

Is it possible to restrict the right of the heir to become a shareholder in a company?

In the Civil Code (hereinafter referred to as the 'Ptk. '), the provisions of Book Seven on the law of succession prescribe that 'upon a person's death, their estate shall pass as a whole to their heir', and 'upon the opening of the succession, the heir shall obtain, without acceptance or any other legal act, the estate, the part of the estate or a certain object of the estate granted to them.'

Under the provisions on the inheritance of shares, the heir, upon the death of the shareholder, obtains the share which the deceased shareholder had in the company, however, the heir does not automatically become a shareholder of the company, rather, as prescribed in s. 3:170 (1) of the Ptk., the heir, provided that they verify their status as an heir (e.g. via a decree on the final distribution of the estate), may request that the director of the company registers them in the register of shareholders.

The application of the heir for their registration in the register of shareholders becomes effective when its addressee, the director, receives the declaration of the heir (which declaration must be in the form of a public document or a private document with full force and effect) on agreeing to be bound by the provisions of the memorandum of association and the articles of association.

What are the options if the other shareholders of the company would not like the child or the spouse of the deceased shareholder to become a shareholder in the company, especially when the 'unwanted heir' would become a majority shareholder?

Under the provisions of the new Ptk., the shareholders of the company may no longer prevent the share from being transmitted to the heir, however, the director is to refuse to comply with the application of the heir to be registered in the register of shareholders if the memorandum of association and the articles of association of the company provide that the persons so authorised in the memorandum of association and the articles of association declare, within a period of 30 days from the date on which the heir's application to be registered becomes effective (failure to act within the said period results in the loss of the right), that they wish to purchase the share of the deceased shareholder and pay the heir the commercial value of the share.

The Ptk. provides that 'authorised persons' are entitled to such purchase, which means that the company itself may not purchase the share, and also that the memorandum of association and the articles of association may not only authorise the shareholders to effect such purchase, but also third parties who are not shareholders of the company.

'Purchase' means the payment of the commercial value of the share to the heir. Naturally, the heir and the authorised persons may agree on the value of the share, however, in the case of disagreement, the commercial value of the share must be determined and paid to the heir.

The Ptk. is not clear whether the 30-day deadline resulting in loss of rights is with regard to the declaration on the purchase or to the payment of the value of the share. Therefore, it is crucial that the deadlines for the payment are clearly regulated in the memorandum of association and the articles of association.

The legislation does not clearly define 'commercial value', the judicial practice applies several methods to determine it in the case of a disagreement: (i) primarily, an expert opinion is taken into



consideration or (ii) the value is determined based on comparative data, which means that the purchase prices stipulated in the sale and purchase agreements for the transfer of the other shares of the same company are taken into consideration.

In the event that the commercial value cannot be determined via the methods above, then the commercial value is to be determined based on the market value of the company.

It must be emphasised that the shareholders authorised in the memorandum of association and the articles of association may exercise this right to purchase the share only if this right is provided in advance in the memorandum of association and the articles of association, otherwise they must cooperate with the heir of the deceased shareholder.

In the long run, however, this obligation to cooperate may cause serious issues, since it may happen that the heir has a fundamentally different opinion about the future of the company with regard to strategic issues such as the management of the company, its improvement, or even its sale.

In order to avoid such a situation, it may be beneficial to the shareholders to plan in advance and prescribe, at the earliest opportunity, such provisions in the memorandum of association and the articles of association which, if necessary, make it possible to prevent the heir from becoming a shareholder of the company, and also regulate, in detail, the manner in which the issues shall be settled with the shareholder in the event of inheriting the share of the deceased shareholder, including, but not limited to, the method for the determination of the commercial value, the payment deadline, and the guarantees of payment.