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# INSIGHTS

FAMILY BUSINESSES  
IN ITALY AND  
GERMANY.  
SUCCESSION  
PLANNING UNDER  
COMPANY LAW



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# FAMILY BUSINESSES IN ITALY AND GERMANY: SUCCESSION PLANNING UNDER COMPANY LAW

In addition to sound inheritance planning, which we discussed in our previous blog post, the focus should also be on clear provisions in the articles of association of the respective family business – with the aim of ensuring a smooth generational change by coordinating inheritance and company law.

In particular, the following issues need to be regulated:

- **Succession clauses** establishing the rights or obligations of the heirs
- **Voting rights** and **management powers** of the successors, often depending on their entrepreneurial qualifications
- Potential **severance payment arrangements** for departing shareholders and heirs excluded from succession

In family businesses, it is advisable to consider these arrangements at an early stage so as not to block the company's activities in the event of inheritance. For example, the death of a managing partner can lead to a disruption of the internal equilibrium among the company's members.

There are several differences between partnerships and corporations with regard to succession planning under company law:

### **Partnerships and business continuity**

In the case of partnerships (in Germany: *GbR*, *OHG* and *KG*; in Italy: *S.s.*, *S.a.S.* and *S.n.c.*), the principle of *business continuity* applies: if a shareholder dies, the company continues with the remaining shareholders alone. Heirs do not automatically join the company but merely receive a severance payment from the company.

However, deviations from this principle can be agreed in the articles of association, provided they are compatible with mandatory inheritance law restrictions. So-called entry and succession clauses are common:

- **Entry clauses** do not result in the automatic entry of the heir into the company, but merely establish the right to do so.
- Under **simple succession clauses**, the heirs join the company as shareholders as a group, with the company shares being distributed according to the inheritance quota.

- A **qualified succession clause** can be used to designate a specific heir or group of heirs who receive all the company shares, while the remaining heirs are entitled to a severance payment under internal arrangements.

### **Inheritance in the case of corporations**

Shares in corporations (in Germany: *GmbH* and *AG*; in Italy: *S.p.A.* and *S.r.l.*) are considered assets and, as such, are in principle freely inheritable. Accordingly, in the event of inheritance, the heirs usually automatically become shareholders. Both types of shares are inherently indivisible, i.e. the membership rights associated with the shares can only be exercised jointly (if necessary through a representative) in the case of a plurality of heirs.

However, there is also scope for flexibility in the articles of association in this regard:

- **Assignment clauses** oblige the heirs to transfer the shares to the remaining shareholders in return for compensation.
- **Redemption clauses** give the remaining shareholders the right to redeem inheritance shares in return for compensation to exclude undesirable persons from the company.
- In addition, succession can also be linked to certain criteria, such as suitability or degree of kinship, by means of **qualified succession clauses**.

If the articles of association do not contain any separate provisions on the amount of compensation in such cases, the heirs are generally entitled to the full market value of the shares. Here, too, it is advisable to take the necessary foresight into account when planning in order to avoid subsequent liquidity risks for the company and litigation risks.

### **Holistic approaches**

To ensure a smooth generational transition within a family business, solutions are needed that equally serve the interests of both the company and the entrepreneur and nip potential conflicts in the bud.

In the context of family businesses in particular, it is often advisable to establish an internal family holding structure (*family holdings*) in order to flexibly structure and bundle governance and economic rights, capital participation and operational responsibility. However, the step-by-step models, which allow the successor to grow into full responsibility, or the creation of a "*family constitution*" to establish transparent rules for conflict avoidance, have also proven to be effective means.

In addition to the inheritance and corporate law instruments described above, tax issues – which will be discussed in a separate blog post – also play an important role in making succession economically viable: a far-sighted approach takes particular account of inheritance and gift tax, the valuation of company assets and possible benefits for business assets.

## Conclusion

A successful generational change in family businesses requires close integration of inheritance and company law – always against the backdrop of the relevant economic, family and tax aspects. Early planning, transparent communication and clear structures ensure the continuity of the company across generations and avoid conflicts.

In any case, family entrepreneurs should regularly review their articles of association, wills and the succession provisions contained therein and, if necessary, adapt them to changed legal or family circumstances.

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.

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For a comparative look on the family business in Germany, please refer to the Insight of Bettina Wirth-Duncan on the blog/web site of Flick Gocke Schaumburg (click <https://www.fgs.de/en/news-and-insights/blog/detail/family-businesses-succession-planning-under-company-law>)

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.