

BUSINESS FOR SALE

Business transfers and closures in Flanders

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1. Introduction

2007. Cumerio disappears from the stock market after a takeover by another company in the sector. Barco sells a large division, BarcoVision, to Iteema, and simultaneously announces that it is planning new acquisitions itself. After a lengthy and aggressive battle, the takeover of ABN-Amro becomes reality, leading to the biggest ever takeover in Europe's financial sector. In the meantime, Volkswagen closes down its Belgian subsidiary. This is just a selection from recent takeovers and closures of large Belgian and European companies or company divisions. It is a recognised phenomenon that periods during which there are numerous high-profile takeovers, such as now, alternate with calmer periods. During busy takeover periods, mergers and takeovers, which can be spectacular, crop up regularly in the media; in the newspapers, they virtually become a permanent item on the agenda. Nor is this surprising, as mergers and takeovers can have drastic consequences for shareholders, personnel and the entire economy of a region.

However, those who follow the financial press would be wrong to think that it is mainly large companies that get taken over: nothing could be further from the truth. Takeovers of large companies are just the tip of the iceberg, and a high degree of turbulence on the corporate landscape can also be observed among smaller companies. After an average of 15 years, smaller companies are taken over by another company, by a family member or by their own personnel, go into voluntary liquidation or become involuntarily bankrupt.

Why is it important to devote a book to this phenomenon? From the Schumpeterian viewpoint, the closure and/or transfer of ownership of companies – in whatever form – is essential to maintaining a healthy and innovative economy. The transformation or closure of older companies creates opportunities for new initiatives in the continuous process of creative destruction. The corporate cycle of start-up, growth, transfer to another shareholder and closure creates the turbulence in the economy that is necessary for its periodic renewal.

The closure or transfer of ownership of a company is not just important from a macro-economic perspective but also for entrepreneurs and shareholders. After all, closing down a company is a transaction which can have consequences which extend beyond the purely economical. The emotional link that some entrepreneurs or families have with their company and the sense of self-worth that they derive from their entrepreneurial activity are not to be underestimated. Entrepreneurship can be compared with parenthood. An entrepreneur thinks up a concept for a company, starts it up and supports it in its development and growth. Then comes the moment when the company needs to go its own way, apart from the entrepreneur who started it. It may be better for a company to cut loose from the entrepreneur at a certain point for all kinds of reasons. For example, the company may have grown too large and may need professional management or extra financing which exceeds the capacity of the original shareholder(s). Alternatively, the entrepreneur may have decided to leave the company, for instance because he or she has reached retirement age. In this metaphor of entrepreneurship, closing down the company is thus a natural process in a recurring cycle. For policymakers, the transfer of companies is an increasingly important issue, and one which is set to become still more prominent in the years ahead. The ageing of the European population means that a third of all European entrepreneurs – particularly those from the baby-boom generation – will be giving up their business in the next ten years (European Commission estimate, 2003). Although it used to be taken for granted that control of a company would be handed over to one of the sons (daughters were rarely regarded as potential successors), this is less and less the case nowadays. Families have grown smaller, and sons and

daughters of business owners have more options open to them. The disposal of companies outside the family circle is therefore becoming more common, but at the same time it is also a more difficult process. If problems hinder the disposal process, this can result in businesses being lost altogether – even ones which are economically strong. The result is unnecessary destruction of economic value, with knowledge, contacts and skills being lost irretrievably. A sound economic policy should thus aim to remove as many of the problems and barriers as possible which can impede the transfer process.

Besides the disposal of companies due to the entrepreneur reaching pensionable age, there is a second reason why business transfers are set to become even more important. This is that companies are increasingly being set up with the explicit purpose of being disposed of in the medium term – long before the entrepreneur's retirement. Starters no longer necessarily see setting up a company as a long-term family affair, but rather as an economically and personally worthwhile activity in the medium term. This change of attitude on the part of entrepreneurs has also contributed to the significance of the company disposal issue.

On the policy side, considerable attention is paid to new and growing companies by means of support measures. Hitherto, however, less attention has been paid to disposals. Yet taking over an existing company can have a number of advantages over starting up a completely new one. Production equipment, extensive customer base, good reputation and so on are already in place. Because of this, a company which is sold has more chance of succeeding than a new company. The European Commission estimates that 96% of transferred companies still exist five years after the takeover, whereas just 75% of newly established companies survive five years. Instruments aimed at stimulating the creation of new companies and the rapid growth of existing ones are not necessarily also suitable for ensuring that businesses change hands more smoothly and safeguarding those companies' economic value. Economic policy should thus also take due account of the issue of business transfers.

The purpose of this book is therefore to provide an understanding of the issue of the closure and transfer of companies in Flanders, based on recent scientific research. The focus is mainly on the closure and transfer of small and medium-sized companies, rather than on issues to do with large companies. However, this does not mean that the findings are entirely without relevance to larger companies.

As well as looking at policy implications, the book also considers the impact of the findings for entrepreneurs and intermediaries. However, it should not be read as a 'guide to successful takeovers'. Entrepreneurs will not find any cut-and-dried solutions in it: for practical guidance, they are referred to the literature which specifically aims to advise entrepreneurs who are seeking to buy or sell a company. What we do hope is that this book will offer new insights or dispel prejudices, thereby ensuring that more entrepreneurs go in search of a buyer or a takeover target at the right moment and with a realistic outlook, and that intermediaries are able to offer more specific and appropriate advice.

The book is divided into four main sections, each of which examines a different stage in the transfer issue. In the first section, the importance of the closure of companies in Flanders and Belgium is demonstrated and placed in an international perspective. A typology of business transfers is developed, which will serve as a framework within which the subsequent contributions can be placed. In the second section, the process of closure and disposal is analysed. We especially focus on problems in Flanders, including the financing of takeovers. This section also includes a description of the issues to do with closure and transfer facing specific groups of companies: micro-companies, hi-tech start-ups and companies in difficulties. Finally, the choice between a takeover and a buyout, in which the company is taken over by its own personnel, is analysed. In the third section, we look at what happens to the company after its disposal. We answer questions such as: How do companies which have been taken over do in comparison with newly started companies? What happens to the company's performance after a buyout or takeover? How is the acquired company integrated into its new context? In the final section of the book, Flemish and Belgian policy measures for ensuring smooth business transfers are compared with policy measures in other (mainly European) countries. On the basis of the insights gained from all these enquiries, we close the book with policy recommendations for the Flemish and Belgian governments. The recommendations mainly relate to the transfer of small or medium-sized companies.

This document seeks to summarise the main conclusions of the book. On the basis of it, a number of recommendations are formulated, both for the government and for the entrepreneurs and intermediaries.

2. Conclusions

Throughout the various enquiries in this book, three questions are asked: (1) Which companies are transferred?, (2) How does the transfer process go if a transfer does take place? and (3) What happens after the transfer?

2.1 Which companies are closed down or transferred?

Not all companies are transferable. Sometimes, no buyer can be found, and the business is closed. Sometimes, companies are forced to stop trading following a bankruptcy. Understanding which companies tend to be liquidated, go bankrupt or be transferred is important both for the government and for entrepreneurs and shareholders. A transfer will yield greater value for the entrepreneurs or shareholders, as they receive a transfer price for the business. Moreover, the business continues to exist, in part at least, which is positive for the Belgian economy. Below we summarise the insights derived from the enquiries into which companies tend to be transferred, and which tend to be liquidated or go bankrupt.

It is often assumed that an independent company is closed down or disposed of mainly when the business owner retires, or when some unexpected negative occurrence takes place, such as the director's death or divorce. Nothing could be further from the truth: just one-third of small companies are closed down because of the entrepreneur's age. Another quarter of entrepreneurs report that their company is closed down because some unexpected occurrence has taken place. Only in a minority of cases is the closure completely involuntary, when the company is declared bankrupt.

When an entrepreneur considers transferring a business, he should first of all bear in mind that not all companies are transferable. Companies with poor economic survival prospects are not attractive as takeover candidates, and will thus tend to be closed down rather than transferred. It is worth noting that only a minority of those companies that are closed down after economic problems are forced to do so through bankruptcy. Those companies which are declared bankrupt are mainly those where the economic problems are combined with a weak financial position. We discovered that attempts are made to avoid this negative outcome for as long as possible. Yet the possibility of liquidating the company in an orderly fashion is greater when a prompt decision is made to close down the business after economic problems have arisen. At this point, the financial situation is usually stronger, evidenced by a better liquidity and solvency position. Even when there are economic difficulties, the entrepreneur obviously still has the choice to take the right decision (i.e. the most remunerative one) in time. The results of the research also show that economic difficulties are not always an obstacle to restructuring: 14% of companies with difficulties are taken over, demerged or merged. Even after a liquidation or bankruptcy, part of the company's value may continue to survive: not all bankruptcies mean complete loss of economic value!

If options still remain open when the situation is unpromising, this is even more the case with more economically valuable initiatives. In some cases, plans have been laid right from the start to close down – or effect an exit from – the company. Obviously, this is the case with temporary associations, which by definition are discontinued after a specific period. An exit scenario is also often found with ambitious hi-tech start-ups, which have high financing requirements in order to develop their technology. Internal funds are only available in modest quantity, and external financiers such as venture capitalists or the capital market (stock exchange) are still insufficiently developed in Flanders for young, innovative companies with very high capital requirements. Partnerships with large companies can sometimes provide extra financial breathing space for a while, but often restrict the young company's strategy. If these forms of financing do not offer a solution, there are two options. Either the company goes bankrupt (especially if the development of the technology or of the market has not gone as smoothly as originally expected), or it is taken over. The two scenarios occur with roughly the same frequency for young Flemish hi-tech companies.

In smaller companies (such as sole traderships), the entrepreneur does not usually start out with an exit scenario in mind. Even so, the entrepreneur should prepare to close the company down in good time, as this

is one of the main factors in a successful transfer. During the preparatory phase, the entrepreneur can optimise the economic success of the business or transfer important knowledge, thereby greatly increasing the chance of a successful transfer. It therefore seems as though ‘keeping the end in mind right from the start’ is also a sign of good entrepreneurship with small companies, in accordance with the saying ‘plan today, benefit tomorrow’.

Perhaps the most important factor which determines whether or not a company is transferred is the entrepreneur’s intentions regarding a transfer. If he himself wishes to dispose of the company, if the company’s disposal is judged to be practically feasible and if those around the entrepreneur take the same view, there will be a very strong intention to carry out such a disposal in practice, making the likelihood high that it will actually occur. Where company disposals are concerned, for many entrepreneurs the *ability* to transfer is about the *willingness* to do so.

However, we would like to nuance this positive account. Factors remain which can prevent a company from being successfully transferred, despite good intentions and thorough preparation. As we have said, not all companies are transferable. For example, the larger a company is, the higher the chance that it will be taken over. Small, unprofitable companies in sectors which are less economically attractive (such as the hotel and catering industry or personal services) are very difficult to transfer. Such businesses are therefore usually closed down rather than transferred. In addition to the question of their economic prospects, companies which grow faster than others in their sector are often taken over. The competitive position in the sector can thus strengthen or weaken the chances of a transfer. Sectoral and other macro-economic barriers can outweigh good intentions.

Finally, we would like to argue against a popular idea prevalent among smaller companies, namely that selling up is preferable to closing down. We came to the conclusion that the degree of satisfaction with getting out of business derives not so much from the choice that was made (whether or not to dispose of the business), but from whether that choice reflected the original intentions and was perceived as voluntary. For example, someone who intends to close down a company because he has reached pensionable age will be as happy with this outcome as someone who wanted to sell his company and succeeded in doing so.

2.2 What happens in a successful transfer?

In this section, we take a closer look at the decisive factors in successful transfers. Whereas in the previous section we emphasised the considerations that drive entrepreneurs in the direction of a transfer rather than other closure options, here we assume that the entrepreneur has already decided to transfer the business. The central question is thus how the entrepreneur can ensure a successful transfer.

Manuals on the successful sale of a company and intermediaries both stress one key determinant for a successful transfer: thorough planning and preparation. However, we wish to qualify this point. We largely agree with this position. Firstly, though, it is easier to transfer an economically profitable company. If the company is insufficiently profitable, it first needs to be restructured in order to make it profitable. It may take several years before the benefits of a restructuring are reaped. This is why it is important to think about the possibility of a transfer sufficiently early and to initiate any restructuring that is required.

Other internal factors were also identified which impede a transfer, such as:

- incomplete or inaccurate book-keeping;
- a complex legal and ownership structure, for instance with business and private assets inextricably entwined with one another;
- tax or employment law disputes;
- not holding the necessary licences.

An entrepreneur should tackle these obstacles before the actual transfer process is started. Again, dispelling these obstacles and ensuring a transparent business (i.e. one which an outsider can understand without too much difficulty) can easily take several years. Thus transferring a company successfully requires an effort

on the part of the entrepreneur, which is why we agree with the argument that it is best to start preparing for a transfer in good time.

On the other hand, it turns out that transfers, certainly those involving smaller businesses, occur much faster than the three- to four-year planning period often suggested in the popular literature on the subject. If the company is economically attractive, keeps its books properly, is in compliance with all legal requirements such as those relating to licences, has a clear legal structure and is not over-dependent on one specific person (the business owner), a transfer can take place very rapidly.

Before a transfer is carried out, a number of important decisions have to be taken. Firstly, it should be decided whether the company will be transferred to a family member, to the personnel (via a management buyout) or to a third party – either one or more private individuals or another company. The seller should bear in mind that a management buyout is only possible if the company generates a sufficient and stable cash flow and if it is profitable. Cash flow is needed to help finance the company's debts, which may be considerable.

A second important consideration is the transfer price. Here, the seller's expectations need to be realistic. It should be appreciated that investments can almost always be expected after the transfer. A comparison with selling a house is helpful: the buyer will often make various alterations, even in a house which is perfectly habitable. But in some cases, the seller will also have invested less than is economically desirable in the years leading up to the transfer. This may be a consequence of an attempt to increase the short-term profitability, but may also result from a reduced appetite for innovation on the part of an older entrepreneur. Thus the purchaser needs to be in a position to finance not just the purchase price but also the extra investments. This also turns out to be the case with many transfers within the family. The greater the investments needed after the transfer, the lower the takeover price will be.

This brings us to the purchaser's viewpoint. The decision to take over a business rather than set one up – or indeed to steer clear of entrepreneurship altogether – is not a simple one. Firstly, it turns out that taking over a business does not automatically lead to greater success than when a business is started up from scratch. Moreover, it seems as though the preparation (in knowledge and expertise) of the successor is the main predictor of success – according to the previous owner at any rate. Preparation is needed to transfer the intangible elements of knowledge and expertise. This is so important that other 'softer' elements, such as conflict with or confidence in the ex-owner, are almost completely overshadowed as predictors of future success.

After the purchaser has made a carefully considered decision to take over a company, the financing needs to be sought. If the purchaser is a company, this is usually somewhat easier, as it will generally have more money than private individuals. The most common source of financing remains the bank, in addition, of course, to the purchaser's own capital. Government measures to facilitate the financing of the transfer, such as subordinated loans issued by the federal Participation Fund or regional government guarantees of bank loans, are used judiciously. This kind of government support is usually obtained for risky acquisitions or ones in high-risk sectors. Alternative sources of financing, such as formal venture capital or financing by business angels, are less relevant. Only a small number of highly ambitious acquisitions can be performed by means of these financiers. The recently introduced win-win loans may be of interest in small transactions, but it is still too early to evaluate their effect.

In view of the specialised nature of the transfer process and the fact that in many cases it will be a one-off occurrence for the seller, most entrepreneurs – both sellers and purchasers – use the services of professional advisers. These may be accountants or bankers, who will mainly look at the accounting, financial and fiscal aspects, or takeover consultants who provide guidance throughout the entire process, including the search for a potential transfer candidate or target. Consultants can be engaged to help solve specific problems. It is interesting to note that the Economic Advice Fund (BEA) may pay some of the consultancy fees of both seller and acquirer if the latter is a self-employed person or SME. However, it is advisable for both the acquirer and the seller to treat the advice received cautiously: former owners of recently transferred companies report that neither their satisfaction with how the transfer has gone nor the expected performance of the successor is any greater when external advice has been taken.

2.3 After the transfer

In this third section, we assume that the choice in favour of and the actual decision about a transfer have already been made. What we look at here is how the company does after the transfer and what contributes to its successful continuation or integration. Success after a transfer depends on various factors which will be further analysed according to the type of transfer.

In the first instance, we compare how companies perform after a transfer with the performance of start-ups. Some people do want to own and build a company, but do not wish to start from scratch. They therefore opt to take over an existing company, rather than start one up. European studies suggest that acquired companies are generally more successful than newly started ones, and are less risky. However, this turns out not to be the case in Flanders. Although there are some acquired companies which perform very strongly, as a group newly started companies perform better in the short term than acquired companies. In terms of both economic performance and degree of innovation and embeddedness in networks, the newly started companies outperform the acquisitions. If the acquirer is excessively encumbered by the company's traditions and past, this can have an inhibitory effect and block innovation, which does not benefit medium-term performance.

Not all companies are transferred to a private individual so that they can be compared with start-ups. Many are taken over by another company. In such cases, of course, it is not possible to examine the economic performance of the acquired company, as it does not generally continue to exist as an autonomous entity, but is integrated into the parent company. However, it turns out that performance of the acquiring company worsens during the period immediately after a takeover. It takes several years for the acquirer's relative performance to return to its original level. This suggests that the successful integration of a company into a larger unit takes a number of years. However, a company can learn this post-takeover integration process: companies which often acquire other companies manage to improve their performance more rapidly. However, the degree of integration required depends on the acquirer's objective. Takeovers do not always have to involve the complete integration of the acquired company. If the latter has unique competencies, such as the initiation and performance of innovative research in the case of hi-tech companies, a fairly autonomous business can be retained.

The situation is drastically different with takeovers of larger companies by the personnel in management buyouts. Companies perform far better than equivalent companies after a buyout. This is not achieved at the expense of either jobs, as the workforce often increases substantially after the buyout, or investments. This applies both to transactions which are financed with private equity and those which take place without private equity. This finding thus contradicts the picture often presented in the popular press, namely that private equity-financiers are out for quick profits, for instance by cutting jobs severely or by putting off necessary investments.

The research makes it clear that the company's fate after the transfer is complex. Part of this complexity derives from the considerable diversity in types of transfer. Each purchaser should therefore be aware of the uniqueness of the individual situation.

3. Policy recommendations

An effective economic policy ensures that economically valuable companies can be taken over without excessive obstacles. A first positive finding is that a good many European policy recommendations for facilitating transfers are already being implemented in Flanders and in Belgium. Belgium has already implemented 11 of the 13 recommendations, or is actively engaged in doing so. This is the second highest score for any European country, after Austria. In the case of certain measures, Belgium is even identified as an example of best practice in Europe, such as the federal subordinated loans granted by the Participation Fund. As ever, though, there is still room for improvement. Further problems have been identified which need to be dealt with. In what follows, we look at legal, fiscal, financial and administrative measures,

together with measures to raise awareness among and support for entrepreneurs. Our discussion relates to the Flemish/Belgian context.

We start with a general, statistical measure.

3.1 Measurement is knowledge

An economic policy should be based on concrete facts and data. The Crossroads Bank for Enterprises has a wealth of information about Belgian sole traderships and companies which have been closed down. These statistics can be analysed by region, sector, size and so on. Regular monitoring of the business closure percentage, as well as the percentage of start-ups, provides a good picture of economic dynamism. However, there is a wasted opportunity here, in that a record is kept of which economic (i.e. VAT-liable) activities are closed down, but not of what happens afterwards. When a VAT number is deleted, one could ask whether the activity

- is being voluntarily wound up (liquidation);
- is being involuntarily wound up (bankruptcy);
- is being completely or partly transferred
 - to a family member;
 - to the personnel;
 - to another private individual or individuals;
 - to another company.

The systematic recording of the nature of the closure at the time of closing down will yield statistics which can ultimately be used to support policy measures. Accurate figures can be used to achieve two main objectives: (1) the early identification of problems and (2) the evaluation of new measures. After some time, these two objectives will start to interact with one another, making it possible to monitor the transfer issue effectively.

In addition, gathering objective data can also help achieve a third objective: the definition of specific target groups. Not every closure or transfer is subject to the same problems. When a new measure is being created, four questions should be asked:

- Who for: sole tradership, family company, listed company, company in difficulties?
- What for: succession, buyout, merger, takeover, liquidation, bankruptcy?
- Why: retirement, lack of financing...?
- How: transfer arrangements?

Looking each time at which of these four questions gives rise to the biggest problems will ensure that measures can be defined in a much more focused, and hence more effective, manner.

Ideally, other information will be requested at the point when a number is deleted from the VAT register, such as the identity of the purchaser or the takeover price (in order to differentiate between successful and less successful transfers). However, we realise that, for the sake of administrative simplification, we cannot impose too many new formalities on entrepreneurs.

More specifically, we therefore recommend that a working group should immediately be set up to put this recommendation into practice. This should definitely include one or more representatives of the KBO. The implementation of this measure will make Flanders or Belgium a front-runner in responding to the OECD's call for such information to be collected.

3.2 Raise awareness among entrepreneurs and intermediaries

In the book we demonstrate that entrepreneurs who intend to transfer their company have a higher chance of actually doing so. We also demonstrate that thorough preparation, in the form in particular of more a professional financial, fiscal and legal approach, facilitates a transfer. We therefore endorse the European recommendation to encourage both entrepreneurs and intermediaries to be more aware of the transfer issue.

However, this recommendation is not specifically related to the handing over of control over companies. In fact, a professional financial, fiscal and legal approach is simply a consequence of the professionalisation of business management. Such professionalisation will benefit not just the transfer process but the overall strategy and running of the business. The decision-making procedure will be able to run more efficiently and effectively if there is greater transparency. We therefore call on intermediaries to give more consideration to the long-term strategy of companies, including their transfer, when setting up complicated legal and fiscal structures. It is also important for entrepreneurs to have sufficient confidence that transferring a company is not a hopelessly obscure task, and that they actually can transfer their company if they approach the matter properly.

However, we depart from the European recommendations in arguing that *all* entrepreneurs should be made aware of the importance of professionalising their company in connection with a possible transfer, and not just those who will be retiring within the foreseeable future. Our reason for this is that a large group of transfers is performed by entrepreneurs who are nowhere near pensionable age.

Exactly how this process of awareness-raising should be tackled in Flanders is a matter for further discussion. One possibility is, as in a number of other European countries, to write to all entrepreneurs and draw their attention to the transfer issue. This might best be done by raising the awareness of enterprise agencies such as VLAO, or entrepreneurial and sectoral organisations, and conscripting them in the task of ongoing awareness-raising. It would also be possible to work via banks or external accountants to raise entrepreneurs' awareness of the possibility of transfer. Some financial institutions have already taken on this task, informing their clients in good time about the possible future benefits of a transfer. Unfortunately, such information is sometimes presented in a biased fashion because of the possible benefits that the financial institution itself may derive from a transfer. For this reason, objective information via a neutral party remains important. Finally, the reader is also referred to the previous chapter for concrete examples of awareness-raising in other European countries.

A second target group for awareness-raising campaigns is potential entrepreneurs. They too need to gain a better understanding of the possibilities of becoming an entrepreneur by acquiring an existing company. Here too, institutions such as VLAO and entrepreneurial and sectoral organisations have an important role to play.

In order to reach both sellers and purchasers, it is desirable to develop a single centralised website on which all useful information about business transfers can be amassed, together with links to specialist bodies. Legal, fiscal, financial and administrative information should all be included. However, it should perhaps be pointed out that the Internet may not be the best medium for reaching older entrepreneurs who are closing down their business. Older entrepreneurs in smaller companies are still often resistant to looking up information on the Internet. We therefore recommend that all information should also be distributed in simple brochures.

3.3 Reinforce the support given to entrepreneurs

However, awareness-raising in itself is not enough. Training and education are the logical next step after awareness-raising. We suggest that training and education programmes should primarily be targeted at the intermediaries rather than at purchasers or sellers (cf. *supra*), on the grounds that the latter groups only have sporadic involvement in transfers or takeovers, whereas the former group – the intermediaries – are often involved in transfers. They therefore represent a logical target group for training about company transfers. It is important for the training to give intermediaries a wider outlook, so that they are not excessively guided by their own limited experience of transfers.

To help the intermediaries, and hence indirectly the sellers, a personal business evaluation package could be devised, for example, following the Italian model. Encouragement could also be given to the involvement, awareness-raising and training of neutral third parties as 'mentors'. The advantage of neutral parties is that they have no hidden agendas or objectives of their own. Their advice will therefore be less biased because they are not seeking any advantage of their own. This is in line with the European recommendation that soft measures should be stimulated which can facilitate business transfers.

3.4 Optimise the legal framework

There is room for improvement in the legal framework, particularly in order to optimise the continuity of sole traderships. The minimum number of members needed to set up a company has already been reduced to one in many Member States. In Belgium, it is possible to set up a one-person bvba/sprl, but by analogy with other European Member States the possibility should be introduced as soon as possible of setting up a single-person limited company (nv/sa). This is in line with a European Commission recommendation. The reason is that incorporating a sole tradership as a legal entity such as a limited company offers a better guarantee of its continuity, for example if the entrepreneur dies.

Moreover, it should be possible for a partnership to continue after the death of one of the partners. Contrary to the recommendations of the European Commission, it is still not possible to ensure continuity against the will of the deceased partner by means of a carefully worded partnership contract. This needs to be rectified urgently, and is especially important for the survival of smaller companies.

3.5 Fiscal measures

Inheritance law has undergone thorough reform in recent years, facilitating the transfer of a company within a family. Further work could also be done on ensuring the tax-friendly transfer of a company without waiting for death or the gifting of the company. In Denmark, for example, it is possible to pay the taxable profit on the sale of a company into a pension fund. The pension fund contributor enjoys full deductibility of the paid amount in the year of payment under certain conditions, such as a minimum age of 55.

More could also be done to create a favourable tax framework for the transfer of a company to its personnel members. After all, such transfers are highly effective from the economic viewpoint, as was demonstrated earlier in the book. This means not just stimulating employee participation with tax measures, but extending this to the transfer of the entire company, for instance via a management buyout transaction. Again, in Denmark transfers to personnel members are facilitated by granting special tax-deductibility on interest payments relating to loans taken out in order to purchase shares in the company for which one works. Following on from this, we would call as a matter of urgency for changes to the current tax law on options assigned to personnel members. At present, employees have to pay tax when options are assigned, even though they may turn out to be worthless. Yet if that does turn out to be the case, the tax loss cannot be recovered. In most other countries, options for personnel are taxed at the time when they are exercised, since at that point it is clear what their actual value is, ensuring that they can be taxed more fairly.

The system of the 'silent transfer', implemented in the Netherlands, is also worth examining more closely. Under this system, it is possible to transfer a company (even outside the family circle) without any income tax implications, under certain conditions. For instance, the transferring entrepreneur and the successor must have worked together as entrepreneurs for at least three years before the transfer takes place (other than in exceptional cases such as death).

One interesting initiative comes from France, where the EDEN measure facilitates the takeover of a company by the employees in the event of a judicial composition or bankruptcy. Among other things, the EDEN scheme offers a one-year exemption from social security payments and the use of consultancy vouchers and government subsidies, which are allocated when a private person or bank provides additional financing for the transaction.

3.6 Financial measures

Numerous government financial measures already exist to facilitate the transfer transaction in Belgium and Flanders. Moreover, it turns out that these measures are used effectively, especially for the more difficult

and higher-risk cases. There are also a number of recent Flemish government initiatives aimed at facilitating the financing of start-up companies. It is pleasing to find that these do not just provide encouragement to genuine start-ups, but that transfers of existing businesses to those embarking on entrepreneurial activities are also eligible. One example here is the win-win loan. In view of this, we would not really argue in favour of introducing even more financial instruments targeted at the average SME. The existing instruments should be sufficient. Where improvement can be made, however, is in publicising the existing instruments and in the process of applying to use them (turnaround time, complexity). The government needs to work on effective communication of the existing instruments, both with potential purchasers and with intermediaries such as accountants, bankers and consultants, or with VLAO and entrepreneurial organisations.

One matter which we believe requires attention very urgently is the immediate amendment of Article 629 of the Companies Law. This article prevents the use of the target company's assets as security for the financing of the company's transfer. Under certain circumstances, and specifically when a clear majority of the target company's directors and shareholders agree to the transaction, this ought to be permitted. At present, complicated legal structures have to be set up in order to (partly) finance transfer transactions from the target company. The only people who gain from this are the legal and tax advisers, and the regulation merely creates additional burdens, without any particular extra value. The European Commission has also called for this article to be amended immediately. This would primarily make the transfer of a company to its employees, for instance in a management buyout transaction, considerably easier and would further stimulate such transactions.

In addition, we would ask for consideration to be given to the financing of larger-scale transactions. So far, government financial measures have focused on facilitating smaller takeover transactions. Large takeover or buyout transactions are ignored. The current ARKImedes regulation does not represent an answer to this. The ARKImedes money is divided up across a large number of rather small investment funds, which may make venture capital more accessible to smaller companies, but are completely irrelevant to the financing of larger transactions. Flemish and Belgian private equity financiers are able to finance or cofinance medium-sized transactions, but large transactions are the exclusive preserve of foreign private equity financiers; Flemish financiers are completely absent from this market. Measures to encourage the formation of larger private equity companies would remedy this situation.

Related to this is the point that hi-tech companies are often taken over due to lack of adequate financing for autonomous development. It is extremely difficult to grow autonomously to become a global player from a base in Flanders. As soon as a company needs really large sums of money, whether for its continued technological development or for market expansion, such funding remains hard to obtain via venture capitalists or the capital markets (the stock exchange). As a result, a takeover (or in the worst case a bankruptcy) is often the only possibility open to the company for it to continue. It is ironic that the Flemish government is investing a great deal of money in young companies in order to develop technologies, but precisely when the real returns stand to be made, the company has to be sold to – usually – a foreign company which is able to take full advantage of the technological development. A policy is therefore desirable that is not only positive for companies requiring a limited amount of venture capital but also supports those which need large sums.

3.7 Administrative measures

Environmental and other licences are transferred to the purchaser after the company transfer has been reported. However, the transfer is supposed to be reported before it actually occurs. For the sake of administrative simplification, we recommend that the transfer should be reported at a single time and to a single office, for example together with the reporting of the deletion of the number from the VAT register.

4. Recommendation for entrepreneurs and intermediaries

The purpose of this book was emphatically not to provide a practical guide to business disposal for entrepreneurs. However, the research produced some interesting insights which may inspire entrepreneurs

and intermediaries when they do face the prospect of a business transfer. Without any claim to completeness, we offer the most important of these insights here. We differentiate between recommendations for entrepreneurs who wish to close down or transfer their company and those who are looking to purchase a company.

4.1 For those considering closing down or disposing of their business

Make sure that the company is run in a professional and transparent manner. This is not just necessary for the sake of proper governance, but also increases the company's attractiveness to third parties. Even if you do not have a concrete plan to transfer the company, it increases the chances of an unexpected tempting purchase bid from a third party. A company which is managed in an unclear, unprofessional fashion is unlikely to have such a stroke of luck! The more attractive your company is to multiple parties, the higher the transfer price you can ultimately expect.

Some companies are started up in the explicit hope that they will be taken over within the foreseeable future, especially if they are operating in a field which requires a great deal of financing. Entrepreneurs behind hi-tech start-ups prepare for the future takeover by recruiting sufficiently highly-qualified personnel right from the start, by protecting their knowledge via intellectual property rights (patents) and by involving the right shareholders in their company. Even for entrepreneurs with less vaulting ambitions, this can serve as an example: professionalisation can be undertaken at a very early stage – right from the start.

If the transfer of the company is a possibility you can foresee in the medium term, have an audit carried out so that you can eliminate any obstacles in good time. We have in mind here points such as legal structures, licences, accurate and sufficiently extensive book-keeping and any disputes. Act early: you should certainly allow a period of three years for this. Take on board the fact that an orderly transfer also requires an investment on the part of the seller. The intention of transferring your company is the most important factor in the ultimate success of the transfer. You, the entrepreneur, are an extremely important part in the process.

Think about who you want to transfer the company to: family, personnel, another individual or another company. Do not regard presumed lack of funds on the part of the potential buyer as an a priori obstacle: more financing may be available than is assumed, provided the necessary creativity is displayed. The advantage of transferring to family or personnel is that the transfer process may be short and efficient, as the purchaser has a good understanding of the internal workings of the company. In such cases, the takeover candidate does not need to be thoroughly screened.

As the transfer of a company is a one-off occurrence for most entrepreneurs, it is advisable to work with a good adviser. When choosing an adviser, it is important to check whether he will be able to act freely and independently on behalf of the seller. It is also worth knowing that advice of this kind is partly subsidised via the Economic Advice Fund.

You may be compelled to wind up your company by economic difficulties which lead to financial difficulties, so do not put off a restructuring for too long if the company does run into economic difficulties. If the restructuring does not yield adequate results, be prompt in considering a merger or transfer, bearing in mind that it is far harder to transfer a company which is performing poorly than one which is doing well. If this proves impossible, again, be prompt in considering a voluntary liquidation. You should be aware that ceasing trading can also be a satisfying move for you if it is a deliberate choice. But the longer you wait before taking drastic steps, the more likely it is that bankruptcy or a judicial composition will offer the only way out – and it will be an imposed one.

Finally, a word to smaller entrepreneurs. A transfer usually looks unattainable to these smaller players, but nothing could in fact be further from the truth. Different best practices demonstrate that entrepreneurs should not give up hope, because the ability to dispose of a business is generally about the willingness to do so.

4.2 For those considering taking over a business

Before deciding to take over a business, the potential purchaser should ask, 'Am I ready for this? Have I gathered sufficient knowledge and skill through training and experience to take the step?' Preparation on the part of the successor turns out to be one of the main indicators of the future performance of the business, particularly with smaller companies. So think it over carefully, perhaps consulting the current owner too, to ascertain whether you have what it takes to make/keep the business successful.

If you do decide on an acquisition, enough financing will need to be found. Bear in mind that it is more than just the acquisition price that needs to be financed. In most transfers, extra investments in the target company need to be provided for. Be creative in the search for financing and do not confine yourself excessively to the most obvious sources of financing, i.e. bank loans. As well as these, there are a whole range of government measures, such as government guarantees, win-win loans or subordinated loans, which can facilitate the financing of a takeover. Be proactive and raise the possibility of using these alternatives with your banker. As well as debt financing, extra capital can be attracted via new shareholders such as business angels and venture capitalists.

However, taking over a company is just the first step in a long process; making a success of the transfer is no easy matter. If you as an individual take over a company rather than starting one up, success is possible, but it is certainly not guaranteed. The takeover means you start with an advantage, as there is already a product or service with a solid clientele, personnel and suppliers. If you have worked in the target company for a while before the transfer, you will have gained a good understanding of its potential. However, make sure that these insights do not immobilise you. Retain a critical outlook and think about the long-term strategy you want to implement. It is a good idea to draw up a complete business plan, just as you would do when starting up a new company. This should enable you to decide what you want to keep in the company, and what needs to be changed.

Nor is success guaranteed if another company takes over the target company. The difficult task of integration only starts after the takeover and lasts around three years on average. We cannot prescribe a uniform recipe for integration. The extent of integration – from total absorption to complete retention of autonomy – depends on the objective of the takeover. Ensuring consistency between the objective of the takeover and the post-takeover integration process is extremely important to the success of the takeover. It is pleasing to find that companies learn from their experience: companies which regularly perform takeovers reap the benefits of them faster than those for which a takeover is a one-off occurrence.

5. Acknowledgements

This book forms the logical closing part of the three-part series issued by the Policy Research Centre for Entrepreneurship, Enterprises and Innovation. The first part looked at company start-ups, while company growth was central to the second. This book is largely based on research conducted at the Policy Research Centre, led by four sponsoring professors: Luc Sels and Geert Van Hootegem from the Catholic University of Leuven, and Bart Clarysse and Sophie Manigart from the Vlerick Leuven Gent Management School and the University of Ghent. At the Policy Research Centre, Professors Hubert Ooghe and Hans Crijns (both affiliated to the Vlerick Leuven Gent Management School and the University of Ghent) also conducted research into this topic. The research was carried out by a large number of personnel: Tine Claeys, Miguel Meuleman and Sabine Vermeulen from the Vlerick Leuven Gent Management School, Sofie Balcaen, Annelies Bobelyn, Sofie De Prijcker, David Devigne, Lotte Goossens and Annelies Maesen from the University of Ghent and Johan Maes, Hann Thoné and Christine Vanhoutte from the Catholic University of Leuven. Alexandre Francart and Matthias Deschrijvere from the Knowledge Centre for SME Financing (KeFiK) contributed on the subject of financial problems during transfers, based on recent research conducted at KeFiK. This annual was compiled by Prof. Sophie Manigart and Hannes Leroy.

The book can be ordered from the library of the Vlerick Leuven Gent Management School (tel: 09/210 97 27 or via library@vlerick.be). The book is also available from Roularta and in bookshops.

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