

CAPPELLI RIOLO
CALDERARO CRISOSTOMO
DEL DIN & PARTNERS



INSIGHTS

FAMILY BUSINESSES
IN ITALY IN ITALY AND
GERMANY: BUSINESS
SUCCESSION FROM
AN INHERITANCE LAW
PERSPECTIVE



Studio Legale

Milan Rome London
crcdlex.com

BUSINESS SUCCESSION FROM AN INHERITANCE LAW PERSPECTIVE

The generational change represents one of the most complex and decisive phases for family businesses. In addition to economic and organisational issues, inheritance and company law regulations are particularly important in determining whether the company succession proceeds in an orderly, conflict-free and tax-optimised manner.

The transfer of a family business is therefore a real key moment in its success story: it is not just a matter of transferring shares and a business, but also about the transmission of a corporate culture, a way of working and a strategic vision.

Below is an overview of the key challenges that family businesses face when it comes to planning for generational change – challenges that are common both in Germany and in Italy.

Special challenges for family businesses

The transfer of a family business greatly increases the complexity of succession planning, as entrepreneurial spirit and family values often clash.

There are often several potential successors who have no interest in the company, or third parties (e.g. spouses) who insist on their – mostly financial – claims. As a result, entrepreneurial requirements, such as suitability for company management, often conflict with family notions of fairness, for example with regard to the equal treatment of heirs.

In order to minimise this potential for conflict, careful legal planning tailored to the individual case is necessary in the run-up to the generational change.

Decision-making criteria for succession planning

The choice of the right measures depends fundamentally on the needs of the entrepreneur and their legal feasibility:

- Who is suitable to continue the business?
- Should the company remain in the hands of the family or be sold?
- Is the entrepreneur's retirement provision secured without recourse to the company's assets?
- Is the company structure sustainable for the future or is there a need for adjustment?
- Am I acting in a tax-optimised manner when choosing the succession model?

Structured succession planning

One of the biggest challenges is to understand the generational change as a long-term, strategic process. Ideally, planning should therefore begin several years in advance in order to:

- introduce the next generation to **management tasks**,
- identify internal and external **conflicts of interest**, and
- make optimal use of **tax planning** opportunities.

The foundation for orderly corporate succession is laid by inheritance law: inheritance regulations (wills, inheritance contracts) ensure a legally secure generational change. In contrast, anticipated succession can offer tax advantages and an early integration of the successor.

In any case, however, precise coordination of inheritance and company law is necessary to avoid contradictory provisions:

- **Inheritance law** clarifies who will inherit and what share of the estate each of them will receive.
- **Company law** determines how and whether heirs can join the company and what management tasks they can take on or what compensation claims they may be entitled to.

Anticipated succession

In the context of company succession, shares can be transferred during the owner's lifetime by way of anticipated succession – either through sale or gift. This *anticipates* the succession that would occur in the event of the testator's death.

In the case of a partial transfer, this mechanism enables the successor to gain management experience, accompanied by the retiring entrepreneur. At the same time, the experienced family entrepreneur retains his influence on the company. In addition, the sale of shares to the successor provides retirement provision for the departing entrepreneur, who is no longer involved in the company and its profits.

In certain cases, a lifetime succession model can also offer tax advantages.

Succession upon death

However, inheritance law also allows for generational change upon death, in particular through:

- **Wills or inheritance contracts** (in Italy, in particular the provisions on the '*patto di famiglia*'), which allow for the targeted allocation of company shares to qualified persons;
- **Partition** orders, which serve to prevent fragmentation through fair distribution.

In this context, particular attention must be paid to compulsory portion claims: disinherited relatives can claim their compulsory portion, which can lead to liquidity bottlenecks in the company. A lifetime waiver of the compulsory portion reduces this risk – however, due to supplementary compulsory portion claims, it only takes effect after 10 years.

Conclusion

In summary, there are two models for succession planning under inheritance law, both with individual strengths and weaknesses:

Succession model	Advantages	Disadvantages
Upon death	Freedom of testamentary disposition, generational control	Compulsory portion claims, possible inability to act due to fragmentation of shares
Anticipated succession	Support for the successor, gradual transfer of knowledge and responsibility	Gift tax, complexity of advance valuation

Early preparation and planning ensure a harmonious transition from one generation to the next, both in terms of the business and within the family.

In the next blog on succession in family businesses, we will examine the options available under company law to ensure a smooth generational change.

This article is part of a multilingual blog series on German and Italian family businesses, created in collaboration with Valentina Dragoni and Martino Liva from Cappelli Riolo Calderaro Crisostomo Del Din & Partners. Learn more about the special features of Italian family businesses – in Italian or English (click [here](#)).

Valentina Dragoni
valentina.dragoni@crccdlex.com

Martino Liva
martino.liva@crccdlex.com

This document aims to provide general information on the topic discussed and should not be considered legal advice nor an exhaustive analysis of every aspect related to the subject matter.