the blood relations of the other parent of the other parent. The line and degree of affinity between two persons is determined by the respective line and degree of consanguinity between in-laws and sons-in-law there is a straight or direct line of affinity in the first degree, and between brothers and sisters-in-law, a collateral line of affinity in the second degree between brothers and sisters-in-law, there is a collateral line of affinity in the second degree. The text in quotation marks was declared unconstitutional by the Constitutional Court of Ecuador (2011) in relation to this study:

The Ecuadorian Civil Code, since its origin in 1861, as well as its legal antecedents, i.e. the Napoleonic Code and the Civil Code of Andrés Bello, has not conceptualized the family; the same has occurred with the constitutional norm, which has recognized the family as the nucleus of society and has provided it with the corresponding legal protection for the development of its purposes. For its part, the Substantive Civil Code has limited itself to establishing what kinship consists of and how it is established.

Parraguez (1997) defines kinship as one of the most important legal relationships generated by the family institution, which we can define as the family relationship that links two or more persons. This family relationship may have different sources or origins and can be classified into kinship by consanguinity and kinship by affinity. In turn, each of them can be considered in two different lines, according to the existing direction of descent: the straight or direct line and the collateral line.

Established the relationship that the family can have with its members, combining total or partial capitals (property) generating a business to support their family or help the members of it; it generates bond and legal effects within the Ecuadorian State, among themselves as well as for third parties, where the Civil Code defines it as a company in its Art. 564.

This study is carried out from a purely legal perspective, to analyze the separate infra-constitutional regulations of Ecuadorian families, with the contribution of literature and research in other approaches related to this topic, will allow to determine that the lack of succession planning, condemns these organizations to mortality in the generational change.

Circumstances of mortality in Ecuadorian family businesses

According to the study conducted by IDE Business School to 142 family businesses in Ecuador, the following factors that affect this type of companies, do not transcend generationally, were determined through data collection and results:

Josemaría Vásquez, the director of Family Business and Ecuador Policy at IDE Business School, explains that one of the reasons for the mortality of family businesses is linked precisely to the issue of ownership and management succession. There are those who raise the issue of management succession, but it is not implemented. Companies are full of good intentions, but they don't quite make the leap. Another of the shortcomings detected by this IDE Business School survey is that there are family businesses that are still far from professionalization and clarity with respect to ownership, to the family, which allows for subsistence and order to avoid conflicts. (Universe 2019)

In this regard, Romero, J. and Zabala, K. (2018) state: Family businesses present unique problems arising from the interdependence between the family and the family's financial interests, which makes it more difficult to carry out the administrative process in all its phases (planning, organization, management and control).

Regarding the reasons that may lead to the failure of family businesses, the Superintendence of Companies (2020), according to its statistics, states that 47% pointed to poor management and 23% to lack of leadership. Guayaquil has 17,602 family businesses, representing 32.18% of the companies operating in Ecuador. At the national level, this type of company is the majority, since of the 54,702 companies registered with the Superintendency, 47,019 are family-owned, that is, 85.95%. The sectors in Ecuador with the highest number of companies classified as family businesses are wholesale and retail trade, professional activities, real estate activities and construction.

According to the National Institute of Statistics and Census INEC (2019): Commercial organizations in the city of Guayaquil represent 40.13% of the total sectors of the economy. In this regard, within the Ecuadorian business fabric, family businesses make a significant contribution, with a percentage of 98%. Despite this, the rate of succession to the second and third generations is increasingly low; statistics emphasize the difficulty family businesses have in overcoming the generational transition. In the same way for Cardona, H. & Rico, D. (2014) Family businesses contribute significantly to the economy in aspects of work and turnover, they also present certain drawbacks that derive from a lack of plans that guarantee an effective generational succession since, some of these establishments fail to transcend to the second and third generation.

Unlike non-family companies, these types of companies have specific and differentiating characteristics from those that are not, where the company, the family and the property are merged, leaving the management and its control to the management of these organizations, considering a competitive advantage, but at the time of the transition of its generational relay, inconveniences arise when in the first generation, concerned about the investment and its growth over time, without considering that at some point there may be a succession change of command or occur according to the law. This is an event that is not internalized, nor is he aware of the need to hand over his business legacy to his successors, and whether they are prepared to manage and direct it.

Poza (2005) considers family businesses as a fusion of the family system and the business system, taking into account three components that are interdependent and complementary to each other: family, ownership and management. The values of the owners is what generates the combination of these three elements which, depending on the context, can be conceived as a competitive advantage or as a source of vulnerability to generational change.

According to Gallo, M. (1997), "many family businesses are born, enjoy a period of growth that lasts approximately 20 years"; but between "25 and 75 years, most of these firms disappear, a time equivalent to the lifetime of the founder" (Beckhard and Dyer, 1983). And for Leandro (2012), Succession is considered one of the main problems faced by the family business. Regardless of the type of business or its size, sooner or later family businesses will be faced with tensions between

owners, managers and collaborators who can hardly detach themselves from the sentimental or affective aspects of kinship, which makes succession difficult due to the moral division between the family and business dimensions.

Business succession

Belausteguigoitia, I. (2012) indicates that: "For Trevinyo-Rodriguez (2010), "succession is a dynamic process through which the roles of the predecessor and successor evolve independently and in parallel until they finally overlap and become confused, causing the generational handover". Having established the difficulty of business succession that these types of companies go through in order to achieve continuity over time, one of the most relevant studies is by John Ward (1987), where it is calculated that "from first to second generation succession, 30% of the companies survive, and from first to third generation only 13%". While for the Heres Foundation (2015) determines that 30% of family businesses have difficulties with succession causing internal power struggle and discomfort among customers.

Carrying out the generational handover is a critical and unavoidable point that these organizations must face, when confronting the business responsibility for its continuity and the family affections and emotions where the founders who created the business or enterprise in an informal way and who gave life to the family business, according to their experiences, knowledge with the purpose of stopping a livelihood for their family, are at the age for their retirement and see that their management must transcend for the benefit of the one that is growing and must have an organizational structure, decision making. It generates a friction of conviction founder-entrepreneur-relay and retirement or to remain in this without the decision of command is a friction at the time of happening that affects the family environment and therefore the company. The transfer of the legacy to the heirs to guarantee continuity and prosperity for the family encounters the first barrier, which is that the founders or owners internalize and are aware of the need for succession.

Legal system on succession in Ecuador

In order to analyze succession from a business point of view, it is necessary to search in the Ecuadorian legislation for norms that correlate with the subsystems of the three circles model of Tagiuri and Davis (1996), to demonstrate the line of argumentation of this research. The legal framework of the companies or mercantile corporations is the Companies Law that regulates them, which establishes in Art. 1 what is the contract of companies, instituting in its second paragraph the provisions of this law, those of the Code of Commerce, the Civil Code and the agreements of the parties. This leads to verify the provision of society or company given by the Ecuadorian Civil Code in its article 1957: "is a contract in which two or more persons stipulate to put something in common, with the purpose of dividing among them the benefits arising therefrom. The partnership forms a legal person, distinct from the individual partners". In accordance with the first paragraph of Art. 564 of the same body of law, which determines: "A fictitious person, capable of exercising rights and contracting civil obligations, and of being represented judicially and extrajudicially, is called a juridical person."

With the enactment of the Entrepreneurship and Innovation Organization Law (2020), which changed the conception of the type of traditional companies that had Art. 2 of the Companies Law and incorporated the simplified joint stock company (SAS), there are currently 6 types of companies that are recognized with legal status in the country, with tax liability according to the Organic Law of Internal Tax Regime. Reyes, F (2020) about the simplified stock company indicates that: "was introduced to the Ecuadorian corporate regulatory context with the purpose of making changes in the traditional system and introducing novelties that solve practical conflicts of entrepreneurs and businessmen". Being one of the objectives of this law, according to Art. 2, paragraph a): To create an inter-institutional framework to define a State policy that fosters the development of entrepreneurship and innovation. While the goal of the family entrepreneur is to pass on his or her business legacy to the next generation, only a small fraction of them succeed. In Ecuador, the life expectancy of these companies is 30% that reach the second generation and 15% to a third generation (Santamaría & Pico, 2015).

When generations are enunciated, the succession transfer of the patrimony of its predecessor to his heirs is conceptualized. This takes us back to family law and within the Ecuadorian legislation to the Civil Code, which establishes two types of successions: the testate or intestate succession known as *abintestato*, being a way of acquiring the domain. The word succession according to the Pan-Hispanic Dictionary of Legal Spanish (2022) "Act of succession of one person to another in his rights and obligations". This succession may be universal (inheritance) or singular (legacy) as stipulated in Art. 993 in accordance with Art. 996 of the aforementioned law. As Carrejo S. (1968) indicates "Once the deceased has passed away, there must be either by legal disposition, or testamentary disposition a person who occupies the position, this person who receives the assets of the deceased receives the name of heir, acquirer, successor, successor, assignee" From which it is inferred that this transfer is by cause of death and they give the forms of how to succeed on his estate, however, the Ecuadorian law also provides for the transmission between living; where Andara, L. (2019) states that successions are classified as acts between living or by cause of death that within the law the latter is known as *mortis causa*, *mortis causa*. (2019) that successions are classified as acts between living or by cause of death, which in the law is known as *mortis causa*. Also noteworthy is the succession that takes place between individuals or individuals and universal succession or universal succession.

For the transmission between living persons, the Ecuadorian legislation establishes the ways of acquiring the domain, which are occupation, accession, tradition, succession by cause of death and prescription, stipulated in the first paragraph of Art. 603 of the Civil Code. Tradition, which is nothing more than the power and intention to transfer part or all of its patrimony from the one who owns it and the intention or capacity to acquire it by the other person. (Art. 686 *ibidem*) being a form of acquiring the domain the donation between living persons applying the provisions of Art. 1402 of the same body of law: "is an act by which a person transfers, free of charge and irrevocably, a part of his property to another person, who accepts it. This is in relation to the legacy to be passed on to their successors, according to the focus of this research.

Now, by law, it has already been established how to succeed according to kinship, whether by consanguinity or affinity. On the other hand, in the corporate

part, since there are several types of mercantile companies, they have different ways of transferring the right of properties that the family may have, which have their own characteristics and limitations, therefore the transfer of shares of a limited company differs from the shares of an anonymous company and thus from the others. The family business can opt for any type of organization in accordance with company law. However, when business succession is analyzed, there is no specific law or State policy that has defined this type of company in a comprehensive manner or legally establishes how to succeed the predecessor in office, how to carry out the generational handover, or even worse, how to survive the continuity of the family business over time. As of 2020, the Superintendence of Companies, Securities and Insurance of Ecuador approved through Resolution No. SCVS-NC-DNCDN-2020-0013 the application of the Ecuadorian Standards for Good Corporate Governance for all types of commercial companies under its control and surveillance. Non-binding if not included in the bylaws. And it urges to "Prepare for family succession at the family level and at the company management level by developing plans for generational transition."

Lack of succession planning

Without succession planning, family businesses would have a high failure rate to survive over time. "Succession is usually considered as the main problem of the family business and cause of most of its failures in growth and continuity" (Gallo, M. 1997) as well as "Succession planning can be considered the most critical factor related to the continuity or long-lasting life of the family business "(Matías & Franco, 2020).

While, for Anderson (2012), the other side of the success story of family businesses is failure, he argues that 75% of the firms that were originally created by the first generation of founders have been forgotten, that is, in the entrepreneurial graveyard; only a small fraction, close to 15% of the original companies reach the third generation, so that the phenomenon of mortality is replicated in all countries.

According to the study by Espinoza et al., (2021), on family businesses in Ecuador: Conscious planning and succession is a key aspect for the continuity of the family business. Being the main pillar of the economy, it is essential to work on concrete actions to strengthen the foundations of the family business through governance mechanisms and its different tools so that both the company and its families prosper through the generations. It is here, where the psychoanalytic knowledge and the juridical-societal benefits take a key participation in the setting up of families in front of the family business. From the surveys conducted, it was determined that 85.0% do not have a written succession plan, 9.4% do have one and 5.3% are in the process of having one.

This study was developed by Espiritu Santo University with the authors of the aforementioned research (2021) from a sample of 57,752 family s data obtained by the Superintendence of Companies, Securities and Insurance of Ecuador:

Regarding succession, 85% do not have a written succession plan, only 9.4% have such a document; but when asked about the criteria for choosing the successor, 66.3% do not have them, while 33.5% do, and the most important criteria

are professional experience within the company, academic training (specifically university) and that he/she must be an owner or a relative of the owners. The transfer of shares to descendants is divided while 38.8% have no plans to do so, 38.5% would do so via inheritance and 18.1% via donations. Only 24.8% of those interviewed stated that they have limits on the transfer of shares, while 73.2% do not. That is why succession planning; it allows to choose the successor in a preparation process, to see his training and involvement and professionalization are important for the company considering the core of the family business so that an eventual failure in the succession seems to be a key factor in the early mortality of family businesses (Cabrera Suárez & Santana, 2007).

From a legal conception of this research, succession planning covers the specific needs of the family business that allows managing the succession process according to the characteristics and circumstances in which any type of company is found; maintaining family ties, adequate organizational structures, appropriate change of command that allows this transition to be effective and instituted for the company, the family and without affecting the property. Calmet, A. (2007) affirms that "in planning, relationships are usually temporary; in a family business, relationships are for life. So how the family learns to work together can be a vital factor in family harmony and continued ownership."

Method

The methodology used in this study is of qualitative approach, supported by a documentary research with descriptive scope from the existing legal framework Constitution of the Republic of Ecuador, the Declaration of Human Rights and internal legal norms that allow reaching the object of study proposed, under the technique of content analysis in a rigorous manner through the use of scientific articles, statistical studies of the existing problem, documents and books to know the mortality of family businesses from a critical analysis of the current situation of this type of Ecuadorian companies due to lack of succession planning. To then systematize it with the support of some research sources. Applying the socio-legal method, which aims to study the social reality insofar as it has an impact on the social behaviors it seeks to modify. Thus, law seeks to transform social events, hence the incorporation of the scientific method (Arango, G. 2013). And for Aguirre-Román & Pabón-Mantilla (2020) "these are problems that seek to analyze and describe social facts and actions related to legal phenomena. In some cases, the methodical reference comes from the currents that, from the socio-legal field, seek to understand the relationships between social realities and legal norms". Figure 1 shows the methodological design to be used in this study

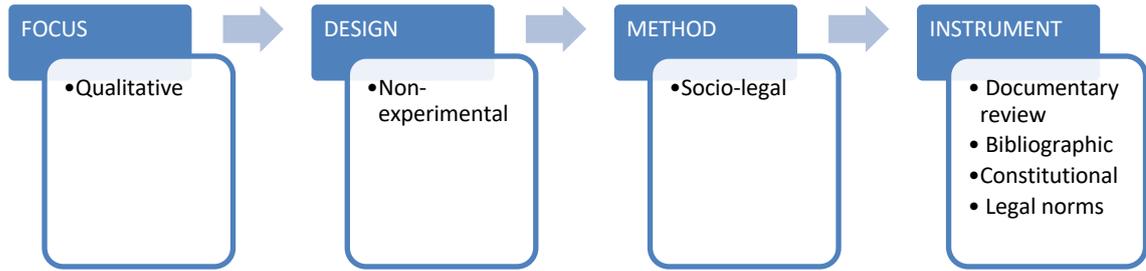


Figure 1. Methodological Design to be used

Results

From the documentary review and the scientific studies done in Ecuador on the reasons for the mortality of family businesses, using the methodological design and the established instruments, the theoretical results show that the main cause is succession, that, due to lack of planning, this type of company cannot transcend generationally. Considering that the independent laws and regulations, which are scattered throughout Ecuadorian legislation, do not help to solve this problem. The three-circle model of Tagiuri and Davis (1996) is used to represent in which legal bodies these regulations are found.

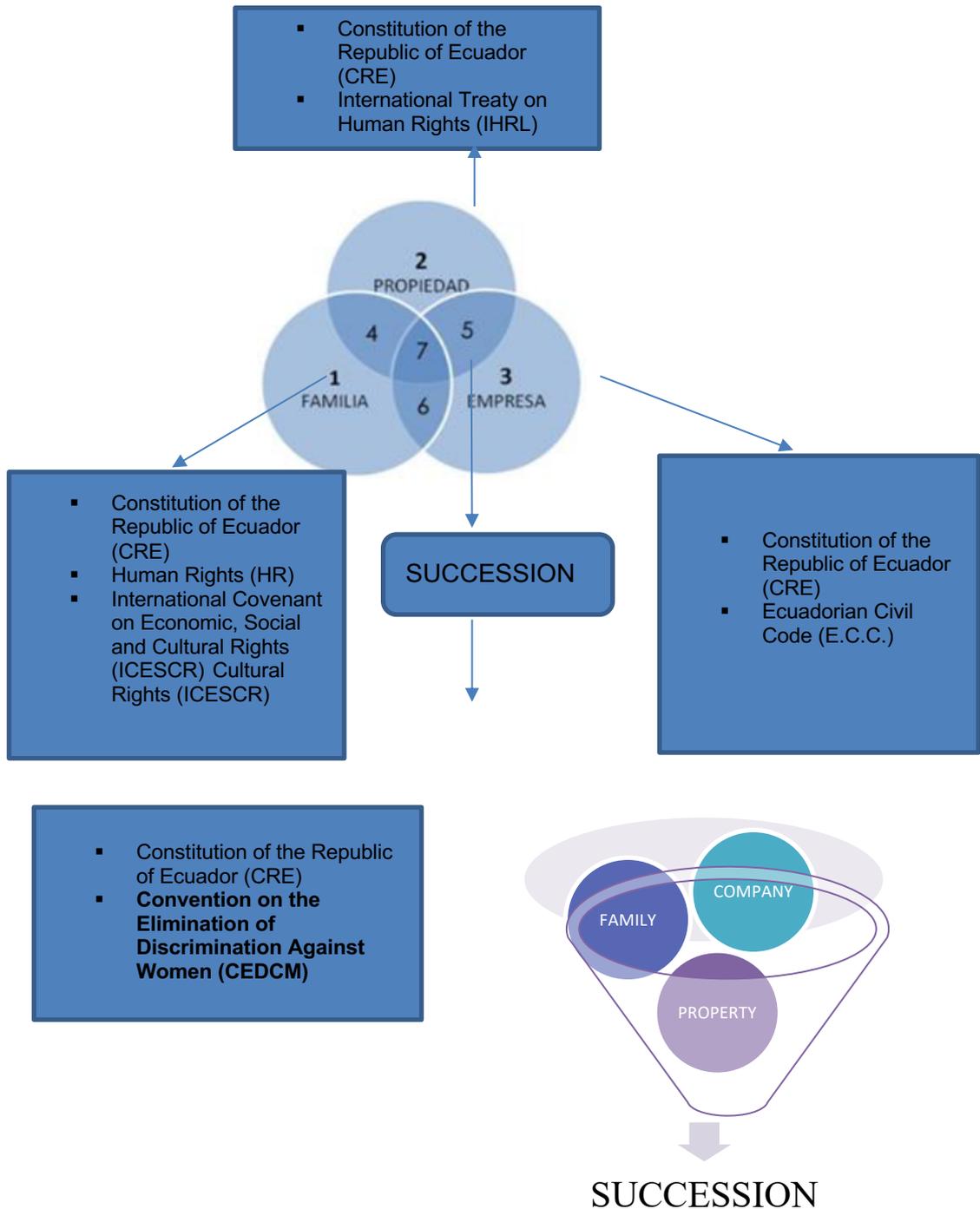


Figure 2. Model of the 3 circles.

Note: Source: Tagiuri and Davis (1996). Modified: by the researcher.

Although all types of families are guaranteed and recognized by the Constitution of the Republic of Ecuador (CRE), this precept is accepted as a State party that ratified the Declaration of Human Rights (DDHH) in its numeral 3 of Art. 156

16 recognizes: "The family, which is the natural and fundamental group unit of society and is entitled to protection by society and the State" as well as Art. 10.1 of the International Covenant on Economic, Social and Cultural Rights International Covenant on Economic, Social and Cultural Rights (ICESCR) (ICESCR) reads: 1. "The family, which is the natural and fundamental element of society, should be accorded the widest possible protection and assistance, especially for its constitution and as long as it is responsible for the care and education of dependent children."

In relation to property, Art. 17, numeral 1 of the International Declaration of Human Rights (IHRL): Everyone has the right to own property, individually and collectively. And so it is that in the legal framework of Ecuador, its Constitution also recognizes all types of property, there are the companies and their different forms of organization of production and management. As legal personality the Civil Code (CC.) ecuadorian law and the law of companies as a mercantile society where all the stipulations in this respect are found.

The connection of these subsystems for the proposed study is the succession found in the Civil Code in force in Ecuador (C.C.E.). Where the Convention on the Elimination of Discrimination against Women (CEDAW) in Article 16, paragraph 1, subparagraph h): "1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, shall ensure, on a basis of equality of men and women: (h) The same rights for each of the spouses in respect of the ownership, purchase, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

This article talks about family relations, property, as well as the disposition of property on equal terms (succession), eliminating any discrimination in this regard. That according to numeral 2 of Art. 11 of the Constitution of the Republic of Ecuador, it establishes formal equality of equality and non-discrimination for any reason, condition or motive. But as it was exposed in this study, nothing is said about the business succession, in spite of not having a specific legislation for this type of companies, it allows us to reach a legal conception that the succession planning would allow the continuity to be able to cope with the generational change and with this it does not produce the mortality of the family companies in this process.

The second legal argumentation, although the legal regulations analyzed in this research are disintegrated, they are complementary in order to understand the phenomenon that arises from family businesses in Ecuador and are part of the legislation that allows framing the need to not only have Ecuadorian Standards for Good Corporate Governance for its application, but public policies are required where the State articulates legislative regulations in this regard and encourages the development of family businesses, creating provisions for business succession planning for their survival to generational change.

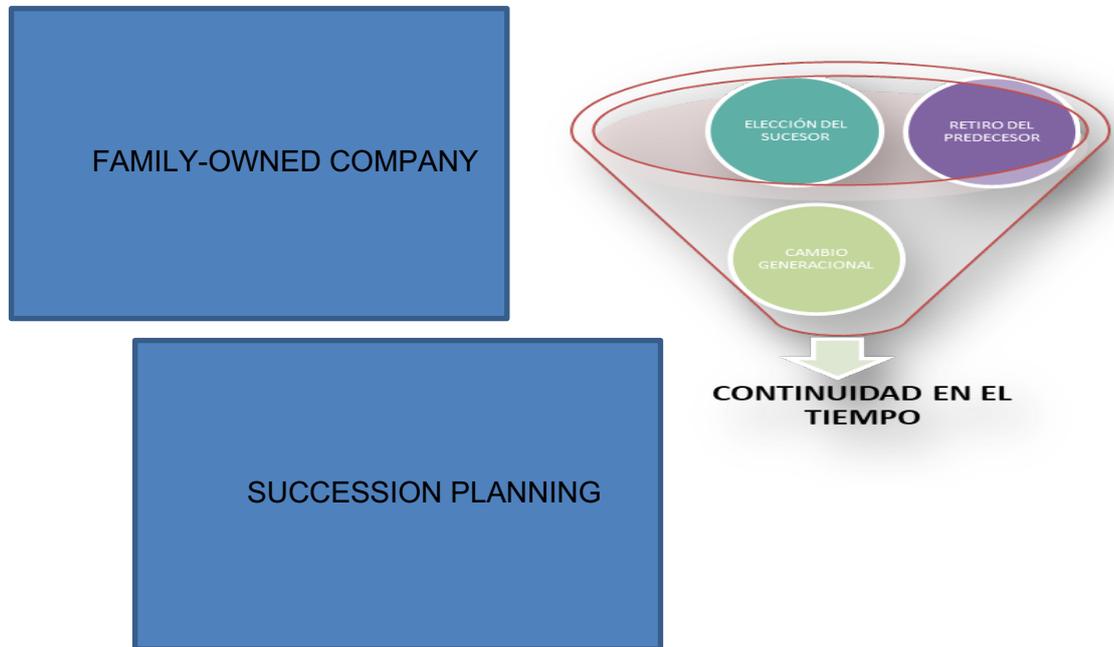


Figure 3. Circumstance of the object of study.

There are several reasons why family businesses do not survive over time, including changes in the family structure, agreements with third parties, competition, laws or the absence of a formal structure that turns it into a professional organization that plans the succession and regulates the relationships between family members, giving way to a more organized annex of the company. (Arruñada, B. 2007) As a third legal argument, the lack of succession planning is another reason for the early mortality of family businesses in Ecuador. According to the studies carried out and the support of the methodological instruments, it can be evidenced that this type of companies are born in the nucleus of the family, as an informal business to sustain the family, with the passing of time and its growth, a formal structure is needed within the company that allows regulating the relations of the family members with the company and this does not affect the property if for any reason there is a change of command, where the successors must be prepared for this, with the knowledge, professionalism and leadership to face the generational changeover with the commitment, linkage and permanence within the company.



Figure 4. Circumstances of mortality in Ecuadorian family businesses

Note: Source: IDE Business School survey information (2019)

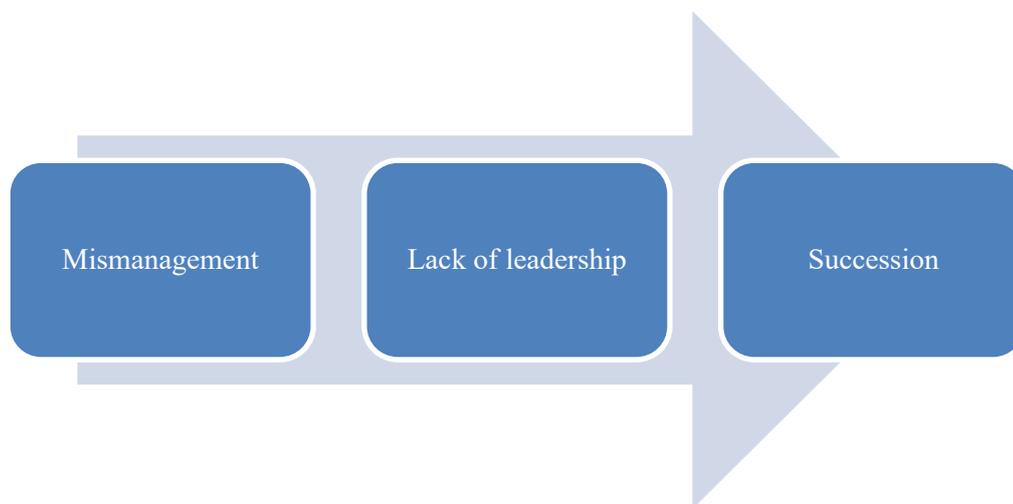


Figure 5. Reasons for the failure of family businesses for their continuity

Note: Source: Superintendency of Companies (2020)

The challenge for the new generation is not only to face the change of leadership but also the era of technology, innovation, growth of the company and its subsistence over time in order to transcend the family business, where a high percentage of this type of company has not yet become aware of the responsibility of business succession and, even worse, has not determined a form of planning in this regard.

Where the Superintendencia de Compañías, Valores y Seguros (2020) urges that: The Board of Directors shall maintain an updated succession plan for Management and other members of the Board of Directors, in order to maintain an adequate level of experience and knowledge within the company, to ensure an adequate course and continuation of its activities in spite of eventual administrative changes. This succession plan, formulated by the Board of Directors, must be approved by the general shareholders'

meeting, the body that has the exclusive power to appoint or remove the members of the administrative bodies of the companies, in accordance with the Companies Law.

Discussion and conclusions

Once the results of this study on the mortality of Ecuadorian family businesses due to lack of succession planning have been analyzed, we proceed with the discussion and conclusions in this section.

According to the review of the literature and statistics from other research related to the subject of this study, for the continuity in time of this type of companies, it is essential to have a succession planning that adapts the generational handover according to the needs and specifications of the company.

Since there is no legislation that considers family businesses as a whole, public policies are needed, where the State establishes mechanisms so that these companies do not disappear during generational changes, taking into account that they generate employment and contribute economically to the country.

Once the circumstances of the mortality of this type of companies are known, the lack of a previous succession is determined, causing conflicts between the family members and the company, leading to the failure in the generational transmission since they drift without a previous preparation that allows them to leverage on the clear guidelines and bases left by their predecessors by not having an organized, adequate succession planning and with clear regulations for this transfer.

For the growth and development of family businesses, it is not only necessary to have an organizational structure, to know how the business works, how to make decisions and control, but also to react to generational change as a change that can occur at any time, so it is necessary to have a succession plan to support this change.

The legacy that the businessman leaves for his successors is not only patrimonial, they are intertwined links between the company and the family, which entail the transfer of decisions, taking of commands and the responsibility of development, growth and above all a transcendence that can overcome the generational changes in a solid way, with adequate preparation and with correct guidelines that can be pre-established with a succession planning.

From the approach of this research, we contribute to the needs that Ecuadorian family businesses have, in the generational succession that does not subsist for not having an adequate mechanism for its transmission, that is why it is important a succession planning that will allow family businesses to shorten the generational gaps and not suffer friction in their change and are prepared to survive in time with a firm foundation, with clear structures, with legal rules and pre-established agreements that will avoid conflicts between the family and the company; and, if there are conflicts, they know how to proceed to solve them and thus turn a weakness that these types of companies have into a strength and that a greater number of family businesses use this succession planning as an advantage to leave their business legacy.

Table 1

160

Results of Constitutional review, human rights and related internal regulations

STUDY COMPONENT	CRE	HUMAN RIGHTS AND INTERNATIONAL TREATIES	CIVIL CODE	COMPANY LAW
1. FAMILY	Art. 67	Art. 16 numeral 3	Art. 14 numeral 2	
	Art. 68	Art. 10 numeral 1	Art. 222	
	Art. 69			
2. PROPERTY	Art. 321	Art, 17 numeral 1		
	Art. 66 numeral 26			
3. COMPANY	Art. 213, 312		Arts. 564 Art. 1957	Art.1 Art. 2
				Art. 113
				Art.213
				Art. 430

Table 2

Results of Constitutional review, human rights and related internal regulations

STUDY COMPONENT	CRE	HUMAN RIGHTS AND INTERNATIONAL TREATIES	CIVIL CODE	COMPANY LAW
4. SUCCESSION	Art. 11 numeral 2	Art. 16 numeral 1 of item h)	Arts. Art. 23 Art. 231 Art. 603 Art. 993 Art. 997 Art. 1402	
5. BUSINESS SUCCESSION PLAN				Resolution No. SCVS-NC-DNCDN-2020-0013

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