

## **How to provide for the operability of our company in case of unexpected tragic events**

**It is mainly small and medium size enterprises where the majority owner deals with the management of the company or a group of enterprises on its own, whereby he or she alone exercises full control over the company or group of companies.**

The expert of Kovács Réti Szegheő Attorneys at Law underlined: unfortunately it may occur that the majority owner unexpectedly dies, or suffers incapacitation for an unforeseeable amount of time due to a serious accident (just think of Michael Schumacher's ski accident).

As a result of the said events, the deceased leaves behind a practically dysfunctional, paralysed enterprise besides the grief and distress, which can often compromise the living of the bereaved, and jeopardises exactly what the injured or deceased had dedicated a lifetime to achieve – laid down the fundamental problem Dr Arvid Hauck.

### **The operation becomes impossible**

In this case there is no managing director who could call the members' meeting to choose a new managing director to take the necessary steps for the payment of employee wages, for the signature of everyday agreements, or to handle – at least on a temporary basis – the operation of the company.

The lack of an authorised person who could make decisions on questions pertaining to the business immediately paralyses the operation of the company.

It is an undoubted fact that in accordance with the Civil Code provisions, members' meetings may be called upon the initiative of any member. However, in case there is no managing director, none of the members will be able to call the meeting owing to the fact that the invitation letter may not be sent to the deceased majority owner, while it may not be addressed to his or her beneficiaries either, since the inheritance will be delivered to them at best only after several months following the death.

### **Appointment of a guardian must be requested**

Unfortunately in this case the only - and little known - solution for those interested in the operation of the company (its owners and prospective successors and beneficiaries) is to request the appointment of a guardian from the clerk or the notary public, depending which of the two is conducting the proceeding.

After the appointment, the invitation may be delivered to the guardian, whereby the members' meeting may be effectively held – explained the expert of Kovács Réti Szegheő Attorneys at Law.

Although the above procedure may seem hassle-free, it can prove to be rather lengthy and many times complicated too, which very often renders the operation of the company quite difficult. The fact of the demise must be certified, there will be waiting times before the business quota is registered in the probate inventory, disagreements may occur about the person of the guardian, and eventual disputes may arise between the interested parties, and a number of further conflicts may arise which may lead to the procrastination of proceedings.



An even worse scenario is where a sole member managing director becomes incapacitated for a longer period of time, since in this case there isn't any possibility that the quota would sooner or later pass on to the inheritors.

### **Preliminary measures may be taken in the articles of association to regulate the situation**

Fortunately, contrary to the previously governing Companies' Act, the Hungarian Civil Code allows for derogation from the general rule, by allowing members to lay down rules within the articles of association by which they can adequately regulate the calling of a members' meeting and the exercise, even if on a temporary basis, of the company's representation, should any event of the above mentioned kind occur.

Many different arrangements are possible if an individual wishes to exercise control over the company on its own, but also wishes to take precautionary measures for an eventual case of his or her incapacitation or demise, to prevent that the company's operations should come to a halt in consequence.

There is no silver bullet, owing to the fact that every company has its own necessities, which is why it is highly recommendable to seek professional advice of experienced legal advisors specialised in company law to resolve these issues, and to draw up a tailor-made set of regulatory measures suited to provide the best possible solution for the efficient operation of our company in case of such unforeseen events – advised Dr Arvid Hauck in conclusion.