

# ENTER-TRANSFER

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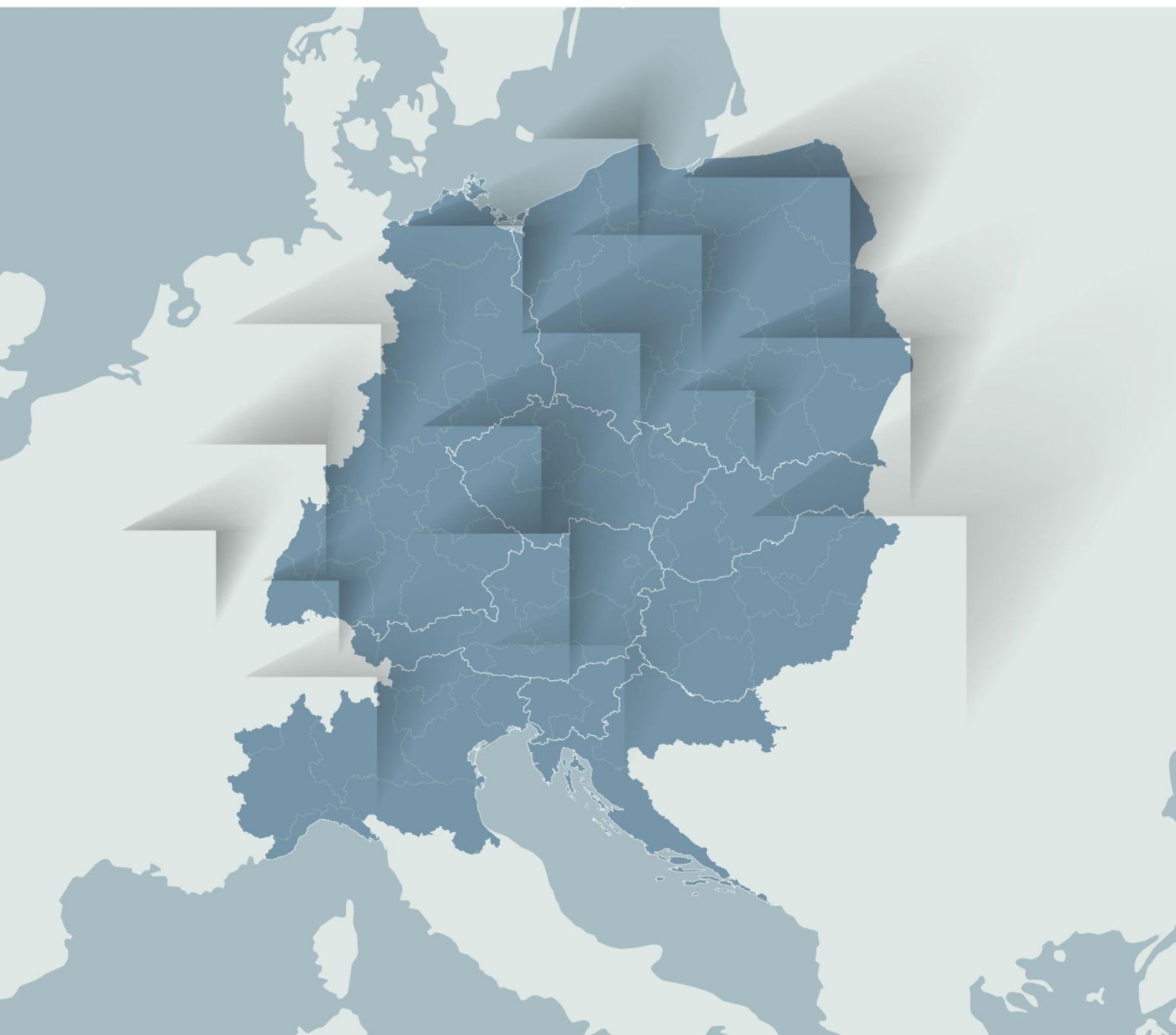
D.T1.1.1 Overview of the legislative  
framework within and outside of the CE area

Version 1

D.T1.1.2 Report on national/EU-wide  
business transfer supporting  
schemes/initiatives and existing knowledge

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09 | 2017



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# 1 Slovakia

## Introduction

Small and medium-sized businesses are an important part of every economy. It shares significant percentages in the gross domestic product of each country. It creates a significant part of job opportunities in the labor market. In a free market environment, it represents the most basic and the easiest way for people to find an adequate way of livelihood and the possibility of their own self-realization.

A favorable business environment is a prerequisite for the development of small and medium-sized businesses in each country. It is therefore the responsibility of individual governments to create favorable conditions for all entrepreneurs, not just for selected groups of businesses. Such an environment is the basis for prosperity and the development of small and medium-sized businesses in Slovakia.

At present, the business process is the driving force of the world economy, which is an indispensable part of every economy. The business process and all the activities associated with this process are the creators of economic values that, on the one hand, increase prosperity and well-being, on the other, help to create imbalances where the rich get richer and the poor get poorer.

## 1.1 Definitions and legislation

### 1.1.1 Enterprise

An enterprise is considered to be any entity engaged in an economic activity, regardless of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities and partnerships or associations which regularly carry out an economic activity.

#### Number of workers and financial limits determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs, MSP in Slovak) consists of enterprises employing less than 250 persons and whose annual turnover does not exceed 50 million EUR and/or the total annual balance sheet does not exceed EUR 43 million EUR.
2. Within the SME category, a small business is defined as an enterprise that employs fewer than 50 people and whose annual turnover and/or annual balance sheet total does not exceed 10 million EUR
3. Within the SME category, a micro-enterprise is defined as an enterprise that employs fewer than 10 people and whose annual turnover and/or annual balance sheet total does not exceed 2 million EUR.

## Entrepreneur

According to the Commercial Code an entrepreneur is:

- a person registered in the Commercial Register;
- a person who does business under the trade license;
- a person who does business under a non-trade license under special regulations,
- a person who performs agricultural production and is registered as a self-employed farmer.

## Ethics of the entrepreneur

It expresses values of honesty and shared well-being. It emphasizes behavior that is acceptable and respectable. It is related to these rules:

- to respect the work of others,
- to do no harm, do not deceive,
- to respect the laws,
- to keep promises and agreements,
- to help in need.

## Obligations of the entrepreneur

Adoption of legal standards

- Legislation of Trades Licensing, Tax Act, Social Insurance, Health Insurance, Accounting, Labor Inspection, Illegal Work and Illegal Employment, Commercial Code
- the Act on Services in the Internal Market, about Leases
- the Consumer Protection Act
- fire protection
- obligations in the field of public health protection
- environmental requirements
- obligations related to the protection of personal data

### 1.1.2 Self-employed business

Self-employment is one of the four ways to be an entrepreneur in Slovakia. The specific conditions and the execution of the entrepreneurial activity are regulated by Act no. 455/1991 in codex on Trade Licensing (Trades Licensing Act), as amended. The Act regulates the conditions of the self-employment business and its control mechanisms.

### Self-employed person

- is a natural person, doing business as a sole trader, based on a trade license.

### Self-employment

- continuous activity,
- operated independently,
- under your name,
- at your own responsibility,
- in order to gain profit and under the conditions laid down by law (Nr. 455/1991).

### Self-employment can be operated by:

- natural person (sole trader)
- legal person, if it meets conditions set by the Trades Licensing Act (entrepreneur).

## 1.1.3 Terms of operating self-employment business

### General conditions for the operation of the self-employment business

To obtain a self-employment business license, you must meet the following conditions:

- reaching the age of 18 years
- legal capacity
- criminal integrity

unless the Law determines otherwise.

### Specific conditions for the operation of the self-employed business

In addition to the general conditions for the operation of the business, specific conditions for the operation are also set for some types of businesses. These conditions include:

- professional or other competence

**Special professional competence** - a summary of theoretical knowledge, practical skills and mastery of the technical or technological procedures that must be met by anyone performing the activities listed in Annex no. 4 of Act 455/1991 Coll.

### Types of self-employment businesses

- **Craft** - the condition of operation is the professional qualification obtained by finishing studies in the field (Annex No. 1 of the Act).
- **Bound** - the condition of operation is the professional qualification acquired otherwise (Annex No. 2 of the Act).

- **Free** - there is no requirement to prove professional competence (Ministry of the Interior has a list of recommended, most frequently used labels, on the website).

#### **Self-employed businesses in terms of subject**

- **Commercial**
- **Manufacturing**
- **Providing services**

#### **Commercial self-employment businesses are primarily:**

- a) Purchase of goods for sale to final consumer (retail) or for sale to other trades (wholesale) (§ 33 section a).

#### **Manufacturing self-employment businesses**

##### **The entrepreneur is entitled to:**

- a) perform a set of follow-up activities related to the production of the final product,
- b) manufacture machines, tools and appliances for the production of the final product,
- c) sell and repair products if the nature of the business is preserved.

#### **Certificate of Trades Licensing**

Issued to a natural person includes:

- a) personal data of the entrepreneur,
- b) business name,
- c) identification number (ID number assigned by Trade Licensing Office),
- d) one or more subjects of business,
- e) place of business,
- f) time period for which the license is issued, if the business has been set for a specific time period,
- g) date of the beginning of business activities, if the entrepreneur stated a later date in the business announcement
- h) the date of issue of the Trade License Certificate.

### **1.1.4 Commercial code**

Commercial Code No. 513/1991 Coll. as amended (hereinafter referred to as the "ObZ"), is effective as from 1 January 1992 and has replaced the current Economic Code and the International Trade Code. Commercial Code is the basic law governing the position of

entrepreneurs, including foreign business entities, business obligations, as well as some other relations related to business. The Commercial Code is divided into 4 parts (General regulations, Trading companies and Cooperatives, Business Commitments, and Common, Temporary and Final provisions), which are then divided into heads, parts and divisions.

#### 1.1.4.1 Trading companies and cooperatives

Trading company (referred to as the "Company") is a legal entity established for the purpose of business.

##### **Legal entities are:**

- a) associations of natural or legal persons,
- b) purposeful associations of assets,
- c) bodies of territorial self-government,
- d) other entities, which are defined by law.

##### **Trading companies are divided into two groups:**

###### **Partnerships**

In these companies, the partners guarantee the company's liabilities with all their assets, including non-business (private), and personally take part in the business. This includes a public company in particular.

###### **Capital companies**

In these societies, the partners guarantee the company's liabilities only with commercial property and do not have to take part in the business. Typical capital companies are: Limited Liability Company and Joint Stock Company.

#### 1.1.4.2 Founding the company

Unless otherwise stated by other provisions of this Act, the company is established by a social contract signed by all founders. The authenticity of the founder's signatures must be officially verified.

The joint stock company is a capital company.

A joint stock company is a company where the capital is divided into shares of a certain nominal value.

The company is responsible for breaching its obligations with all of its assets. The shareholder is not liable for the company's liabilities.

The joint stock company may be a private joint stock company or a public joint stock company. A public joint stock company is a company whose shares or part of shares have been admitted to



trading on a regulated market (for example, a stock exchange) located or operating within the European Economic Area.

The share represents the rights of a shareholder to participate, under the law and the articles of association of the joint stock company, on its management, profits and the liquidation balance after the liquidation of the company, which are associated with the share as a security, unless the law stipulates otherwise.

In the Slovak Republic, a share may be issued in the form of a paper security ("certificated share"), which may be issued on the name or bearer, or in the form of a sealed security ("booked share"), which must be issued on the name, unless the law stipulates otherwise.

A joint stock company may be founded by one founder if the founder is a legal person, or two or more founders. If a joint stock company is established by two or more founders, they will conclude a founding agreement. If the company is established by one founder, the founding document replaces the founding agreement. The founding document or agreement must be drafted in the form of a notarial deed. A draft statute is a part of the founding document or agreement. The value of the equity capital of a joint stock company must be at least 25,000 Euros.

A **cooperative** is a community of undefined number of people established for business purposes or to secure the economic, social or other needs of its members.

The main feature of the cooperative is openness - allowing free entry and exit of members.

The business name of a cooperative has to include a "cooperative" label in its name.

The cooperative must have at least five members; this does not apply if at least two legal entities are its members. Accession of new members or termination of membership of current members does not affect the duration of cooperative existence, as long as it fulfills the aforementioned condition.

The cooperative is a legal entity. The company is responsible for breaching its obligations with all of its assets, the members are not liable for the obligations of the cooperative.

**The bodies of the cooperative are:**

- Member assembly,
- Board of Directors,
- the Audit Commission,
- other cooperative bodies under the statutes.

In a cooperative with fewer than 50 members, the statutes may stipulate that the activities of Board of Directors and the Audit Committee are covered by Member assembly.

**Limited Partnership** - it is a mixed type of business because it has the characteristics of a personal and capital company that derive from the different legal status of two groups of partners: the Commandist and the Complementaries.

A limited partnership is a company in which one or more partners are liable for the company's liabilities up to the amount of its unpaid deposit entered in the commercial register (Comandist) and one or more shareholders with all of its assets(complementary).

If the Commercial Code does not say otherwise in specific cases, they apply to the limited partnership adequate provision of public owned corporation (personal company) and for the legal status of comandists provision of a limited liability company (capital company).

The limited partnership is formed by the conclusion of the social contract by at least two persons (the comandist and the complementary).

Comandist is obliged to place a deposit in the amount determined by the social contract, but at least 250 Euros. He is obliged to pay the deposit within the term stipulated by the social contract, without undue delay after the establishment of the company, or after the establishment of his participation in the company.

This company is also characterized by the fact that the statutory bodies of the company are the complementaries. Unless otherwise provided by the social contract, each complementary person is entitled to act independently.

The comandist is liable for the obligations of the contracts concluded on behalf of the company without authorization, to the same extent as the Complementary.

**Limited Liability Company** is a capital company. The company may be established by one person, but the company may have a maximum of 50 members.

The company is responsible for breaching its obligations with all of its assets. Partners are liable for the obligations of the company by amount of their unpaid deposit registered in the Commercial Register.

The business name of the company must be labeled "Limited Liability Company", the abbreviation being "LLC" or "Ltd.". The value of the company's capital must be at least 5,000 EUR, with the value of the partner's contribution at least 750 EUR. The company is based on a founding agreement, but in case of just one person it is established by a founding document.

The bodies of the company are: General Assembly, Supervisory Board and or more directors.

**Public owned corporation** is a type of a personal trading company, where at least two persons are operating under a common business name and are liable for the liabilities of the company jointly and with all of their assets. A public company is responsible for its obligations with all of its assets. Creditor may claim fulfillment of obligations by any associate.

Table 1: Important laws on entrepreneurship in Slovakia,

Nuber of Law	Name of the Law
455/1991 Zb.	Trade Licensing Act
513/1991 Zb.	Business Code
580/2004 Z. z.	Health Insurance Act
461/2003 Z. z.	Social Insurance Act
311/2001 Z. z.	Labour Code
124/2006 Z. z.	Act on Safety and Health at Work
343/2015 Z. z.	Public Procurement Act
563/2009 Z. z.	Tax Administration Act (Tax Code)
595/2003 Z. z.	Income Tax Law
222/2004 Z. z.	Value Added Tax Act
582/2004 Z. z.	Local Tax Act and Local Local Waste Fee for Municipal Waste and Small Construction Waste
50/1976 Zb.	Law on Town Planning and Building Regulations (Building Law)
40/1964 Zb.	Civil Code
431/2002 Z. z.	Accounting Law
136/2001 Z. z.	Law on the Protection of Competition
7/2005 Z. z.	Bankruptcy and Restructuring Act
530/2003 Z. z.	Business Register Act
272/2015 Z. z.	Act on Registry of Legal Entities, Entrepreneurs and Public Authorities
200/2011 Z. z.	Business Journal Act
136/2010 Z. z.	Act on Services in the Internal Market
358/2015 Z. z.	Law on the Adaptation of Certain Relations in the Field of State Aid and Minimal Assistance and on Amendments to Certain Acts (the State Aid Act)
539/2008 Z. z.	Law on the Promotion of Regional Development
561/2007 Z. z.	Investment Assistance Act
336/2015 Z. z.	Law on the support of the least developed districts
185/2009 Z. z.	The R & D Act
91/2010 Z. z.	Tourism Promotion Act
323/1992 Zb.	Act on Notaries and Notarial Activities (Notary Code)
523/2004 Z. z.	The Financial Administration Act
199/2004 Z. z.	Customs law
361/2014 Z. z.	Motor Vehicle Tax Act
5/2004 Z. z.	Employment Services Act
82/2005 Z. z.	Act on Illegal Work and Illegal Employment
289/2008 Z. z.	Law on the use of electronic cash registers
193/2001 Z. z.	Law on Support for the Establishment of Industrial Parks
386/2002 Z. z.	State Debt Law and State Guarantees
150/2013 Z. z.	Act on the State Fund for the Development of Housing
555/2005 Z. z.	Energy Performance of Buildings Act
172/2005 Z. z.	Law on the organization of state support for research and development
223/2001 Z. z.	Waste Act
587/2004 Z. z.	The Law on Environmental Fund and on amendments to certain laws
543/2002 Z. z.	Law on Nature and Landscape Protection
152/1995 Z. z.	Food law
514/2009 Z. z.	Traffic Law on Railways
524/2010 Z. z.	Act on granting subsidies within the competence of Office of the Government of the SR
71/2013 Z. z.	Act on granting subsidies within the competence of the Ministry of Economy of the SR
544/2010 Z. z.	Act on granting subsidies within the competence of the Ministry of Labor, Social Affairs and the Family of the SR
435/2010 Z. z.	Act on granting subsidies within the competence of the Ministry of Defense of the SR
525/2010 Z. z.	Act on granting subsidies within competence of the Ministry of Health of the SR
543/2007 Z. z.	Act on the competence of state administration bodies in the provision of support in agriculture and rural development
434/2010 Z. z.	Act on Granting of Grants within the Ministry of Culture of the SR
284/2014 Z. z.	Act on the Arts Support Fund
516/2008 Z. z.	Audiovisual Fund Act
290/2016 Z. z.	Small and Medium Entrepreneurship Support Act

Source: Slovak Business Agency, 2017, edited, [http://www.sbagency.sk/sites/default/files/sprievodca\\_2017.pdf](http://www.sbagency.sk/sites/default/files/sprievodca_2017.pdf)

## 1.1.5 Possibilities of ownership transfer

### 1.1.5.1 Basic obligations after the death of the self-employed person

Any entity that has started with a self-employed activity is required to comply with reporting obligations when starting a business against all institutions facing legal claims and obligations in relation to the performance of a trade. Such notification duty must also be fulfilled at the end of the business. By the death of the taxpayer business is over. And this fact should also be reported to the relevant authorities. The only difference is that for a deceased taxpayer, heir is obliged to fulfill the notification duty.

#### **Social Insurance Agency**

In case the self-employed person has to pay contributions and premiums to social insurance funds, **the heir is obliged to submit the death certificate to the respective branch of the SIA within 8 days from the date of death**, together with the natural person's registration letter as a deregistration.

#### **Health insurance companies**

The insurance card and the person's death certificate are immediately delivered to the relevant branch of the health insurance company where the person was insured.

#### **Trade Licensing Office**

**Within 15 days of the death of the trader, the heir is required to report the termination of the activity of the deceased.** If the heir intends to continue to work, until the inheritance proceedings and the acquisition of the right to do business are passed to the heirs, the successor shall be marked on the trade license. If continuing the business, the heirs are obliged to notify the Trade Licensing Office within one month of the death of the entrepreneur.

#### **Tax Office**

Within 15 days after the taxpayer's death, the family members are required to report to the legal representative. Which persons and under what conditions after the death of the entrepreneur (self-employed tradesman) can continue the trade, regulates the Trade Licensing Act in the provisions of § 13. In accordance with § 13 par. (1) of the Trades Licensing Act, if a natural person (self-employed tradesman) dies, they may continue in the trade until the completion of the inheritance proceedings:

- heirs by law if there is no heir by testament,
- heirs by testament and the surviving spouse, even if he is not the heir, if he is the co-owner of the property used for the operation of the trade,
- a surviving spouse fulfilling the condition specified in b) if the heirs do not continue the business,
- the administrator of the inheritance, if the court has appointed one.

## Income tax

**Within 3 months after the taxpayer's death, the heirs are required to file a tax declaration.** If there are more heirs, they will agree which of them will file a tax declaration. The tax administrator may extend the deadline for filing the tax return if the lawyer asks for it no later than 15 days before the expiry of the tax declaration date.

The tax base of a dead taxpayer is adjusted as if the business had ended. To the tax base is added the receivables and inventories of material and goods and liabilities that would be considered as tax expense in the event of reimbursement are deducted.

## Other direct taxes

It is also necessary to report the termination of the tax liability of motor vehicle tax or other taxes that have arisen in connection with the business activity.

## Value added tax

The VAT Act does not regulate the provisions of § 83 for the person continuing the trade after the completion of the inheritance proceedings, respectively after the end of the last tax period, the obligation to return the registration certificate for tax. However, the obligation to submit the registration certificate to the tax authority is governed by the VAT Act in the provisions of § 81 par. 5, last sentence. A person continuing a trade shall be deemed to be the taxpayer until the end of the inheritance proceedings. **The taxpayer is obliged to hand over the tax certificate to the tax office within ten days of the end of the last taxable period.** The last taxable period of the person continuing the trade is the tax period in which the inheritance proceedings are completed. The tax administrator does not determine the last tax period by decision. The VAT Act in the provisions of § 83 par. 2 clearly establishes the last taxable period for a person who has continued the trade after death of a physical in self-employed trade. The person continuing a trade shall submit a tax return for the last taxable period within 25 days after the end of the taxable period in accordance with § 78 par. 1 of the VAT Act and within the same period the tax liability is also due to be paid. If, after the death of the payer does not continue in business, then his successor or representative established tax authority has the obligation to file a tax return. **If the business is terminated after the death of the taxpayer, then his legal successor or agent appointed by the tax authority is required to file a tax declaration.**

The last taxable period, if the business does not continue to operate after the death of the taxpayer, is the taxable period in which the taxpayer died. The Tax Office does not issue a decision on the determination of the last tax period, since the VAT Act in Section 83 3 clearly establishes the last taxable period. The tax registration certificate and the tax identification number expire upon expiry of the last taxable period. All receivables and liabilities to government institutions will be included in the inheritance.

If a self-employed tradesman as a testator wants to decide who to cede the company, or part of it, for the inheritance, it is enough to write a will. Inheritance according to the testament written by the testator always takes priority over inheritance by law.

### **Procedure with testament**

In the testament, the testator, hence the self-employed tradesman, is entitled to deal with his possessions freely and according to his own imagination. As the lawyer Alexandra Korbel'ová explains, the only limitation is that if they do not disinherit some of the children or their descendants, these persons - as a so-called unforgettable heir - have right for a share of the inheritance, even when the testator did not mention them in the testament. "In case of minors, they must be given as much as it is stated by by law, in case of children that reached legal age, this share has to be at least a half." the lawyer adds.

If the trader is a lone person, his heirs mentioned in the testament will inherit his assets, or if there was no testament and there is no one who would inherit according to the law, the inheritance now belongs to the state, as so-called escheat.

In case where an underage is the heir, the court shall appoint a guardian who will not only represent him during the succession but will manage his property until he reaches legal age. The guardian may only operate with this property of an underage child with the consent of the court. This is always applicable, even if the underage would miss only a few months until legal age.

### **Procedure without testament**

"If the inheritance process goes by law, the heirs from first group are first to inherit, that means the spouse and children, all with equal share", as noted by the lawyer. However, if the descendants of the testator are already deceased, in that case their descendants become heirs. If children of testator do not inherit, in case he does not have any, the order passes on the second group, being the spouse, testators' parents and persons that shared household with him for at least one year before death, while they also took care for common household or were dependent on testator. In this case the spouse inherits at least half of the heritage, others by equal share. If the spouse, or any of the parents does not inherit, heritage moves to the heirs of the third group, that means siblings of testator and persons, that lived with him in shared household for at least one year before death, they took care of him or were dependent on him. Their share on heritage is equal.

### **Continuing the self-employed business**

The self-employed business of the deceased can be carried on, under certain conditions, by his heirs, for example spouse, if he or she is co-owner of operated assets, or other heirs that acquired ownership share in the business. The continuation of the trade must be notified to the Trade Licensing Office within one month after the completion of the inheritance proceedings. If they do not acquire their own trade license within six months of the termination of this procedure, they cannot continue to operate the inherited business.

However, the law allows: the spouse, who already was co-owner of property used to run the business, or who has so acquired it, can continue in self-employed business even after this time period - on the basis of the trade license of the deceased.

## Debt succession

The subject matter of the inheritance is not only the assets but also the testator's liabilities, that means, his debts, as the self-employed businessman could have had a loan, mortgage or a leasing. As the notaries emphasize, in practice, often after the death of the entrepreneur, various applications for inheritance come, irrespective of his obligations. Here, however, the principle is that the inheritance is either accepted or rejected as a whole. It is not possible to transfer only the assets to first person, other liabilities or some part of the debt to a second person and the rest to another person. "Each case is so different in the inheritance of obligations and it is solved so individually that the notary does not dare to say general rules here," emphasizes Karol Kovács, Vice-President of the Chamber of Notaries of the Slovak Republic. And Korbelová adds that in general, the following applies: "The heir is only responsible for the liabilities of the deceased up to the amount equivalent to the price of the acquired heritage."

### The self-employed business of the deceased can be carried on by:

- spouse, if he or she is the co-owner of the assets,
- other heir, if he acquired a related of assets
- within a month the heir must announce the continuation of the trade to the trade office
- if within six months the heir does not obtain his own business license, the inherited business can not continue

#### 1.1.5.2 Inheritance of an enterprise and business share

The death of a natural person is an important legal fact with which various legal consequences are attached. In our article we will let you know the situation when the testator is a natural person in the position of entrepreneur - owner of the company. The inheritance of the enterprise is covered by the substantive law of the estate in the seventh part of the Civil Code and the procedural law in the Civil Procedure Code, as well as in the Commercial Code.

Article §5 of Act No. 513/1991 Coll. The Business Code, as amended, defines an enterprise as a set of tangible as well as a personal and intangible business components. The business includes property, rights and other property values owned by an entrepreneur and serving for the operation of an enterprise, or because of its nature, serve this purpose. Under the term "business" we mean a whole business unit operating within one business entity. Therefore, we can only speak about an enterprise only if all of its legally defined components, tangible, intangible and personal component exist.

An enterprise may be subject to legal relations. This means that the owner can handle with it freely. It follows from the foregoing that it may also be the subject of an inheritance, but only if its owner was a single natural person. An enterprise is a mass affair that arises from the law and as a mass affair can be the subject of property dispositions. It creates a compact unit and, in the inheritance process, must be included in the inventory of assets and liabilities of the inheritance. It must contain the exact identification of the entrepreneur - name, residence, ID, etc.

Debts related to business are not business debt, but the testators. Therefore, they must be included separately in the inventory of inheritance liabilities. In connection with the company's inheritance, it must be borne in mind that it also includes the sovereignty of intellectual property - industrial property (inventions, designs, utility models) and industrial rights (know-how). They

are part of the intangible assets of an enterprise. Thus, the subject of the estate will be the property rights attached to the intangible property in question.

After the death of the testator - the owner of the company, there are usually situations when it is necessary to ensure the undisturbed functioning of the business. The provisions of § 175e and 175f of Act No. 99/1963 The Civil Procedure Code, as amended (hereinafter referred to as CPC), regulates the cases of the need to secure the inheritance in cases of importance or general interest. CPC in the proposed amendment envisages the appointment of the heritage trustee. If the heritage is an enterprise, the trustee must be a person who has experience with his management. The trustee must act with professional care in the course of his temporary function, the breach of which leads to liability for possible damage. The procedure for settling an enterprise as a subject of inheritance is analogical to the procedure for settling any heritage subject matter.

If there is only one heir, the court will confirm the acquisition of the heritage. More heirs, based on the provision §482 of Act No. 40/1964 Coll. The Civil Code, as amended, settle among themselves an agreement that the court approves if it is not contrary to the law and good morals. Whoever inherited an enterprise after a businessman - a natural person, can do business under a previously registered business name with an addendum indicating the succession and name of the successor.

A different procedure is followed if the enterprise is co-owned by several natural persons, with one of the co-owners dying. The procedure is fully dependent on the form of the particular business. In this case, it is more appropriate to refer to it as a trading company. Trading companies are legal entities that can acquire their own assets and are responsible for their activities. For each trading company applies a different procedure for succession. For trading companies, there is an inheritance process of the business share.

**Public owned corporation** is a personal trading company, where at least two persons are operating under a common business name and are liable for the liabilities of the company jointly and with all of their assets. The provision § 88 of the Commercial Code stipulates that with the death of a companion, the company voids, but in certain circumstances it may carry on functioning.

After a partner's death, a **POC** may continue to do business if the social contract contains a provision that the heir can become a shareholder, who, at the latest within one month of completing the inheritance proceedings, signs a participation in the company and at least two other shareholders remain in the company. The heir must register in writing and starting with the moment of the official confirmation of his signature in the application enters the rights and obligations of the deceased partner. He acquires his share to the day of testator's death. If this does not happen and all the conditions are not met, the heir is entitled to receive financial compensation in the amount of the share from the company.

If the testator has several heirs, the share of the testator is divided among them in proportion to their share in the heritage. In addition to this, several heirs have the right to agree that only one of them will inherit, and he then pays the other heirs financial compensation.

**Societe en commandite** is a grouping of two or more people. It is a personal trading company, which is a legal entity. There are two types of co-operatives - the comandists, guarantors of



liabilities up to the amount of their unpaid deposit and complementaries, guarantors of the company's obligations with all their assets.

Additionally, the legislation of a SEC is adequately applied to the complementaries, and the legislation of a limited liability company shall apply to the comanditists. The provision of §102 of the Commercial Code determines that the death of a comanditist is not a reason for the dissolution of the company. By deriving further from the legislation of a limited liability company, the commercial share of a comanditist is inherited *ex lege*. If the social contract excludes the possibility of participation of the heir of a comanditist in the company as well as if all the heirs of a comanditist deny the inheritance, the heir is to receive financial compensation in the amount of the share from the company.

A limited liability company is a capital company where the maximum number of shareholders is 50 and the transferability of the business shares is limited. The company is based on a social contract or notarial record. The death of a companion is not a reason for the dissolution of the company. In the event of a companion's death in a company, his business share goes *ex lege* to the heir of the deceased companion. Therefore, the business share is inherited. The transfer of a business share does not occur only if the social contract has precluded the inheritance of the business share. Only the social contract may exclude the inheritance of the business share. The only exception, when a social contract can not rule out the inheritance of a business share, is a one-person trading company.

The heritage is passed on as a whole, hence the heir can either fully refuse or accept it. Thus, he enters into all rights and obligations to company to the extent that existed at the time of the testator's death. The transfer of a business share as a result of the inheritance can therefore only be avoided by the heir by denial of the inheritance as a whole.

If there are more heirs and there is no agreement between them who inherits the business share, there will be a situation where one business share is shared by several heirs (common business share, co-ownership). These co-owners act as one owner in relation to the company, and the rights attached to that share are exercised through a joint representative. If the heirs wish to be separate shareholders, they must ask the general assembly for approval (the minimum amount of each partner's contribution to company set by law must be maintained).

If the social contract excludes the inheritance of a business share and the company has at least two shareholders, including the testator, then the heirs are entitled to the payment of the compensation in accordance with § 150 of the Commercial Code. The compensation is calculated by the ratio of the paid contribution of the deceased member to the paid contributions of all the partners, unless otherwise specified in the social contract. The formation of the right to compensation cannot be ruled out in any way.

A joint stock company is a capital company whose registered capital is allocated to a certain number of shares with a nominal value. Joint stock company is characterized by the fact that it has its own legal personality, capital in form of shares and the separation of the company's assets from the shareholders' assets. Shareholders are not liable for the company's liabilities. The death of any shareholder is not a reason for the dissolution of the company. The death of a shareholder passes the rights and obligations attached to the security to another holder based on a legally binding heritage decision.

Shares may be issued in registered form or bearer. When a company issues shares registered to a name, it keeps a list of shareholders or secures that shareholders are tracked at the Central

Securities Depository. If the share is inherited, the rights connected to the action may be exercised by the heir only after the registration as the new shareholder in the list of shareholders.

Although the Commercial Code and the Securities Act do not explicitly address the issue of stock succession, it is undisputed that an action is an asset and can be subject of inheritance. Inheritance of shares in the event of death of a shareholder can not be excluded by the statutes or the memorandum (founding treaty). If there is only one heir, he fully inherits participation in the joint stock company. If they are more heirs, they may form an inheritance agreement, who will become the owner of which shares. In the event that they do not agree, all the heirs become co-owners of all the shares that are the subject of the inheritance, in proportion to their share in inheritance.

If shares are held in the name of multiple persons, the rights associated with the action may be exercised by any one of them. The change of the owner shall be registered by the Central Securities Depository on the date of the transfer on the basis of an order of the acquirer or the securities broker who is obliged to prove the acquisition by a document proving the said legal fact - in this case, it is a judgment on the inheritance.

#### 1.1.5.3 Fusion

The concept of fusion(merger) is tight, proprietary form of merger of two companies, one in which the two companies combine into one. Fusion is the process which involves the voluntary merger of two companies (Smolková, 2005, p. 257).

In market economies, fusion refers to the economic merger of previously independent enterprises by transferring all the rights and obligations of the merged organizations (business entities) to the new organizational unit. A fusion may be seen as a process similar to pooling businesses, in particular from the point of view of restricting competition on the market. In such cases, fusions are monitored by antitrust and state institutions, who take care there won't come to excessive monopolization of the market (Šlosár, Šlosárová, Majtán, 1996, s. 63 - 64).

Fusion merges companies in a way, that results in one big company. The fusion itself can be done either by takeover or merging. When taking over companies, one or more of the disappearing companies will integrate into an existing company. By merging companies, of course, the companies of these companies are also merging.

#### 1.1.5.4 Acquisitions

„Acquisition is a specific type of property link between companies in which the process of connecting one company to another takes place“ (Smolková, 2005, p. 177).

Acquisition is the process where an acquirer (a company that acquires another firm) buys a controlling stake of shares or all shares of another firm and gains control over it. In other words, the buyer is the one who:

- a.) Controls the process of joining companies, dictates its terms, principles and rules. The aim is to influence the future form of the acquired company.
- b.) Controls the resulting merger and depends on his discretion if he does or does not exercise direct control over the activities of the acquired company.

The result of the acquisition is either full merger, referred to as amalgamation, or affiliation of one firm to another - either as a strategic business unit or by all of its activities being taken over by the acquiring company. Both options are referred to as acquisitions.

#### 1.1.5.5 Sale of the enterprise

There are different situations in business that need to be dealt with. Ending a business can be a complicated, lengthy process or a slightly easier way depending on the situation the entrepreneur faces.

A decision to sell a business or a part of it may be predated by a lack of time of the entrepreneur, the need for additional capital and inflow of new business opportunities, or, at best, an attempt to monetize a well-running business and redirect the investment to another sphere. However, it is often the case that the company no longer prospers, and the entrepreneur does not have real means of maintaining or rescuing the business and has to end the business. In this case, it is ideal when the company is in a situation where its transformation can be resolved by selling.

The sale of the business from the legal side is regulated by the Commercial Code in § 476 - § 488.

#### **Contract**

When an entrepreneur who intends to sell his business finds a suitable buyer, they can jointly agree to a draft contract. The seller should prepare all the accounting and legal documents for the negotiation of the contract and inform the buyer of the current state of the business.

The contract concluded must be in written form and must contain officially certified signatures of both Contracting Parties.

The contract is transferring from the seller to the buyer:

- liabilities,
- ownership rights,
- assets,
- industrial or intellectual property rights associated with business,
- rights and obligations arising from employment relationships with employees.

#### **Business name**

If this is not contrary to the law or the right of a third party, the right to use the trade name passes from the seller to the buyer. If the sale is made between natural persons, it may pass the right to use the business name to the buyer, if agreed upon in the contract, and only with an addendum indicating succession in business.

#### **Proprietary rights**

Items that are sold, must be delivered to the buyer by the seller at the date of effectiveness of the contract. Their takeover is indicated in the takeover note (memorandum), which must be

signed by both parties. Property law as well as the risk of damage to the subject matter property passes from the seller to the buyer through the effectiveness of the contract. If the real estate is also the subject of the sale, the ownership right is transferred to the buyer by a deposit in the land registry.

### **Memorandum on takeover**

If the seller is aware of any shortcomings in the property, rights, or other property values that are transferred to the buyer, he is obligated to alert him at the latest in the takeover memorandum.

Otherwise, he will be responsible for any damages that could be avoided by these warnings. The memorandum also mentions missing assets. Missing assets are things that are recorded in accounting and contract as part of the assets of the business sold, but the seller has not given them to the buyer.

#### **1.1.5.6 Related terms**

**Intellectual Property** - we understand as an asset of an immaterial character that is the result of the creative activity of human thinking. Intellectual property is divided into **industrial property** and **copyright** and **related rights**.

**Industrial ownership** includes those types of intellectual property that have industrial uses. This includes patents, utility models, designs, trademarks, designations of origin, geographical designation of products, semiconductor topography, supplementary protection certificate and breeder's certificates.

**Copyright** and related rights can be divided into works rights, copyright, computer programs, and databases.

The value of intellectual property depends, in particular, on the extent of subsequent use and benefit to the individual, society, and the ability to generate other products. Protected Intellectual Property may be subject to technology transfer.

Table 2: Databases of intellectual property objects operating in the Slovak Republic.

Additional protection certificates of ÚPV SR	The online database is made accessible through the website of the ÚPV SR. (Department of Industrial Property)	Slovak	patents and utility models	Slovak republic
Európske patenty s určením pre SR	An online database accessible through ÚPV SR website	Slovak	patents and utility models	Slovak republic
Trademarks of ÚPV SR	An online database accessible through ÚPV SR website	Slovak	trademarks	Slovak republic
Patenty ÚPV SR	An online database accessible through ÚPV SR website	Slovak	patents and utility models	Slovak republic
PCT Advanced Search (WIPO)	Allows search in World Intellectual Property Organization databases related to international patent applications filed under the Patent Cooperation Treaty (PCT).	English	patents and utility models	Slovak republic
ÚPV - Webregisters	Web registers make information from industrial property registers kept by the Office available to the public. They are updated daily and allow you to search or view records.	Slovak	designs; trademarks patents and utility models	Slovak republic
Utility models ÚPV SR	An online database accessible through ÚPV SR website	Slovak	patents and utility models	Slovak republic

Source: National Technology Transfer Portal, 2017

## Inheritance

The issue of the inheritance of the business share in LLC. is regulated in § 91 and § 116 par. 2 of the Commercial Code. The rights of shareholders can apply to the lawful termination of the succession process. Only after that, it will be indisputable that you are the legal heirs of the business share of the testator-partner.

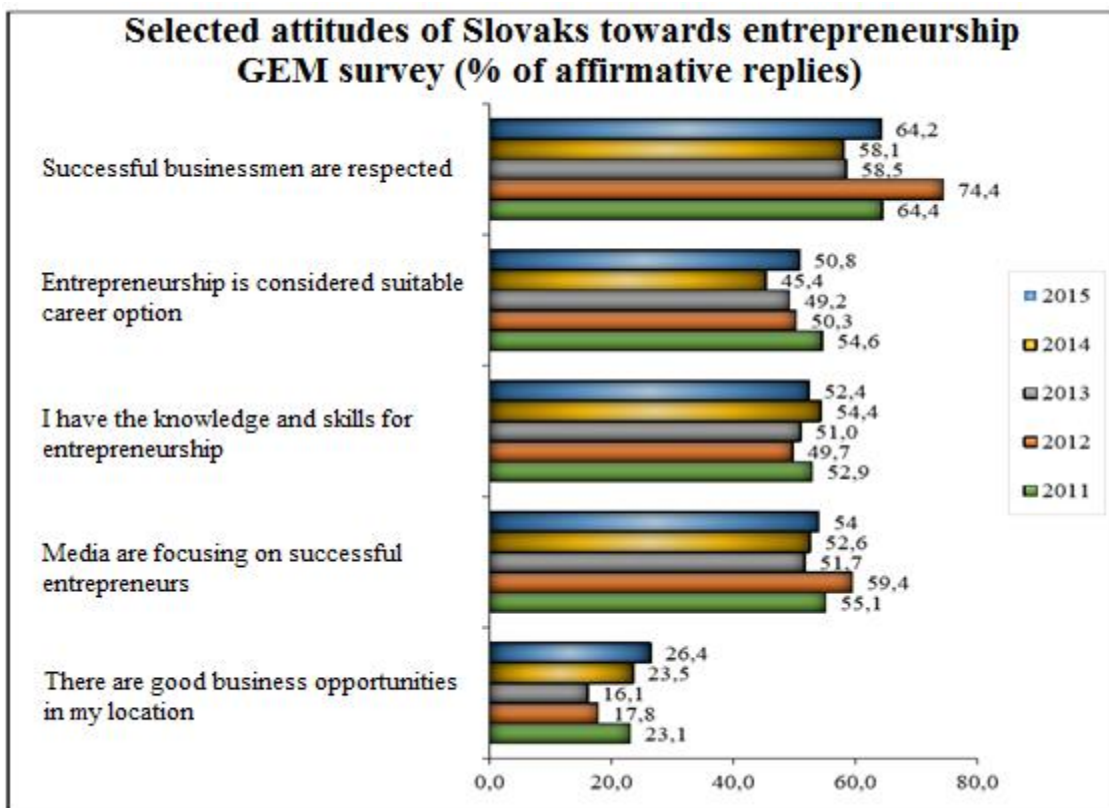
## Freelancer

If we open one of the major Slovak online dictionaries, we will come to the phrase "independent worker". More acceptable is the term "independent professional" or then the descriptive form "person working on a free foot". However, the term "I am a freelancer" is becoming more and more common in the minds of the Slovaks. Freelancer can be anyone who works in a variety of areas and in different legal forms (most often a self-employed business or a single person limited liability company), however, there is a condition of working alone meaning not having any employees. This category includes, for example, translators, designers, architects, programmers, original jewelry manufacturers, lawyers, accountants, etc. Another relatively common feature of Freelancer's work is that he does not have his own office and, if so, it is mostly associated with private housing. Freelance functioning may therefore also result in a mild "asocialization" of the individual, due to the lack of social contact with colleagues, employees or bosses, as there are none.

## 1.2 Current state of SMEs in Slovakia

Small and medium-sized enterprises, the inherent part of which is family businesses, are pillars of the Slovak economy. They account for 99.9% of the total number of business entities. They provide employment in the business economy with nearly 75% of the active workforce. They account for more than 50% of gross output and value added. The Global Entrepreneurship Monitor (GEM), which seeks to explore entrepreneurship in national economic growth through discovery of features and business characteristics, has conducted research aimed at identifying the attitude of Slovakia's population towards entrepreneurship. The results of the research are illustrated in the following graph.

Graph 1: Selected attitudes of Slovaks towards entrepreneurship



Source: Global Entrepreneurship Monitor, processed by SBA, edited

It is clear from the above graph that the perception of the ability to start a business in Slovakia is quite high. An interesting indicator is that despite the demanding business environment in Slovakia, 64.2% of the population think that entrepreneurs are well recognized in Slovakia. In connection with the issue of family business, it is clear from the graph that business in Slovakia is a topic discussed and in the interest of society.

After nearly more than 20 years family business in Slovakia comes to a breaking point. It is time the transfer of the business to the next generation. How are family businesses specific and what problems are they facing?

Family business is recently a rather discussed topic in Slovakia. In the recent period, a legislative initiative in this area has also been recorded. So far, however, there is no specific definition of

this category of enterprises as well as the identification of their specific problems. The family business itself in Slovakia does not have a long history. It began to grow in the post-revolutionary period (1989), although some mechanisms of family co-operation in the implementation of economic activities were applied earlier. The impulse for the development of family business has been the beginning of economic transformation, accompanied by relatively simple business start-up conditions as well as new opportunities that have led to the liberalization of economic relations and the opening of borders. At the same time, "post-revolutionary enterprises" arose as a result of problematic work and income security, when it was a necessity for some former employees to start a business.

*"In 1992 it was possible to start doing business relatively easily in any area, there was plenty of skilled people, relatively inexpensive materials."*

The definition of a family business in Slovakia is not legally established, but there are some features that show that it is a family business: the self-employment of the founder, the family members, the transition from one generation to the next. The survey, conducted by the European Public Policy Partnership (EPPP), in cooperation with the SBA (Slovak Business Agency), states that a family business often involves married couples or the co-operation of one of the parents and their offspring.

### 1.2.1 Specifics of family business

The founder of a family business is also the executive manager or director of the firm and determines its direction. An entrepreneur has to learn how to manage his time. It has a key influence on the development of his family business in the long run. There is no dividing line between work and private life and therefore the entrepreneur has to address the crucial question of priorities between business and private activities.

Overlapping of work and private life is reflected in the effort to involve family members in the business. By involving key family members into a business, "family interest". It can be described as the main family business aspect that affects its success and significantly differentiates it from non-family. According to the survey above, family businesses are formed in the context of natural development through gradual integration of individual family members into a business, creating a stronger family unit and giving a better prerequisite for transferring experiences from generation to generation.

Within personal family relationships, there is confidence that transmits to business and creates a specific family business climate. As one of the respondents said: *"A family business is my trust and I know, that family members do the best for the business. What's good for a business is good for me and my family."*

The personal factor that enters family business is therefore the source of stability and the creation of tradition. In relation to the employment of family members, we are confronted with the trend of giving preference to family members in management positions. The trend is a consequence of confidential climate and serves to ensure succession in the enterprise.

An important feature of family businesses is the creation of tradition and its maintenance through the transfer of experience from generation to generation. This creates a strong foundation for business continuity and future prosperity.

Table 3: Number of active business entities according to the individual legal forms and size categories of enterprises as of 31.12.2015

Size categories / Legal forms	Businesses	Self-employed	Freelance	SHR	Total	
					abs.	%
Microenterprises (0-9)	178 095	315 182	17 657	4 302	515 236	96,9
Small enterprises (10 - 49)	11 721	1 215	39	9	12 984	2,4
Medium enterprises (50 - 249)	2 780	63	0	0	2 843	0,5
Large enterprises (250+)	666	0	0	0	666	0,1
<b>SMEs Total (0-249)</b>	<b>192 596</b>	<b>316 460</b>	<b>17 696</b>	<b>4 311</b>	<b>531 063</b>	<b>99,9</b>
Business subjects Total	193 262	316 460	17 696	4 311	531 729	100

Source: Statistical Office of SR, 2016, edited

According to data of the Statistical Office of the SR, 531,729 active business entities were registered in Slovakia in 2015, of which 531,063 were small and medium-sized enterprises. The largest share in these categories was micro-enterprises (96.9%), small enterprises (2.4%) and medium-sized enterprises (0.5%). Natural persons - entrepreneurs account for almost two thirds (63.7%) of the total number of active SMEs in Slovakia.

#### 1.2.1.1 Problems of family entrepreneurs

Family business, however, brings with it a number of problems. One of them is the employment of family members, when conflicts from the family environment arise and transfer to business and vice versa. These disputes can ultimately affect the company's performance and bring even an economically successful company to ruin. It is important that the founder is aware of the importance of these relationships and pay attention to their development.

*"Everything depends on people, we help each other, we complete each other in many things, sometimes we have a lot to do, and with that comes the risk that it will affect the family."*

Problems in the employment of family members arise in the area of employment relations. Consequences and punishments of breaching the work discipline, failure to perform assigned tasks, or low work performance are more difficult to put on family members than on other employees.

A particular problem is the legislative barriers when family members help within the family business. According to Act No. 82/2005 Coll. on illegal work, it is illegal work if a family member assists an entrepreneur without an employment relationship, from which criminal liability is imposed on the entrepreneur. However, by fulfilling certain conditions, the family member's assistance is legal. As indicated by the above-mentioned law, if *"the work is performed by his direct relative, sibling or spouse who has pension insurance, is pension recipient under special regulations or is a student under 26 years of age"*. The condition for non-punishable assistance is, therefore, pension insurance or the status of a pensioner or a student.

*"Perhaps it would be better if the employment of family members and the related duties and other obligations were made easier."*

Engaging family members into entrepreneurship is closely related to the preparation of a young generation to carry the business on. The importance of preparation in the field of succession is intensifying with the increasing age of founders. Slovak family businesses are in a period when they are mostly undergoing or preparing for the first generational exchange. This moment can be



considered critical. A survey of family businesses in Slovakia by PwC shows that only one-third of businesses will handle this generation exchange process successfully.

The first step towards successful generational change is to integrate potential successors into business and create family interest in successors. Underestimation of the succession preparation may lead to the successor not becoming entrepreneurial, will not have sufficient interest in maintaining it, or he will want to get rid of it as unwanted burden. Preparation for succession must not be neglected either by the preparation of the enterprise itself.

### **The most significant problem - succession or sale of a business**

The breakthrough moment in the life of family businesses is the generational exchange process. It includes, in addition to the effective integration of followers into the enterprise structure, the timely delivery of the key management function to the next generation. The founders are often trying to delay this moment as much as possible in an effort to keep things under control. Giving up management positions in the company and leave it to successor is in most cases problematic. It is hard for the founders to leave the business they founded, and which is their lifelong work.

Despite the perception of the need for an intergenerational transition, the older generation feels anxiety about succession as a result of possible harm to family relationships.

*"Succession by children, taking over the property. Yes, it can be a problem and it can harm the whole family. "*

If an entrepreneur does not have a successor, he often thinks of a possible sale of his business. Both options (transition from generation to generation, sale of business) are related to the problem of securing the transfer of assets. This is a long process that requires careful preparation. Business transfers are typically triggered by retirement, personal decisions or unpredictable events (illness, death). According to a survey conducted by EPPP in cooperation with the SBA, entrepreneurs consider important to ensure continuity in the intergenerational transition and simplify the transformation to achieve fluidity of succession.

It can be said that family businesses represent a significant and specific component of the business environment in Slovakia. A problem that prevents them from being more strongly supported is their "invisibility". In the absence of a legal anchor for this type of business, more substantial public support cannot be expected for the category of family businesses. On the other hand, some support is planned from the EU Structural Funds under the forthcoming Operational Program Research and Innovation 2014-2020.

### **Intergenerational differences**

The older generation considers as its strong side experience gained with age, responsibility and built-up reputation, what is confirmed by the younger generation. They see the young generation as well-linguistically equipped, full of enthusiasm and ideas, but on the other hand very impulsive and impatient. Research has also highlighted the diversity between generations. The young generation (especially in the engineering, manufacturing and agricultural sectors) is rather engaged in management and less in production process itself. On the other hand, the young generation is aware of the importance of knowledge of manufacturing processes in the company and is seeking to gain the necessary information for managing. From the perspective of an older

generation, it can be labeled as a more risky, as they are testing the implementation of several differently-oriented projects at once. As the young generation has said, it is based on the traditional attitude of the older generation, which opposes the innovative attitude of the younger generation.

#### 1.2.1.2 Specific problems of family businesses

Another part of the research was aimed at identifying the specifics of family business. Among the problems faced by family businesses, there was a predominantly administrative burden, an unstable legislative environment, a problem of outflow of know-how, or the problem of ensuring a level playing field for all and, as has already been mentioned, the rather common problems of the small and medium-sized enterprise sector. The problem with the outflow of know-how was quite frequent. Family businesses are especially struggling with the competition of former employees who have been educated and gained their knowledge from them. According to them, this problem should be legislatively treated in the form of a competition clause. Research also reflects the low interest in supporting family business. Lack of interest stems from bad past experience. On one hand, there is a resonance of disappointment with the unsuccessful applications for aid and the necessary bureaucracy that comes with it, on the other hand, they regard aid as a tool that damages the market and creates an unhealthy environment ("structural funds mess with the market"). This is linked to the need of equalizing aid conditions for everyone. Entrepreneurs call for the creation of a level playing field for all, and thus for an environment in which no entity will be favoured over others. Furthermore, research results point to the tendency of family entrepreneurs to innovate. This is confirmed by respondents' comments on the issue of supporting innovative solutions. Most entrepreneurs support the introduction of new technologies and production processes. Inclination towards innovation may be slightly influenced by the structure of the representative sample as it is largely made up of enterprises in the sector of agriculture, mechanical engineering and manufacturing, characterized by the frequent introduction of new technologies. Interestingly, innovation is supported in all these businesses, regardless of their size. The analysis of foreign activity points to the active involvement of family businesses in this area. Most of the entrepreneurs said they either exported abroad or are planning to expand to foreign markets or plan other foreign activities. The dominant group is made up of entrepreneurs exporting to EU markets, but also exported to V4 countries or non-EU countries. The results indicate that the main obstacles to expanding abroad include insufficient production capacity, limits resulting from high transport costs, absence of contacts abroad and interest in satisfying the Slovak market. Family entrepreneurs in the foreign environment appreciate the higher degree of stability of the legislative environment, even giving it as an example. Specific adjustments have not been suggested, but the answers show that they would appreciate lower frequency of legislation change. In particular, one of the entrepreneurs highlighted the functioning of member organizations abroad, which are more focused on the joint presentation of their own interests and, in comparison with the Slovak ones, have a unified concept. Opposing views have emerged in terms of exchanging experiences with other family businesses. One group of family entrepreneurs avoids exchanging experience because they are worried about the loss of know-how or have had a negative experience of exchanging them in the past. The second group confirmed the exchange of experience with other companies but also the search for technical solutions or mutual assistance in dealing with orders in case of insufficient production capacity. In this context, it is also interesting to note that family businesses are particularly interested in setting up a trade union oriented on the exchange of experience.

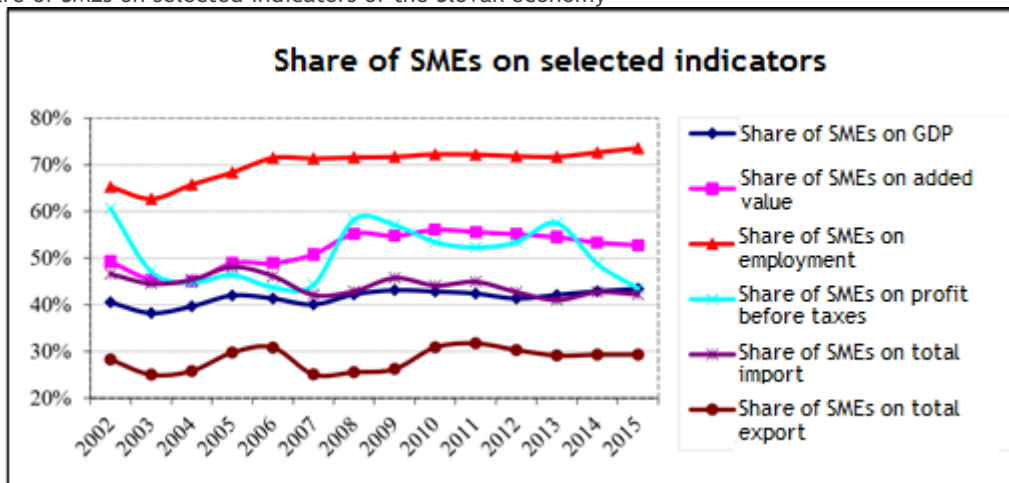
*The cycle of family business:*

- The owner should be clear about the future positions of the children in the company at the latest when they are about 25 years old
- The offspring successors should have detailed knowledge of the company in their twenties
- They should enter the management of the company in their thirties
- After forties they should take-over the company as new leaders
- When they reach close to fifty years of age, they should begin with incorporating their children into the family business

**1.2.1.3 SMEs, including family businesses, and their recommendations**

Surveys among Slovak family businesses show that no selective support tools from the state are very much needed. But Slovakia could introduce legislative instruments to help maintain the integrity of family property.

Table 4: share of SMEs on selected indicators of the Slovak economy



Source: Slovak Business Agency, 2017, edited

The main economic indicators characterizing the development of SMEs increased year-on-year. The increase in the added value of SMEs (by 4.4%) was the highest in the last 5 years. More than half of the added value generated is the result of the SME's operating in the industry and commerce sector. However, due to higher growth of the added value of larger enterprises than SMEs, the share of SMEs in the total added value created year-on-year fell again to 52.8%. The share of SMEs in gross production increased year-on-year to 43.4% and the pre-tax profit margin, on the other hand, fell to 43.5% year-on-year.

The country is lagging behind, for example, in matters of pre-marital agreements and divorce separation of property of spouses, including the assets of their companies. Although the pre-marital agreement is perceived to be negative in our region, it tends to preserve the integrity of small and medium-sized companies, and thus their greater stability. Slovakia has also not yet legislatively treated the creation of family trusts or foundations.

Due to the high involvement of family members in family businesses and their specific business status, we recommend adopting in the Labor Code a specific type of family-friendly agreement that would support the simplification of family members' employment and ensure that the legislative framework distinguishes the special status of a family member labor relations.

With the approaching period of transition from the older generation to the younger generation, in support of the older generation's preparedness for this process, we propose to develop a methodological tool - a manual for entrepreneurs that will deal with the accounting, psychological and legal aspects of generational exchange in family businesses. Following the example of the Netherlands, we recommend distributing this guide to all entrepreneurs in family businesses who are over 55 years of age. An important area of the succession problem is securing the transfer of property. In this area, we recommend implementing legislation on the transfer of assets in order to ensure transparency and continuity of property transformation in the transition of ownership rights from the older to the younger generation within the family, but especially with regard to the absurd time, administrative and financial costs incurred in transferring assets (in the case of the natural persons) at market prices as currently applicable.

In the framework of the survey, the issue of the outflow of know-how was a very sensitive issue and we therefore propose to legislate in the framework of labor relations the provisions ensuring the protection of entrepreneurs' know-how for a period of two years from the termination of the dependent activity of employees in the form of a competitive clause with the existence of possibility to "buy-out yourself". In addition, the need for grouping into professional organizations has emerged from family businesses. In this direction, we encourage the creation of networking organizations of a professional nature representing the interests of family businesses. In addition, these organizations would provide advice and encourage mutual exchange of experience.

## 1.3 Entities, programs supporting SMEs in Slovakia

### 1.3.1 Institutions supporting SMEs in Slovakia

In the area of support for small and medium-sized enterprises, several institutions operate at different levels:

Table 5: Institutional framework of support for SMEs in Slovakia

<b>EU level</b>
- European commission (DG Grow, DG REGIO) european agatures (EASME) - strategies + programs; - European financial institutions: EIB, EIF, EBOR - financial schemes
<b>National level - legislative and strategical</b>
- ministries (MH SR, MŠVVaŠ SR, MPSVaR SR, MPRV SR a ďalšie) - legislative, strategies + programs - other central organs of government (Úrad podpr. vlády pre investície, ÚNMS SR)
<b>National level - implementation</b>
- specialized support agencies (SBA, SIEA, SARIO, PPA, CVTI and other) - measures - state financial institutions: SZRB, Eximbanka SR - financial schemes
<b>Regional level</b>
- Regional self-governing units (VÚC) - strategies - specialized agencies in regions, regional development agencies - measures
<b>Private sector initiatives</b>
- chambers of commerce, business associations - measures - commercial banks and other financil inst. participating on supportive measures - financial schemes

Source: Slovak Business Agency, 2017, edited [http://www.sbagency.sk/sites/default/files/sprievodca\\_2017.pdf](http://www.sbagency.sk/sites/default/files/sprievodca_2017.pdf)

#### 1.3.1.1 Institutions supporting SMEs at EU level

From the point of view of SME support, the most important are the Directorate-General for Growth (DG GROW) which is covering the internal market for goods and services, promotes entrepreneurship and growth by reducing the administrative burden on small businesses; facilitating access to finance for small and medium-sized enterprises; by promoting access to global markets for EU businesses, building up a policy on the protection and enforcement of industrial property rights, coordinating EU action in the system of intellectual property rights, helping innovators to effectively use intellectual property rights, and the DG REGIO, covering the policy area of Cohesion and the Elimination of Economic Gaps, which also manages the European Structural and Investment Funds (ESFS).

The European Investment Bank (EIB) supports investment projects that help reduce regional disparities, strengthen economic competitiveness and improve the standard of living of citizens. The EIB has entered into loan agreements with Slovak banks and leasing companies that use EIB funds to finance projects by small and medium-sized enterprises and medium-capitalized enterprises. These credit lines meet the EIB's priority of supporting small businesses in Europe and help to improve SMEs' access to medium- and long-term financing on favorable financial terms.

### 1.3.1.2 Institutions supporting SMEs at national level

#### **Ministry of Economy of the Slovak Republic**

The Ministry of Economy is the most significant institution in Slovakia supporting small and medium-sized enterprises. It acts as a guarantor and coordinator of business support activities and includes the following forms of support.

The Ministry of Economy of the Slovak Republic the most important institution in support of SMEs in terms of state aid programs and other initiatives of central state administration bodies, which acts as guarantor and coordinator of many activities in this area. Among the most important activities of MoE in the area of small and medium-sized enterprises are state support programs, which are implemented in compliance with Act No. 358/2015 Coll. on State Aid as amended.

#### **State aid to small and medium-sized enterprises**

State aid is generally understood to mean any aid, in whatever form (monetary or non-monetary), provided to support entrepreneurship or activities connected to it by a provider) (usually one of the state institutions, eg. the Slovak Business Agency, the Center for Labor, Social Affairs and Family, Ministry of Education, Science, Research and Sport of the Slovak Republic or the Ministry of Economy of the Slovak Republic) directly or indirectly through public funds (eg from the state budget). Coordination in this area with respect to the European Union is carried out since 1.1.2016 by the Antimonopoly Office of the Slovak Republic. Prohibited is a form of State aid that would distort competition, favor certain entrepreneurs or provide services that would adversely affect trade between EU Member States.

#### **Minimum aid (aid "de minimis")**

A separate category for assisting entrepreneurs is so-called minimal assistance ("de minimis" or "small-scale" support).

Terms of aid, which during any period of three fiscal years shall not exceed:

- in the sum total of EUR 200 000 per entrepreneur (or EUR 100 000 in the case of hired or paid road freight transport, which cannot be used for the purchase of road freight transport vehicles) - Commission Regulation (EU) 1407/2013
- in the agricultural sector; the ceiling for the minimum aid is set at EUR 15 000 - Commission Regulation (EU) 1408/2013
- in the fishing and aquaculture sector; the ceiling for the minimum aid is set at EUR 30 000 - Commission Regulation (EU) 717/2014
- in favor of companies providing services of general economic interest; the ceiling for the minimum aid is set at EUR 500 000 - Commission Regulation (EU) 360/2012

#### **Ministry of Education, Science, Research and Sports of the Slovak Republic**

Supports R & D projects under R & D incentives under Act No. 185/2009 Coll. In accordance with § 8 and § 8a of Act No. 172/2005 Coll. on the organization of state support for research and development, as amended by the Ministry, may provide subsidies for scientific and technical

services in support of research and development. The Ministry of Education, Youth and Sports is the managing authority of the OP Research and Innovation.

### **Ministry of Labor, Social Affairs and Family of the Slovak Republic**

As a central body of the state administration for employment strategy, coordination of its creation and implementation and labor market policy, the state administration of the Labor, Social Affairs and Family in the field of social affairs and employment services at the second level and the Office for Labor, Social Affairs and Family at the first stage. Entrepreneurs and potential entrepreneurs - eligible persons can apply for support and assistance through active labor market instruments and support for the employment of disabled citizens under Act No. 5/2004 Coll. on Employment Services as amended. Starting entrepreneurs can also get a contribution in 2017 to start their business in the sense of § 49 of Act No. 5/2004 Coll. on Employment Services as amended.

### **Ministry of Agriculture and Rural Development of the Slovak Republic**

In accordance with Act No. 543/2007 Coll. manages and guides the provision of support from agriculture, food processing, forestry and fisheries from the state budget and manages the financial management of support from European agricultural funds outside the EFF (European Fisheries Fund). For the 2014-2020 programming period, the Ministry is entrusted with the preparation and implementation of the Rural Development Program, the Operational Program for Fisheries, the Integrated Regional Operational Program as well as the new Cross-Border Cooperation Programs 2014-2020.

### **Slovak Business Agency (SBA)**

Slovak Business Agency represents in Slovakia the key and the oldest specialized institution in terms of SME support.

The SBA was established in 1993 by a joint initiative of the Government of the Slovak Republic and the European Union PHARE program. The founding members are the Ministry of Economy of the Slovak Republic, the Association of Entrepreneurs of Slovakia and the Slovak Trade Union. The Agency supports small and medium-sized businesses at international, regional and local level by coordinating all activities, including financial ones. It functions as an information center for entrepreneurs, an organizer of educational and advisory programs and a provider of financial support programs. The SBA wants to be the first choice of Slovak companies for the establishment and development of their business.

The mission of the agency is

- Comprehensive assistance to entrepreneurs in line with the principles of the Small Business Act initiative.
- Comprehensive support for entrepreneurship at national, regional and local level. Strengthening the competitiveness of entrepreneurs in the EU common market and in third country markets.

The Small Business Act (SBA) is an EU initiative to support small and medium-sized enterprises (SMEs), which provides a comprehensive framework of measures for SMEs to ensure their sustainable growth and competitiveness on the global market. The symbolic title of the initiative

as an act is the expression of the political will to recognize the central role of SMEs in the EU economy and for the first time to establish a comprehensive policy framework for the EU and its Member States through a set of 10 principles to facilitate understanding and implementation of policies at EU and Member States level.

10 principles of Small Business Act:

1. Create an environment in which entrepreneurs and family businesses can grow and be rewarded for their entrepreneurial efforts.
2. Ensure that honest entrepreneurs who have gone bankrupt can quickly get a second chance.
3. Create "Think Small First" policies.
4. Ensure that public authorities respond to the needs of SMEs.
5. Adapt public policy instruments to the needs of SMEs: to facilitate SMEs participation in public procurement and to better use State aid for SMEs.
6. Facilitate access to finance for SMEs and create a legal and business environment that will support the timely payment of commercial transactions.
7. Encourage SMEs to make better use of the opportunities offered by the single market.
8. Promote skills development in SMEs and all forms of innovation.
9. Enable SMEs to turn environmental challenges into opportunities.
10. Encourage and support SMEs so that they can benefit from rising markets.

The aim of these principles is to remove barriers that hinder SMEs in increasing and increasing competitiveness and ensuring the conditions for job creation in the SME sector. Representative of the Small Business Act in Slovakia is the SME Envoy. In August 2013, the SBA initiated the Small Business Act Working Group under the patronage of the Ministry of Economy of the Slovak Republic. The goal of the group is to prepare and implement key SME support policies and policies, discussing EU tasks and recommendations, and preparing measures to support the development of SMEs in order to ensure sustainable growth for SMEs and increase regional employment.

## State financial institutions

### Slovak Guarantee and Development Bank (SRZB)

Slovak Guarantee and Development Bank is a specialized banking institution that supports small and medium-sized businesses through guarantee schemes, contributory programs, credit programs, and financial intermediation programs. The Slovak Republic is the owner and the sole shareholder of the Bank represented by the Ministry of Finance. This institution is dependent on transfers from the state budget. In addition to its credit products, the Bank uses its partnership with commercial banks and other institutions supporting target segments to fulfill its mission. Provides support for SMEs through the following products:

- providing loans to small and medium-sized enterprises, towns and municipalities or legal entities established under special regulations (eg communities of apartment owners)
- providing bank guarantees for loans - to entrepreneurs who do not have sufficient credit security



### **Slovak Agency for Investment and Trade Development (SARIO)**

The aim of this agency is to support and develop the Slovak economy and improve living standards in Slovakia by supporting pro-export activities, reducing unemployment and managing EU structural funds.

### **EXIMBANKA SR**

This is the Export-Import Bank, which is owned by the State, which is liable for the debts incurred in raising funds in foreign markets and liabilities incurred in financing and export credit insurance. Its aim is to increase export activities of supported entities through insurance and financing of export credits. The purpose of EXIMBANKA SR is to help small and medium-sized companies that can offer a prospective and competitive product or service to foreign markets. The segment's share of clients is over 70% over the long term.

#### 1.3.1.3 Institutions supporting SMEs at regional level

In the field of business and innovation support, the Self-governing Regions Act No. 302/2001 Coll. and Act No. 539/2008 Coll. on support for regional development. The law refers to the responsibilities of self-governing regions in the area of care for the universal development of their territory and the needs of their inhabitants, on the effective use of local human, natural and other resources, while the law gives the self-governing regions the opportunity to carry out their own investment and entrepreneurial activity. Individual self-governing regions in accordance with Act No. 539/2008 Coll. on the promotion of regional development, processed the programs of economic and social development of higher territorial units. The self-governing regions also worked on research and innovation strategies for the Intelligent Specialization of the Slovak Republic (RIS3) through the development of innovation, science and technology.

**Regional Advisory and Information Center Prešov (RPIC Prešov)** was established in 1993 at the platform of the Association of Legal Entities. The members of the association are currently three commercial companies (LPH a.s., Mliekofarma, s.r.o., JAKOR s.r.o.) and the city of Prešov. Since its foundation, the organization has been focusing on business support in all its forms, with the gradual expansion of the services provided to the relevant target group. RAIC Prešov is also involved in the Slovak association of business and technology incubators (SAPTI), the National Association for the Development of Enterprise (NARP) and is the only out of Bratislava consortium Enterprise Europe Network (EEN). The mission of RPIC Prešov through its services and activities is to support SMEs and create suitable conditions for socio-economic development in the Prešov and Košice regions. The vision is to build the dominant position of RPIC Prešov in the region as a partner in the field of innovation and internationalization of business.

#### 1.3.1.4 Interest and professional associations

### **Slovak venture capital association (SLOVCA)**

SLOVCA is an association of legal entities whose activity consists in the processing and provision of venture capital. It includes five goals:

- providing information about risk capital,
- representing the opinions of members in the negotiations with the Government of the Slovak Republic,
- creating a platform for its members to exchange opinions,
- training of SLOVCA members and other interested parties,
- support, development of practice and business ethics in the given field.

**Association of Entrepreneurs of Slovakia (ZPS)** is the first interest association of private entrepreneurs of the Slovak Republic established after 1989. The ZPS has been a non-profit organization throughout its existence, operating exclusively from the contributions of members and donations of domestic and foreign natural and legal persons. Since 1st of March 1993, ZPS has been a member of the European Confederation of Small and Medium-Sized Enterprises, based in Brussels. ZPS is a founding member of the organization that covers employers' associations, the Republic Union of Employers, which represents entrepreneurs producing a significant part of GDP in Slovakia. The primary objective of the ZPS is to contribute to build a modern and developed market economy. ZPS protects business conditions from restricting businesses rights and freedoms, and hinder all political and economic measures leading to the deterioration of an equal market business environment. ZPS focuses on key issues of creating and guaranteeing a corresponding business environment.

**Slovak Trades Association (SŽZ)** is a union of professional societies - legal entities established in accordance with Act No. 83/1990 Coll. on citizens' associations, as amended. SŽZ associates, on a voluntary basis, legal persons - trade guilds, associations and societies, provided that their activities are in accordance with the objectives of the SŽZ. The objective of the SŽZ at home and abroad is to interpret, promote and defend the interests of self-employed tradesmen, small and medium-sized entrepreneurs in relation to state, regional and local authorities, employee organizations and non-governmental organizations. For its members and their member organizations it provides direct or mediated professional consulting, advisory information services in all areas of interest, as well as educational activities, including in cooperation with foreign companies on technical, business or legal issues.

**Slovak Chamber of Commerce and Industry (SOPK)** was established by the law of SNR no. 9/1992 Coll. on Chambers of Commerce and Industry, as amended, as a public institution. Members of the Chamber may be legal and natural persons engaged in business activities in economic sectors other than the agricultural and food sector. However, other legal and natural persons may become members if they are related to business activities in the economic sectors. Membership shall commence on the day of admission as member of the Chamber upon written request. The membership fee is approved by the Assembly of SOPK Delegates. SOPK is a partner of the Enterprise Europe Network in Slovakia. Represents and coordinates the common interests of its members in matters of business activity in Slovakia and abroad, provides them with services and performs other tasks within its sphere of responsibility, in particular, participates in the preparation of generally binding laws and measures in the field of business, helps to reconcile the interests of its members in the field of business activities and protects them from unfair commercial relations, liaises and develops contacts with chambers and similar institutions in Slovakia and abroad and concludes agreements with them, organizes economic and trade missions and delegations, gathers and disseminates knowledge and information on trade-political, legal, customs, environmental and economic conditions abroad and for this purpose publishes professional publications, ensures the promotion of its members in Slovakia and abroad, including participation in exhibitions and fairs and other activities.

## 2 Czech Republic

### 2.1 Definition of basic terms

#### 2.1.1 Keywords in Czech

In order to be able to search for information about business succession in the Czech, it is recommended to search using the following keywords:

Firemní nástupnictví, podnikové nástupnictví, nástupnictví, následnictví, předání podniku, předání firmy, převzetí podniku, převzetí firmy, prodej podniku, prodej firmy, transfer podniku, transfer firmy, rodinný podnik, rodinná firma, rodinné podnikání, firma, podnik, podnikání.

#### 2.1.2 The definition of “business succession”

Czech terminology, given the "young age" of the branch in this field, has no settled concepts. Someone calls it succession, someone follow-up, another generational exchange, or just takeover. Succession and succession are, however, misleading in Czech language, as they refer not only to the process of taking over the business, but to the process of assuming some employee function in the enterprise.

#### 2.1.3 Definition of the “proprietor”

Czech legislation distinguishes entrepreneurs as natural and legal persons.

Entrepreneur as a natural person is referred to as “živnostník” or “osoba samostatně výdělečně činná = OSVČ”, which translates as “proprietor”, “sole trader” or “self-employed person”. It is a person who does a continuous independent business activity, on its own behalf and on its own responsibility for profit and there is no legal distinction between the owner and the business entity. The owner is in direct control of all elements and is legally accountable for the finances of such business and this may include debts, loans, loss, etc.

The performed activity is called “živnost” in Czech, which translates as “proprietorship” or “sole proprietorship”. The proprietorship is regulated by law no. “455/1991 Sb. o živnostenském podnikání” but some aspects of proprietorship are regulated by other laws, such as law no “89/2012 Sb. Občanský zákoník”.

The proprietorship may be carried out on the basis of an issued license if it fulfills the conditions provided by the law 455/1991; a state license to operate a trade ("concessions") is only required in some cases.

## 2.1.4 Definition of “business corporations”

Entrepreneur as a legal person is referred to as “obchodní korporace”, which translates as “business corporation”. Business corporations are established for the purpose of generating profits and are regulated primarily by law no. “90/2012 Sb. o obchodních korporacích”.

Business corporations are commercial companies and cooperatives. Commercial companies are a public limited company and limited partnership (also referred to as “the partnership”), a limited liability company and a joint stock company (also referred to as “the capital company”) and a European company and a European economic interest grouping. Cooperatives are a cooperative and a European cooperative society. The European Company, the European Economic Interest Grouping and the European Cooperative Society are governed by the provisions of this Act to the extent that the directly applicable European Union rules governing European society, the European Economic Interest Grouping or the European Cooperative Society so allow.

Table 6: The number of entrepreneurs by regions in the Czech Republic

Region	Business corporations								Proprietors	
	Joint-stock company	Limited liability company	Limited partnership	Public company	Cooperative	European Cooperative Company	European Company	European Economic Interest Grouping	A natural person doing business under other laws than Trade Act	A natural person doing business under Trade Act
Hlavní město Praha	13 235	181 587	293	1 672	5 874	1	1 301	5	27 246	289 755
Jihočeský kraj	748	14 422	37	350	624		17		11 811	112 472
Jihomoravský kraj	2 924	47 148	57	618	1 915		253		16 933	202 117
Karlovarský kraj	294	9 334	20	150	135		6		4 340	51 812
Kraj Vysočina	452	8 120	30	197	476		8		7 860	77 726
Královehradecký kraj	732	12 232	12	311	500		17		9 165	97 786
Liberecký kraj	477	10 627	32	466	390		18		6 426	85 786
Moravskoslezský kraj	1 871	28 487	32	496	1 673		50		16 601	175 925
Olomoucký kraj	800	13 091	17	272	568		15		9 344	99 063
Pardubický kraj	593	10 484	14	432	407		13	1	8 727	82 937
Plzeňský kraj	669	14 973	48	237	395		33		10 622	98 040
Středočeský kraj	1 478	32 513	70	498	933		51		18 658	237 606
Ústecký kraj	838	17 670	49	678	474		14	2	10 879	122 427
Zlínský kraj	712	14 128	24	212	281		21		7 562	102 244
ČR	25 823	414 816	735	6 589	14 645	1	1 817	8	166 174	1 835 696

Source: own research, RES

## 2.1.5 Current situation in the Czech Republic

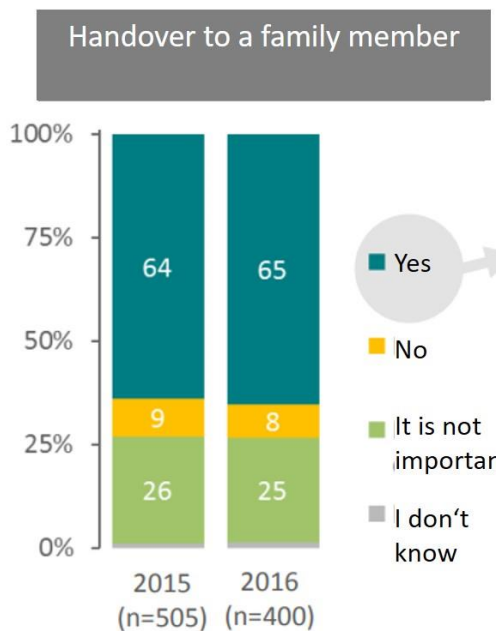
In the Czech Republic, the topic of succession actively began to be tackled around 2015, mainly for historical reasons (Navláčil, 2016). Most family businesses in the Czech Republic were founded after the collapse of communism, about 25 years ago. The generations of these founders have been approaching retirement age in recent years and are addressing the Family Business Forum (2015), ie family businesses in the Czech Republic are experiencing the first generation of exchanges (Deloitte in the Czech Republic, 2014). In more developed countries of Europe, this problem has been addressed for a longer period, due to the longer existence of small and medium-sized businesses.

The current state of the situation in the Czech Republic has been analysed by ASMP ČR in 2016. Below you can find the main findings.

### Is your company's goal that a family member takes over the company?

Two-thirds of the owners want to transfer the business to someone in the family.

Figure 1: Is your company's goal that a family member takes over the company?



Source: ASMP ČR, 2016

### Did you already start the business transfer?

About one-third of them are already in the handover phase.

Figure 2: Did you already start the business transfer?

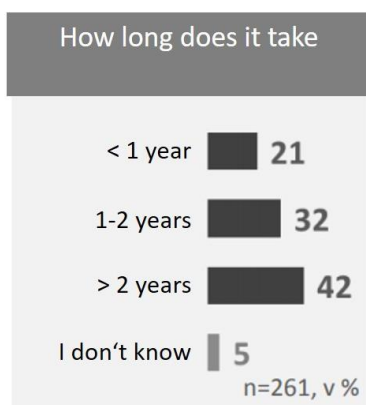


Source: AMSP ČR, 2016

### How long does the process take?

The process of handing over the company often takes more than two years.

Figure 3: How long does the process take?

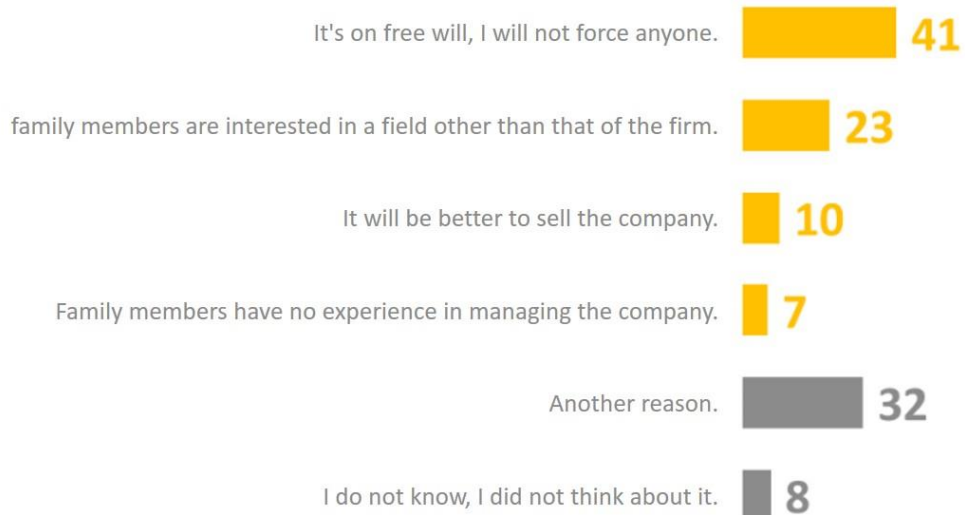


Source: AMSP ČR, 2016

### Why do you not want a family member to be a successor?

If a family succession is not planned in the company, it is mainly because owners do not want to exert pressure on other family members or because family members are heading to other fields.

Figure 4: Why do you not want a family member to be a successor?

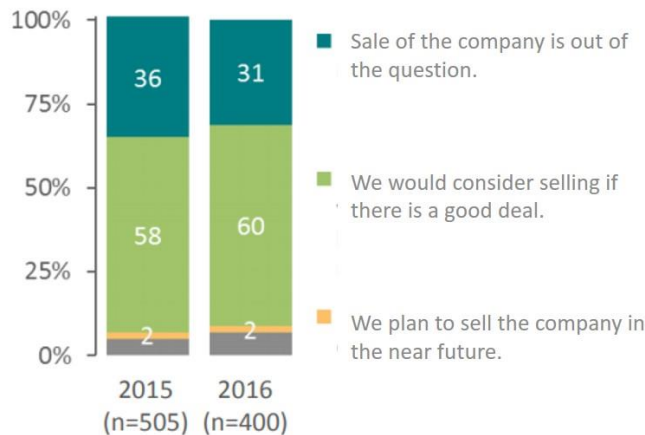


Source: AMSP ČR, 2016

### Attitude to the sale of the company

More than half of the owners would be willing to sell the business if there was a good offer.

Figure 5: Attitude to the sale of the company



Source: AMSP ČR, 2016

## 2.2 Defining the process

### 2.2.1 The point of view of theory

Succession planning is not an easy task and it is certainly not a unique matter that can be solved in isolation. It is a combination of many steps that are needed to successfully transfer family property from one generation to another. Planning is an absolutely crucial element that cannot be underestimated. Planning can be reactive, adaptive or strategic. In the case of reactive or adaptive planning, chances of success are diminishing.

Each enterprise is different and is influenced by the sector, strategies, roles of family members and their relationships, future plans and values. There is therefore no universal solution that the owner of the company could use. However, a structured approach to strategic succession planning for the owner will help the process not only to start, but to achieve the desired results (Deloitte, 2014).

#### Critical questions for business owners

- Do you have a detailed personal vision and goals of transferring ownership and management of your company? If so, did you familiarize yourself with these goals with your family members and corporate management?
- Have you selected successors who will own the company? Are you clear about the successors who will drive the company? Are these successors experienced enough? What knowledge and skills do they lack to successfully take over management or ownership of the company?
- What is your idea of the value of the company?
- Have you resolved family relationships and set rules for your company's future leadership and ownership? Are family members familiar with these rules?
- Did you think in preparing your succession plan about the issue of your tax burden?
- Does your succession plan include a detailed solution to unexpected life events such as death or long-term inability of a company owner or senior management?
- Did you also take into account when planning the succession plan whether the company will be able to provide you or anyone else with the necessary funds for the retirement period?
- Have you considered alternative corporate structures or, alternatively, methods of transferring shares or business shares that could help companies achieve successive goals?
- Do you consider selling the company to the management or to an external investor?
- Have you recently appreciated your company?
- Do you have any idea of whether or not you will leave the management of the company or will you participate in a certain way in the running of the company even after leaving the leading position?
- Are you aware of the possibility of using trusts, private foundations, or other instruments to address succession and property protection issues?



## Theories of business succession & process models

„Because succession planning has become an integrated process, one model cannot be universally applied; company leaders have to find the best fitting system and adapt it individually to their needs, structure and program priorities. The following theories of succession planning are of high relevance:

The Common-Sense theory of succession suggests that replacing management due to inefficient operations will result in performance improvements and increased effectiveness. Good performance does not require any management changes. Advocates of this theory state the positive change of organizational output as the key reason for succession planning. (Guest, 1962)

In comparison, Grusky (1960) introduced the Vicious-Circle theory of succession planning arguing that administrative succession disrupts structures and relationships in all corporations. Frequent leadership changes have a reciprocal effect on performance and lead to less employee motivation. The successor is often isolated from colleagues and finds him or herself in a vicious circle. Because new management tends to alter known bureaucratic procedures, people are afraid of changes. Through replacing employees whom the successor can trust and communicate with, he or she has the opportunity to overcome the vicious circle. (Grusky, 1960)

In response to Grusky, advocates of the Ritual-Scapegoating theory contend that management succession does only have a limited effect on the performance of a team or corporation. Powerful leaders will find a scapegoat to blame for poor performance. Gamson and Scotch (1964) introduced the example of a baseball team: in case that a field coach takes the responsibility for poor performance and is dismissed in an act of ritual scapegoating, hopes of the team and the fans are high that a new manager will lead to better results. However, there would not be any difference in performance under the old and new manager if the “slump-ending effect” was balanced. In the long run, administration and corporate policies are more important to ensure excellent performance than replacing individual managers. (Gamson & Scotch, 1964)

Another theory divides succession planning into four phases. The first sector describes succession contingencies that include among others organizational structure and industry characteristics whereas the second area refers to events initiating the need for succession planning (i.e. succession antecedents). The succession event and the choice of the candidate take place which are instantly followed by succession consequences. (Lynn, 2001)

The Leadership Pipeline model analyzes seven career stages within an organization which each concern various areas and complexities of leadership. While every stage takes on average three years to complete, leadership development challenges differ at each level and need to be addressed diversely. It is suggested to fill the leadership pipeline at all stages in order to avoid talent shortages and to have a vast pool of candidates to choose from for present and future leadership positions. Leaders progress through several stages with continuous training and development. One weakness of the model is its focus on larger organizations that have large HR budgets. (Charan, Drotter, & Noel, 2011)

The Acceleration Pools model advises corporations to group high potential employees in order to prepare them for executive positions. Each candidate has a mentor and a wide learning experience with the help of task forces and action learning. Development Action Forms are filled in for each of the training areas to encourage candidates to apply skills and knowledge in a practical way. Pools can be organized according to functional areas or management levels. (Byham, 2002)

The Seven-Pointed Star model was introduced by Rothwell (2005) who developed seven steps to implement a succession planning program successfully. The first task is to make the commitment, i.e. to demonstrate the need for the program and formulate a mission statement as well as an action plan. Following, it is essential to assess current key positions and their competency requirements. The third step is to determine individual actual performance and establish talent inventories. The subsequent steps are to estimate future work requirements as well as future individual potential in order to find out how to close the development gap. The final step is evaluating and improving the program after its implementation. (Rothwell, 2005)

Concluding, several theories are presented in this chapter: from generic succession planning about the question whether managerial changes disrupt or positively influence a corporation's performance to models that offer subsequent steps to be applied in practice “.

## **2.2.2 The point of view of business owners**

This document maps the laws of the Czech Republic from the business owners point of view, that is how can they pass/sell/give their business share, what happens if they die. The data was processed in the form of the “mind map” or “decision tree” or the “tree of options”, where there is a main topic in the center and it logically divides to other branches.

The inheritance process and its possibilities are illustrated in Annex 1. The possibilities of corporate succession from the point of view of a proprietor are shown in Annex 2. Owners of legal entities and their possibilities of transferring the company are depicted in in Annex 3.

This section does not analyse the view of employees in leading position and transfer of their positions, such as preparing employees for their future positions as managers. The figures in Annexes 1-3 do not take into account the tax point of view. Further branching of the mind map would be confusing and unclear.

## 2.3 Legislative framework

Table 7 shows the most important Czech laws on corporate succession and explains what it regulates.

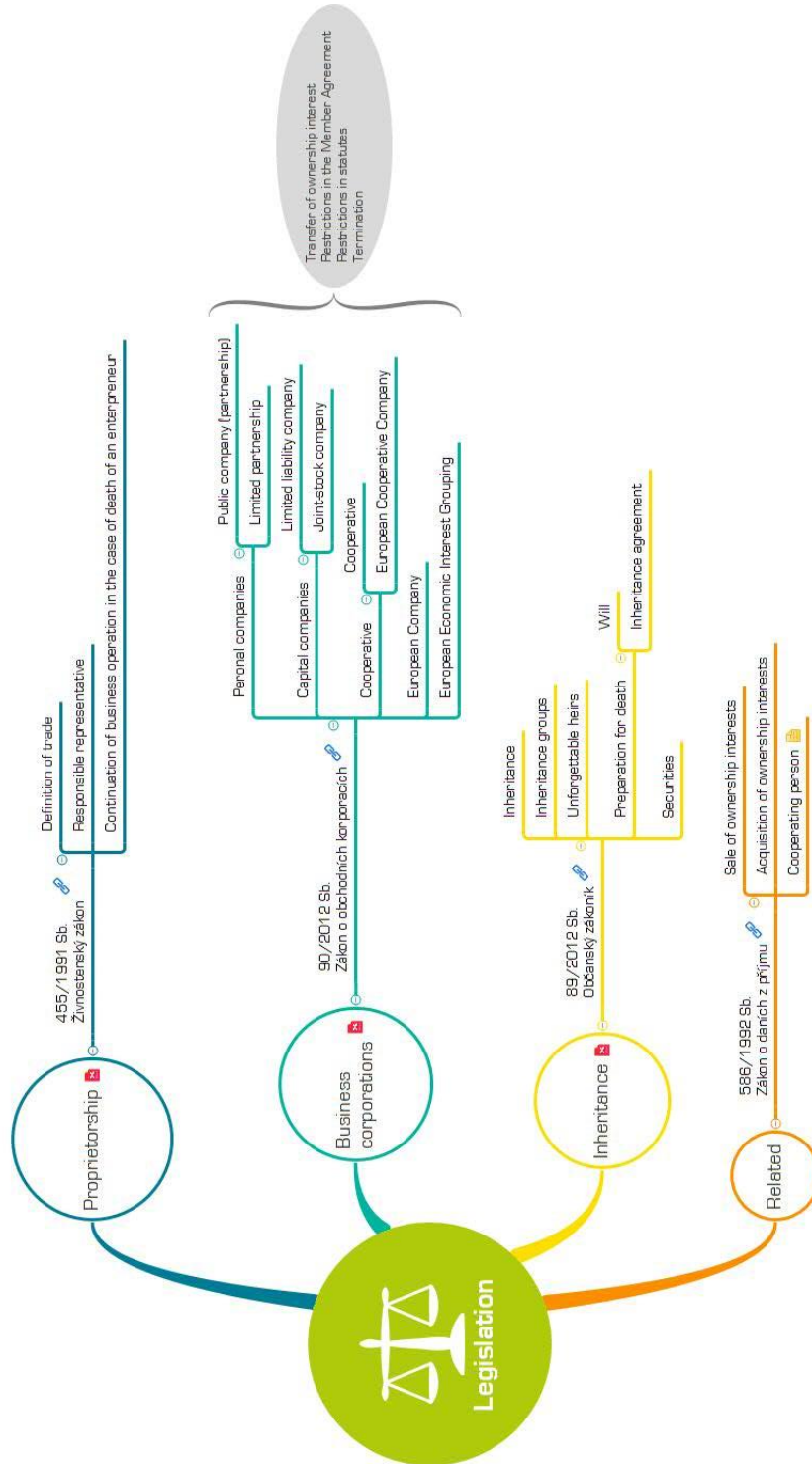
Table 7: Overview of Czech legislation on corporate succession

Name of the document (ENG)	Name of the document (CZ)	What it regulates	Hyperlink
Charter of Fundamental Rights and Freedoms	Listina základních práv a svobod (Usnesení č. 2/1993 Sb.)	Right to own property	<a href="http://zakony-online.cz/?s5&amp;q5=all">http://zakony-online.cz/?s5&amp;q5=all</a>
Civil Code	Občanský zákoník (Zákon č. 89/2012 Sb.)	Definition of entrepreneur, inheritance law	<a href="http://zakony-online.cz/?s189&amp;q189=all">http://zakony-online.cz/?s189&amp;q189=all</a>
Trade Act	Živnostenský zákon (Zákon č. 455/1991 Sb.)	Business definition, business continuity at the death of an entrepreneur	<a href="http://zakony-online.cz/?s8&amp;q8=all">http://zakony-online.cz/?s8&amp;q8=all</a>
Business Corporations Act	Zákon o obchodních korporacích (Zákon č. 90/2012 Sb.)	Definition of business corporations, companies, cooperatives, European companies, European interest groups and European cooperative societies. Termination - transfers and transfers of shares. Annulment. Authorities and legal successors.	<a href="http://zakony-online.cz/?s190&amp;q190=all">http://zakony-online.cz/?s190&amp;q190=all</a>

Source: own research

In a similar way, but from a different point of view, the different laws and areas that they regulate, can be displayed by the following Figure 6.

Figure 6: Overview of Czech legislation on corporate succession



## 2.4 Entities / institutions, existing schemes / models or websites / portals / programs

### 2.4.1 Entities & institutions & websites

Table 8: Entities & institutions & websites

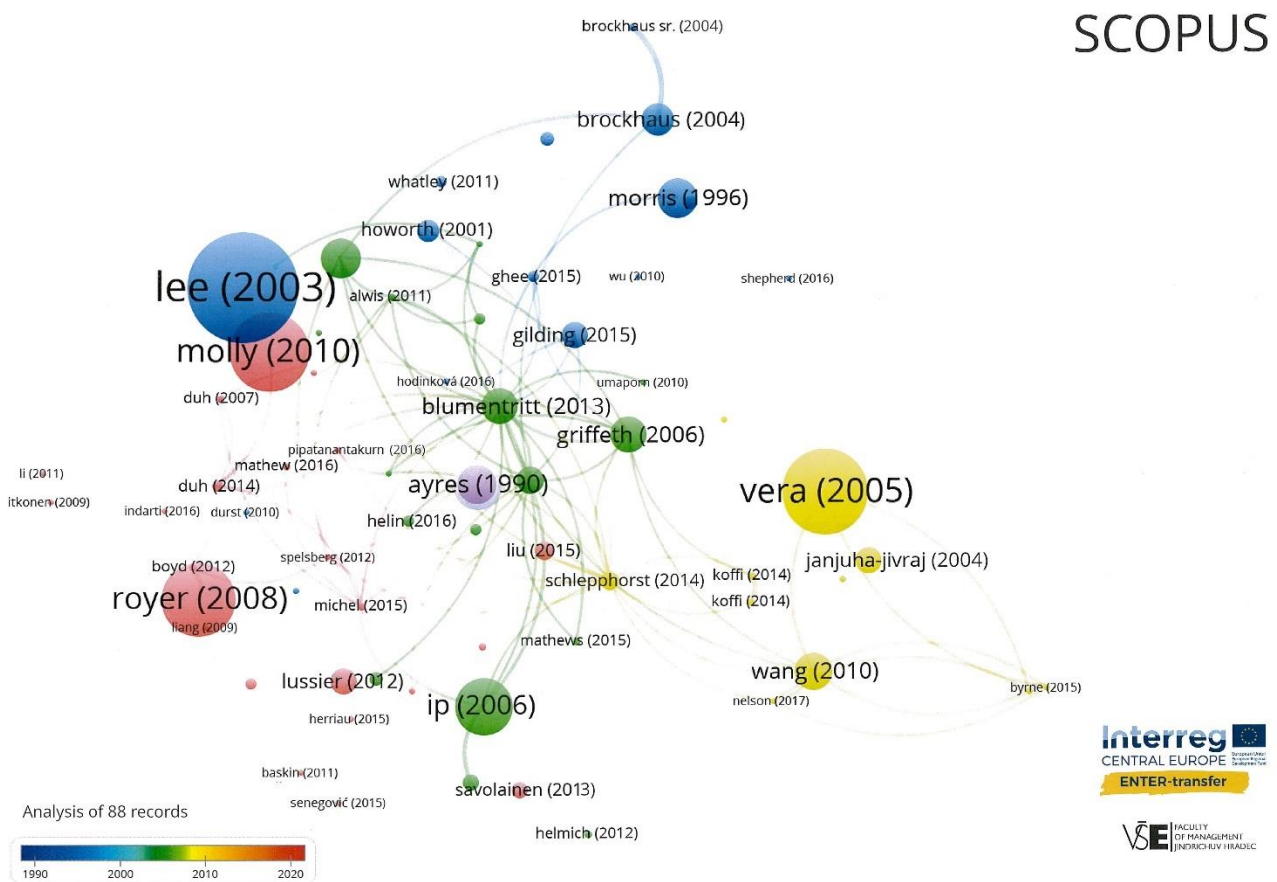
Institution name (ENG)	Institution name (CZ)	Description	Website
Association of Small and Medium Enterprises and Tradesmen of the Czech Republic (AMSP CR)	Asociace malých a středních podniků a živnostníků České republiky (AMSP ČR)	AMSP CR - Association of Small and Medium Enterprises and Tradesmen of the Czech Republic was established in 2001 and is the main representative of the broadest business segment in the Czech Republic. It covers small and medium-sized enterprises (SMEs), tradesmen, as well as corporations, guilds and associations representing the specific professional interests of small entrepreneurs.	<a href="http://amsp.cz/">http://amsp.cz/</a>
Family Business Association: Platform for sharing experiences of family business owners	Asociace rodinných firem: Platforma pro sdílení zkušeností majitelů rodinných firem	It allows family business owners to share the values, experiences and information from the family business area, to meet at an informal level and discuss with interesting people.	<a href="https://umsemumtam.cz">https://umsemumtam.cz</a>

Source: own research

2.4.1.1 Scientific articles in Scopus and Web of Science databases

The following figures depict scientific articles on business succession according to their novelty and quoting rate. The more the author's article is quoted, the larger the circle. The newer the article, the redder is the circle. The analysis shows that the most important articles in the SCOPUS database are molly (2010), royer (2008) and vera (2005). In future work, we recommend reviewing these articles in more detail.

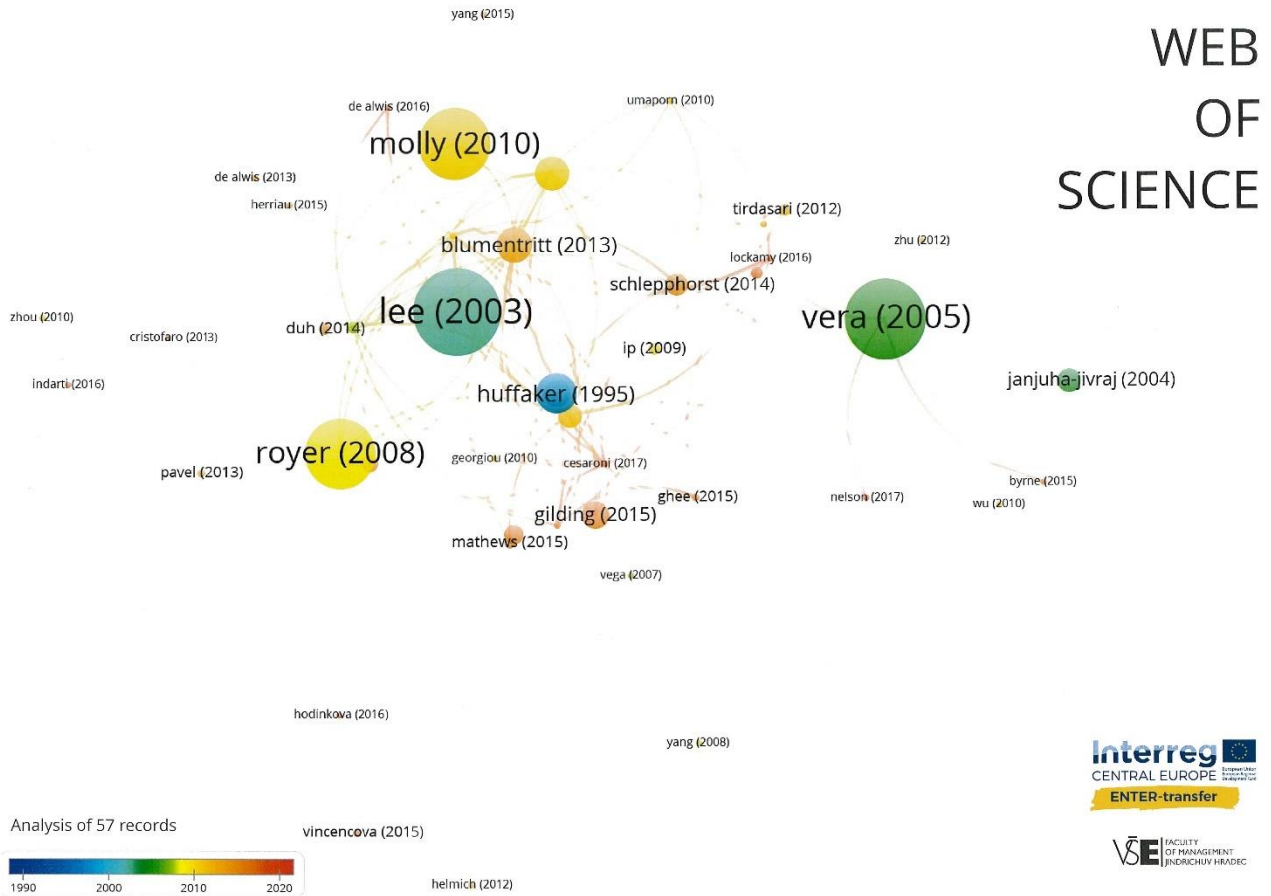
Figure 7: Analysis of scientific articles in the Scopus database



Source: own research

Next figure shows, that molly (2010) and royer (2008) are once again among the most important scientific articles in the Web of Science database. In future work, we recommend reviewing these articles in more detail.

Figure 8: Analysis of scientific articles in the Web of Science database



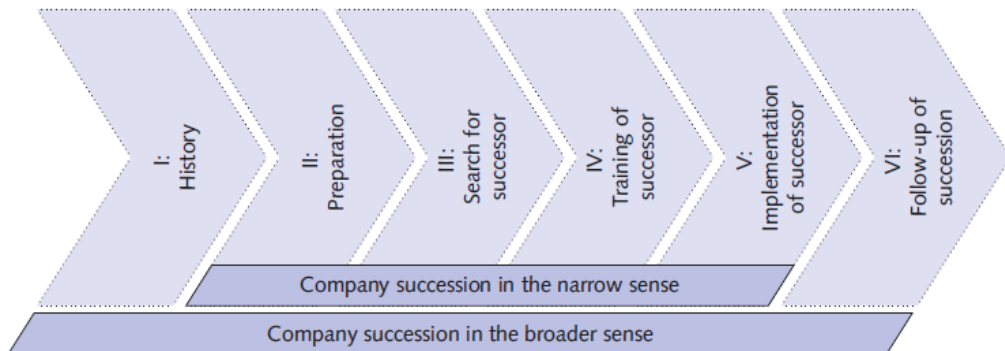
Source: own research

## 2.4.2 Existing schemes & models

According to the research of the Faculty of Management of the University of Economics in Prague, there are several existing models on the topic of business succession.

### 2.4.2.1 St. Gallen succession model based on Halter/Schröder

Figure 9: St. Gallen succession model based on Halter/Schröder



Source: Halter/Schröder (2010), p. 129

As shown in the following figure, Halter and Schröder differentiate between a succession process in the narrower sense and one in the broader sense. The dotted lines should reflect permeability, i. e. that the individual phases can also be handled parallel to each other and must not necessarily follow each other (Cf. Halter/Schröder (2010), p. 128.).

Company succession in the narrower sense includes the steps of preparing the succession, searching for a successor, training the successor and implementing the succession. Company succession in the broader sense also includes the phase of past history and the follow-up phase at the conclusion.

The focus of the first phase described as the past history is addressing the self-image of the family company. Within this context, it is necessary to explain which traditions, stories and routines have defined the company and may have a major influence on the decision-making processes (Cf. Halter/Schröder (2010), p. 129).

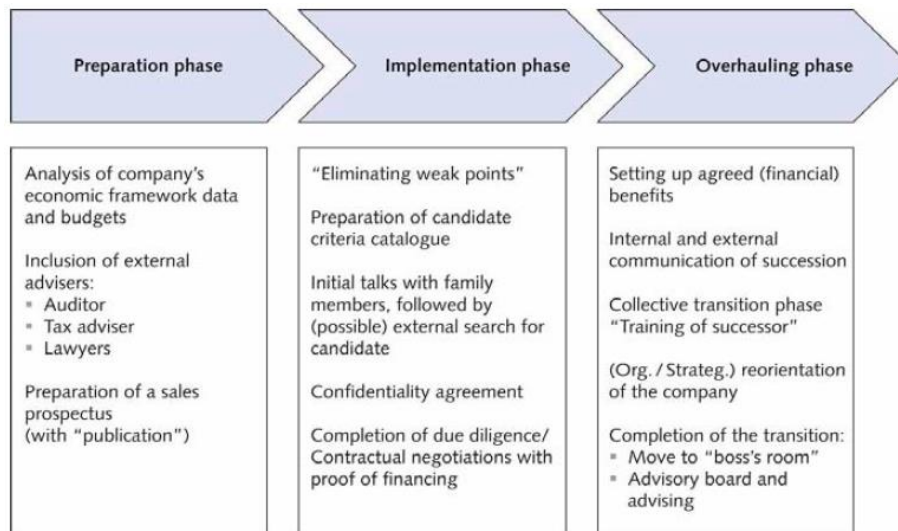
The last phase of the succession process in the broader sense consists of the follow-up work. The follow-up phase leads to changes in the daily routines of the person handing over the company. The successor faces the challenge of finding a balance between what was previously achieved by his or her predecessor and the introduction of certain changes within the company (Cf. Halter/Schröder (2010), p. 131).

The St. Gallen succession model provides a description of an idealised succession process with an integrated character since all of the phases are taken into account: from the preparation of the succession to the work following the succession. Furthermore, it includes emotional aspects with respect to the successor and the transferring owner, as well as individual stakeholders and interactions in the training phase. As a result, each phase of company succession is given comprehensive consideration in this model.



### 2.4.2.2 Company succession model based on Kary/Dittmers

Figure 10: Company succession model based on Kary/Dittmers



Source: Hilse (2010), p. 159

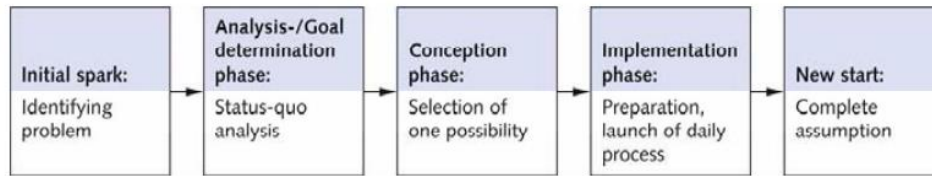
The figure shows that the succession process by Kary and Dittmers is broken down into three phases. In the preparatory phase, the current financial statements, planned balance sheets and income statements for the next three years are examined. An external adviser is usually hired, e. g. an auditor or a tax consultant, in this phase. Lawyers can also be helpful, e. g. with regard to questions on company law or industry-related legal concerns (Hilse (2010), p. 159). The central tasks of the consultant include determining the type of transfer (e. g., fee-based or free), liability questions under civil law, questions with regard to inheritance law and questions on the departing entrepreneur's pension plan, tax optimisation of the transfer, preparation of the company that will be transferred in an organisational, strategic, operational, technical and financial regard and the valuation of the company (Hilse (2010), p. 159).

After completion of the preparatory phase, the implementation phase begins primarily by searching for a suitable successor. This person is initially sought among family members. If no individual can be found, it is necessary to search for an external alternative. This process should also be supported by an external consultant, according to Kary and Dittmers (Hilse (2010), p. 159). The selection of a potential successor should take place on the basis of the previously set and weighted criteria. This means that it is necessary to determine in advance the criteria that are particularly important and must be met by the successor, as well as what is less important. If a successor has been found, it is necessary to start contract negotiations. Since the potential successor gains insight into all of the company documents, evidence of its financing in advance must be presented in advance. Furthermore, the successor must sign a declaration of confidentiality and a letter of intent (Hilse (2010), p. 159).

The phasemodel according to Kary/Dittmers concentrates on a rational and smooth handling of succession. The focus is on minimising the likelihood of erroneous decisions and avoiding risks for both the involved parties and the company. The key importance of advisers and contracts emphasises the risk-averse character of this model (Hilse (2010), p. 159).

Company succession model based on Viehl

Figure 11: Company succession model based on Viehl



Source: Viehl (2003), p. 140

The focus of the succession model by Viehl is the change of generations in family companies and therefore succession within the family. Due to the great complexity of a transfer, which requires much time and intensive preparation, the planning of the transfer should begin at a very early point in time (Cf. Viehl (2003), p. 9.). The following figure shows the different phases of the succession process according to Viehl.

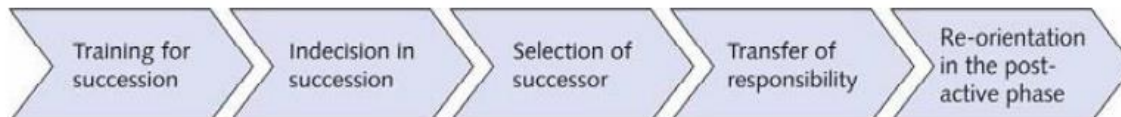
The course of the transfer would still focus on the predecessor, usually in the person of a senior, during the first and second phase as an ideal arrangement. In the phase described as the initial spark, the main concern is that the senior must recognise the importance of the succession rules. In the practice, a frequent observation is that this recognition fails to materialise on the part of many family company owners. Provided that the senior addresses the succession rule and the importance of the change in generations, the analysis and objective-defining phase follows. On the one hand, this requires an extensive audit of the company from a business and legal point of view, e. g. in the form of a strengthweakness analysis or calculation of the company’s market value. On the other hand, an analysis of the senior’s private assets and pension plan must be conducted. Furthermore, the economic and personal objectives of the participating family and children must be identified in this second phase (Cf. Viehl (2003), p.141).

In the fourth phase, the previously made decisions and plans are implemented in the practice. If the model of family succession was chosen, the implementation phase should be divided into the additional steps of preparing the successor and the successor’s assumption of the position. The preparatory phase must be understood as the training period for the successor. In addition to a university degree programme, it also includes gaining experience outside of the family business. The starting position of the successor also depends on his or her professional experience. The actual change can take place in multiple stages, i. e. the senior can gradually transfer competencies and responsibilities to the junior (Cf. Viehl (2003), p.141). The last phase represents the new beginning with the successor. In the case of family-internal succession, it is important that the predecessor withdraw from the business and solely assume responsibilities on the advisory board. The successor must now implement his or her own ideas, goals and plans in the company (Cf. Viehl (2003), p.142).

Viehl’s model deals intensively with the prospects and roles of seniors and juniors in the succession process phases with a change of generations at family companies. The longer time horizon for the process and comprehensive consideration of how to prepare succession in light of personal matters are equally important.

### 2.4.2.3 Witten phase model for succession

Figure 12: Witten phase model for succession



Source: Groth et al. (2012), p. 101.

In contrast to many succession models, the Witten phase model does not view succession as a transfer decision made at a certain time. Instead, it is an ongoing process of reflection within the family (Cf. Groth et al. (2012), p. 100). Based on this fundamental mind-set, the following five phases are differentiated in the Witten model.

The first phase, training for succession, begins in the potential successor’s childhood and extends from birth to 15 years. The focus of this phase is the issue of how to best introduce the potential successor to the company. This involves determining how intrinsic motivation and interest in the subject can be stimulated within the individual at such an age. Consequently, the parents’ approach to raising their child and theories about everyday life are especially relevant. Within this context, it is critical that their role as an entrepreneur family is conveyed to the younger generation as naturally as possible. The importance of the business should be conveyed to the younger generation at quite an early point in time, but without already urging succession in the early phases of life (Cf. Groth et al. (2012), p. 100).

The second phase is characterised by doubts about the succession and lasts roughly from the potential successor’s youth to young adulthood (15-30). During this phase, it is critical that a reasonable balance is achieved between autonomy and external determination since the initial professional orientation occurs here. Above all, the issue of whether the potential successor actually has the abilities to run a family company that has been successfully managed for multiple decades will preoccupy the transferring owner in this phase. Both the parents and the children should get an idea as to whether joining the family company is the right professional path or whether an alternative must be found by testing this early on, e. g. by working at the company during holidays (Cf. Groth et al. (2012), p. 100).

The third phase, described as the “selection of the successor”, takes place between the ages of 20 and 40. During this phase, the decision for a successor is made in a complex objective, social and temporal selection process. It is important to set the fundamental requirements for the successor and the selection process at an early stage. Advisory boards or external decision-makers should also be included here (Cf. Groth et al. (2012), p. 100).

The phase of transferring responsibility involves the successors early to middle years, and in some case also the later adult years. In the course of changing generations, the company’s continuation and survival is important on the one hand; on the other hand, the relationships between the new management and all of the involved parties are also critical for the company (Cf. Groth et al. (2012), p. 101).

The Witten phase model for succession focuses on raising the successor as a future manager. Both educational and psychological aspects are applied in this model, which places succession in an interdisciplinary context.

#### 2.4.2.4 Wiesbaden model

The Wiesbaden model is considered the most important model with a tax focus. Above all, the Wiesbaden model is important to avoid the tax construct of a company split in the new arrangements for the company (Cf. Landsittel (2006), p. 383).

From a tax point of view, a company is basically also a single entity in terms of civil law. However, the situation is different when a company is split since this involves dividing a single company into two companies: in specific terms, this is an operating company and an ownership company (Besitzunternehmen). The operating company reflects the actual activity of the company. By contrast, the ownership company provides the assets, e. g., the machinery for production or properties (Cf. Fehrenbacher/Tavakoli (2007), p. 183). The goal of the company split is to take advantage of various legal forms, i. e. the company must not be run uniformly as a corporation or a partnership but can instead adopt both legal forms (Cf. Dinkelbach (2012), p. 182). For example, it is accordingly possible that the asset ownership or the ownership company adopts the legal form of a partnership and the commercial activity - which means the operating company - adopts the legal form of a corporation (Cf. Niehus/Wilke (2013), p. 346). The split offers advantages under civil law, e. g. in terms of limiting liability (Cf. Landsittel (2006), p. 384).

However, splitting a company results in the operating and ownership company being viewed as one entity for tax purposes. So both companies are subject to the business tax, even if the ownership company is not defined by commercial operations (Cf. Fehrenbacher/Tavakoli (2007), p. 184). "Assets to which different legal entities are entitled under civil law are assigned to one single legal entity for income tax purposes." (Cf. Fehrenbacher/Tavakoli (2007), p. 183).

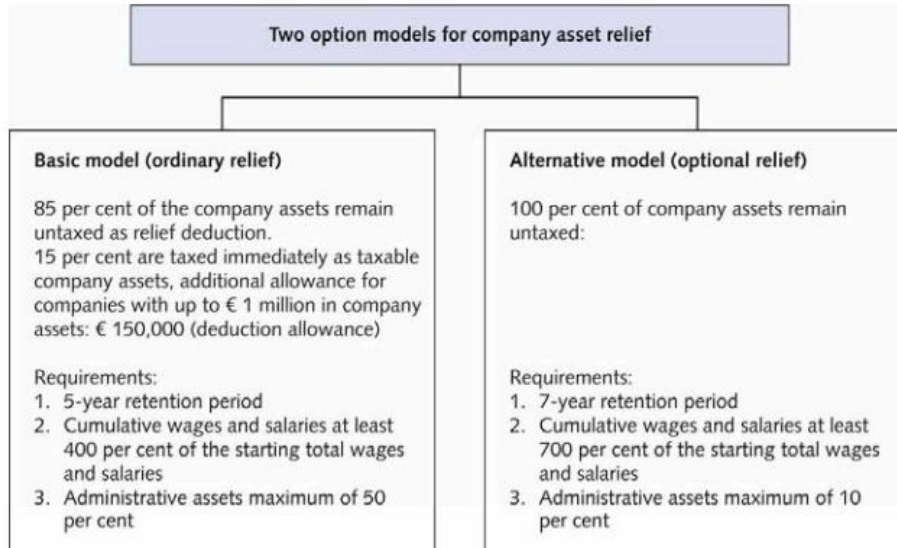
A splitting of the company occurs when intertwining exists in terms of material and personnel. If the ownership company provides the operating company with at least one economic asset for use and this asset represents a significant basis for the operations, the companies are viewed as materially intertwined. An economic asset is deemed to be a significant economic basis if it is required to achieve the actual business purpose of the operating company. The economic asset can be provided either for a fee (rental or lease agreement) or for free (loan agreement). Properties and machinery, as well as intangible assets such as patents or the customer base, are typically included as economic assets that the ownership company transfers to the operating company (Cf. Dinkelbach (2012), p. 185.)

With regard to company succession, the Wiesbaden model stipulates that the senior is responsible for control of the ownership company, while the successor runs the operating company (Cf. Wesel (2010), p. 200). Accordingly, neither the senior nor the successor are jointly invested in either of the two companies (Cf. Schneeloch (2009), p. 467). This means that the intertwining of personnel and premises for a splitting of the business have not been fulfilled. A split of the business occurs in an economic sense, but not for tax purposes (Cf. Rupp (2013), p. 84). In the Wiesbadenmodel, the owner of the ownership company generates income from renting and leasing, and is therefore not subject to the business tax (Cf. Arens (2013), p. 167).

The form of company succession according to the Wiesbaden model solely considers the tax issue in the new constellations after the transfer and therefore only one aspect of the many-layered process. Due to its partial perspective of the process, it is meaningful to use this model as a supplement for another model and under the assumption that a company split into an ownership and an operating company is being considered.

### 2.4.2.5 The 5-year model and 7-year model

Figure 13: The 5-year model and 7-year model



Source: Lindmayer/Dietz (2014), p. 341.

In the planning of company succession, the inheritance tax must especially be taken into account at family companies. The reform of the German inheritance tax law in 2009 (Cf. Kaminski/Strunk (2012), p. 95) gave rise to new alternatives for those who inherit companies. Attention should be focused on the relief provisions (Verschonungsregelungen) for company assets within this context. In this case, relief (Verschonung) means that inheritors of companies can lay claim to preferential treatment in some circumstances.

The figure shows that there are two models for company asset relief, the 5-year model and the alternative model, which is also referred to as the 7-year model. The basic model designates that 15% of the operating assets are classified as non-productive administrative assets, which is why a tax must be paid directly on this portion of the company assets. The remaining 85% of the company assets are classified as productive and therefore not subject to the inheritance tax (Cf. Haufe Kompass (2010), p. 13). However, one requirement for the company to be relieved of the inheritance tax is that it will be run for another five years (formerly seven years) and the total wages and salaries paid will amount to at least 400% of the total wages and salaries at the time of inheritance (Cf. WIFU (2011), p. 22). But the relief provision does not apply to asset management companies, i. e. companies where “at least 50% of the business assets consist of economic assets serving asset management.” (Haufe Kompass (2010), p. 14). The highest amount with administrative assets is 50%. Companies with business assets of up to €1 million can also enforce an additional tax-free allowance, the deduction amount (Abzugsbetrag) of €150,000.

## 3 Austria

### 3.1 Business statistics

Table 9: Business statistics Austria

Year	2013	2014	2015
Number of SMEs	317.197	320.601	321.243
Net business population growth - all sizes	-0,13	-2,76	-1,39
Business churn (birth rate + death rate) - all sizes	13,08	13,08	12,98
Death rate - all sizes	6,01	6,06	6,14
Employment share of enterprise deaths - all sizes	1,37	1,43	-
Number of enterprises newly born in t-2 having survived to t - all sizes	23.525	23.278	21.760

Source: Eurostat, 2017

### 3.2 Legal basis for the establishment of businesses

#### 3.2.1 Sole proprietorship

In Austria any person who is a citizen of Austria, Switzerland or an EEA (European Economic Area) country can found a business as a sole proprietor. The sole proprietor bears full personal liability. It's the easiest way to set up a business but with the strongest liability. Concerning certain professions (e.g. attorneys, tax advisors ...) there are some more restrictive rules on professional practice. (Austrian Business Agency 2017)

A sole proprietor is only legally required to register its company in the Austrian Commercial Register (Firmenbuch) if its turnover of two successive fiscal years is more than € 700.000, or more than € 1.000.000 in one year. However, a voluntary registration is possible. Companies required to register in the Austrian Commercial Register are also obliged to perform their accounting according to the accounting rules of the Austrian Commercial Code. (Austrian Business Agency 2017)

#### 3.2.2 Forms of business entities

##### 3.2.2.1 Limited liability company or Gesellschaft mit beschränkter Haftung (GmbH)

*“A GmbH is an “incorporated entity” with a legal identity independent of that of its shareholders. It may be formed by either one or several shareholders. One characteristic of the GmbH is that*

*the shareholders of a GmbH do not, as a general rule, bear liability towards the GmbH's creditors for the GmbH's obligations ("separation principle"). A GmbH must have a nominal capital of at least € 35,000 when it is formed. Normally, at least € 17,500 of this must be paid in cash. If, on the other hand, a "privileged formation" (gründungsprivilegierte) GmbH is formed, then only € 5,000 must be paid at the time of formation. The shareholders are also personally liable for another € 5,000 during the first ten years after the privileged formation GmbH has been registered and are also liable for the residual amount of the nominal capital after this period has expired." (Austrian Business Agency 2017)*

A GmbH has to be registered in the Austrian Commercial Register.

### 3.2.2.2 Joint-stock company or Aktiengesellschaft (AG)

To get a complete picture this legal form is also included in this report, but is generally not used for SMEs.

An AG is an independent legal entity with rights and obligations of its own. The statutory minimum share capital is € 70.000. (Unternehmensserviceportal 2017)

Its constitutive bodies are the management board, its supervisory board and the general meeting of shareholders. (Austrian Business Agency 2017)

### 3.2.2.3 General partnership or Offene Gesellschaft (OG)

The OG consists of two physical or legal persons and can be used for any purpose permitted by law except certain activities such as those of insurance businesses, pension funds and employee provision funds. (Austrian Business Agency 2017)

There is no initial capital needed to set up an OG and comes into legal existence as soon as all partners have submitted their applications for the Austrian Commercial Register by notarised signatures. (Austrian Business Agency 2017)

Also each partner bears full liability towards the OGs creditors for the partnerships' obligations. (Wirtschaftskammer Österreich Gründerservice 2017)

### 3.2.2.4 Limited partnership or Kommanditgesellschaft (KG)

Another form of partnership is the Limited partnership. In contrast to the OG only one partner (the so-called "Kommanditist") bears full liability. The second (or more) partner(s) ("Komplementär") only bear(s) limited liability paying in their "liability share". (Wirtschaftskammer Österreich Gründerservice 2017)

## 3.3 Legislative framework in business succession

### 3.3.1 Taxes

The following taxes have to be taken into account when buying/selling a business:

- Income tax (Seller)
- Sales tax (Buyer)

### 3.3.2 Labour law

The Austrian AVRAG (Arbeitsvertragsrechts-Anpassungsgesetz; law amending the labour contract law) defines that the existing contracts and claims (e.g. for compensation) of the employees have to be taken over. This applies only if the substantial parts of the company are acquired (business premises and equipment, machinery and devices, customer base). It also defines the obligations of the seller to its former employees. (Wirtschaftskammer Österreich Gründerservice 2017).

### 3.3.3 Inheritance Law

If a family member is the successor in the company, inheritance law has to be taken into account. There are two possible situations of succession: during the lifetime of the former owner or after his or her death.

#### 3.3.3.1 During lifetime

There are different forms of legacy in the Austrian law:

- Holographic will (no need of witness, notary and court)
- Last will and testament (if not handwritten: three witnesses)

Additionally, a Contract of inheritance can be drafted but only for three quarters of the inheritance.

If there are persons entitled to a compulsory portion they have to be considered but may waive those rights (in total or concerning parts of the legacy e.g. the company). The compulsory portion depends on the degree of relationship but maximally one half. (Wirtschaftskammer Oberösterreich Gründerservice 2017)

#### 3.3.3.2 Death of former owner

If there is no last will and testament of the former owner the intestate succession regulates succession. Children and spouses are the first in line to inherit followed by parents of the deceased and so on. Those heirs who do not wish to take over the company are entitled to their compulsory portion but may also waive those rights. (Wirtschaftskammer Oberösterreich Gründerservice 2017)

Austrian Law allows a deferred payment of the compulsory portion in rates during not more than five years. (Wirtschaftskammer Oberösterreich 2017)



## 3.4 National business transfer supporting schemes / Initiatives / Existing knowledge

### 3.4.1 Process of business succession

Between the years of 2000 and 2015 succession in SMEs grew per 11%. Between 2015 und 2024 26% of Austrian SMEs (42.400 excl. one-person businesses) have to find a successor. Additionally, 9.000 one-person businesses will be in the same situation. (Federal Ministry for Science, Research and Economy 2017)

The following checklists for business transfer processes are taken from the “Leitfaden zur Betriebsnachfolge” (Manual for Business Succession) provided by the Austrian Chamber of Commerce. (Wirtschaftskammer Österreich Gründerservice 2017)

### 3.4.2 Sellers’ point of view

- Define personal aims
  - Define the point of time for handing over your company.
  - In case of retirement: Talk to your pension insurance institution.
  - Complete or gradual resigning?
  - Which are my aims after handing over the company?
  - Which steps are to be taken if I want to secure the long-term existence of my company?
  - Clarify pension scheme.
  - Talk to external consultant.
- Find successor:
  - Inside of family
    - Talk to them.
    - Integrate them in company/decisions (if not already the case).
    - Talk to/integrate employees concerning the decision of succession.
    - Consider buying out other family members (compulsory heirs).
    - Define the point of resigning.
    - Consider questions of law (e.g. trade licence of successor).
    - Talk to external consultant.
  - Employee
    - Talk to them.
    - Integrate them in company/decisions (if not already the case).
    - Talk to/integrate employees concerning the decision of succession.
    - Talk to external consultant.
  - External
    - Use online succession platform of Austrian Chamber of Commerce.
    - Place an advertisement.
    - Contact management consultants specializing in business succession.

- Consider selling to customer/supplier or competitor.
- Handing over:
  - Forms of succession
    - Sale
      - Kinds of payment (one-off payment, payment by instalments, pension arrangement)
    - Lease
    - Donation
    - Keeping a share/founding of new company (in which form?)
    - Operational split?
  - In case of sale
    - Develop selling concept
    - Have the company value calculated
    - Evaluate financial situation, market opportunities and customer relations.
    - Is there a valid business facilities permit?
    - Start sales negotiations.
  - Handing over
    - Introduce successor to suppliers, customers and employees.
    - Inform employees at an early stage.
    - Define day of handing over.
    - Define price and terms of payment.
    - Consider securement of price of sale (e.g. bank guarantee)
    - Make list of transfer costs.
      - Consulting costs
      - Taxes
      - Inheritance payments
    - Change/takeover/cancellation of existing contracts
    - Registration/Deregistration of:
      - Trade licence
      - Trade social insurance
      - Tax authority
      - Health insurance (of employees)
      - Motor vehicles
      - Address information (e.g. telephone book)
  - General questions of law
    - Liability for existing liabilities
    - Warranty/Guarantee claims
    - Compulsory portion of heirs
    - Existing entitlements to compensation
    - Which employees are on parental leave or military service?
    - Is there a risk of environmental burdens - and who can be held liable?

### 3.4.3 Buyers' point of view

- Sort out personal situation
  - Trade licence
  - Financing
  - Get information on possible funding schemes.
- Get information on the company
  - Reason for transfer (retirement, bad course of business)
  - Competitive position/Situation of sector
  - Economic situation - especially of last years
  - Financial situation (debts, liabilities, delinquent tax, open social security contributions)
  - Abstract of land register (mortgages)
  - Number/structure of employees
  - Image
  - Continuing obligations (possible takeover)
  - Existing rental/lease contracts
  - Zoning plan
  - Is there a valid business facilities permit?
  - Have the company value calculated
- Define details of transfer
  - Type of transfer (Sale, lease, donation etc.)
  - Price and terms of payment
  - Deadlines and maturities
- Define costs of transfer
  - Consulting costs
  - Taxes and fees
  - Inheritance payments (inside of family)
  - New investments
- Get financial commitment for acquisition and investments in writing
- Make a transfer agreement with seller
  - There is no specified form but it is recommended to make it in writing
- Start own company foundation
  - Register in Austrian Commercial Register
  - Trade registration
  - Register with trade social insurance
  - Register with tax authority
- Register changes
  - Indentures with Austrian Chamber of Commerce
  - Employees with Health insurance
  - Motor vehicles with insurance company
  - Insurance contracts
  - Telephone book
  - Domain names

## 3.5 Supporting schemes for business succession

The Austrian Chamber of Commerce (WKO) offers a broad support system for business foundation and succession: [www.gruenderservice.at](http://www.gruenderservice.at). (Wirtschaftskammer Österreich Gründerservice 2017).

As Austria is a Federal Republic, the support and funding schemes differ a little between the States (Bundesländer). The following summary outlines the main correspondences and - in more detail - the Upper Austrian situation as it is one of the most comprehensive support schemes in Austria.

The support system in Austria can be divided in three parts:

- **Information and consulting:** this includes the website [www.gruenderservice.at](http://www.gruenderservice.at) as well as consultants on business foundation and succession at every regional office of the WKO. (Wirtschaftskammer Österreich 2017)
- **Financial support:** Not all but most Austrian States offer funding schemes for costs occurring during business succession (e.g. consulting costs, investment costs). Also some successors may be eligible for a microcredit scheme offered by the Austrian Social Services Ministry. (ÖSB Consulting GmbH kein Datum)
- **Platform/Marketplace for Business Succession:** Prospective Sellers and Buyers can advertise at the website [www.nachfolgeboerse.at](http://www.nachfolgeboerse.at). (Wirtschaftskammer Österreich Gründerservice 2017)

### 3.5.1 Information and consulting

The WKO-owned platform “Gründerservice” offers comprehensive information on the whole process of business foundation or succession (from the founders/successors view) following the four steps “initial thoughts”, “planning”, “foundation”, and “after foundation”. Succession is included in the part “initial thoughts” as one possible form of business foundation. (Wirtschaftskammer Österreich Gründerservice 2017)

This information is easily available either on the website of the Gründerservice or in its printed handbooks on business foundation (Wirtschaftskammer Österreich Gründerservice 2017) and business succession (Wirtschaftskammer Österreich Gründerservice 2017) which are also downloadable from the website.

Also the WKO offers consulting services for the succession process. Every regional office employs specialized consultants on business foundation and succession. (Wirtschaftskammer Österreich 2017)

### 3.5.2 Financial support

The funding schemes for business foundation and succession differ from State to State. The following table gives a short overview of the different funding possibilities in Austria. (Wirtschaftskammer Österreich 2017)

Table 10: overview of the different funding possibilities in Austria

State	List of funding measures
National	<ul style="list-style-type: none"> <li>- Microcredit scheme of Austrian Social Services Ministry</li> <li>- Special investment grants for SMEs of tourism and leisure industry</li> <li>- Special investment grants for tourism and leisure start-ups (including succession)</li> </ul>
Burgenland	<ul style="list-style-type: none"> <li>- Investment grants (for tourism and leisure industry, for industry and trade)</li> </ul>
Carinthia	No own funding schemes
Lower Austria	No own funding schemes
Salzburg	<ul style="list-style-type: none"> <li>- State supported credit facility for foundation and succession of SMEs</li> </ul>
Styria	<ul style="list-style-type: none"> <li>- Grant for investment AND consulting costs during foundation or succession (for new entrepreneurs).</li> </ul>
Tyrol	No own funding schemes
Upper Austria	<ul style="list-style-type: none"> <li>- Equity capital guarantee</li> <li>- General grant for consulting costs (consulting on questions of export, foundation/succession, digitalization/innovation, technology, environment, work safety, for SMEs: lawyer costs for acquiring the business facilities permit)</li> <li>- Special grant for consulting costs for founders and successors (for up to three successive years)</li> <li>- Special grant for tourism and leisure industry (investment, marketing and succession costs)</li> <li>- Silent participation of the state of Upper Austria in small enterprises (foundation/succession)</li> </ul>
Vienna	<ul style="list-style-type: none"> <li>- Grant for business succession (subsidy to purchasing price)</li> <li>- “creative pioneer” - funding for start-ups of the creative economy (competition)</li> <li>- Credit facility by Viennese Chamber of Commerce and City of Vienna</li> <li>- Guarantee for investment and operating loans</li> <li>- Investment grant for small local suppliers (defined sectors of local supply)</li> <li>- Funding for revival of vacancies at ground floors</li> </ul>
Vorarlberg	<ul style="list-style-type: none"> <li>- Grant for consulting costs during business succession</li> <li>- Start-up grant for investment, transfer and credit costs</li> </ul>

Source: Wirtschaftskammer Österreich, 2017

All this information can be easily found on in the “Förderdatenbank” (funding database) of the Austrian Chamber of Commerce.

## 4 Poland

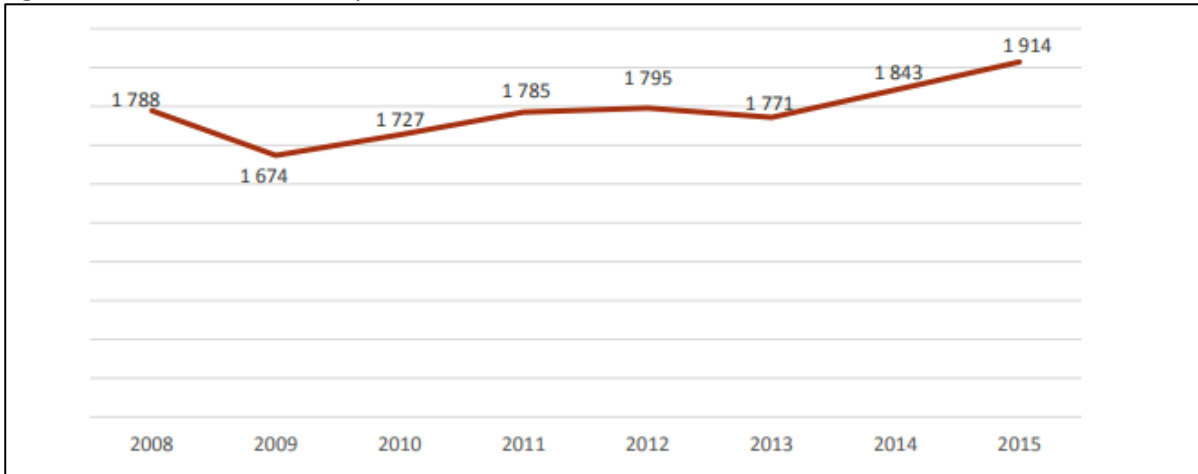
POLAND	
Definitions of basic terms	
Enterprise	A term used to describe a project or venture undertaken for gain. It is often used with the word "business" as in "business enterprise". Usually, by extension, it refers to the business entity carrying out the enterprise and is thus synonymous with "undertaking", "company" or "firm".
Family enterprise	A family enterprise is each business from the SME sector, regardless of the legal form, registered and operating in Poland, in which: at least two family members working together; at least one family member has a considerable impact on managing the enterprise; family members have a significant share in the enterprise. It is assumed that a „significant share“ refers to controlling shares. A family company is a company in which at least 51% of the shares belong to the members of one family. Theoretically, therefore, this applies to every individual business activity entered into CEIDG, in which all the property is held in the hands of one person. However, family members are not always involved enough that they want and can continue the business of the previous generation.
Succession	The succession in family firms is related with the dilemma how to preserve (and possibly increase) family wealth, while transforming the company. Is it better to keep family control over the company, but possibly to harm its growth perspectives, or to transform it by diminishing the family control (or even eliminate it altogether). Thus, there might be different types of succession. First type might be called a defensive succession, in which family tries to preserve the control over enterprise at all costs. Second type might be called a transformatory succession, in which the company is transformed so as to maximize the wealth of family even at the cost of reducing the family control.
Intellectual property	The term “intellectual property” (IP) encompasses various aspects of human creativity, including any results of human intellectual activity. Providing protection for IP becomes increasingly important in the current environment of globalisation and high competitiveness. Given such environment, competitive advantage can only be achieved by companies implementing innovative solutions in their businesses. The awareness regarding IP protection, combined with proper management of IP rights, allows to effectively implement new business models and to benefit from using it. Intangible goods are usually regarded as the company’s most valuable asset, therefore, it is crucial to provide adequate protection thereof. Furthermore, the knowledge of IP protection regulation also contributes to limiting the risk of infringing the rights of other market participants.
Shares	Units of ownership that represent an equal proportion of a company's capital. It entitles its holder (the shareholder) to an equal claim on the company's profits and an equal obligation for the company's debts and losses. Two major types of shares are (1) ordinary shares (common stock), which entitle the shareholder to share in the earnings of the company as and when they occur, and to vote at the company's annual general meetings and other official meetings, and (2) preference shares (preferred stock) which entitle the shareholder to a fixed periodic income (interest) but generally do not give him or her voting rights.

<p><b>Freelancer</b></p>	<p>Someone, who is self-employed and is not in a long-term contractual commitment to any one employer. The most common freelance jobs include writing, editing, photography, web design, graphic arts or computer programming. Freelancers make their money selling their work to clients rather than being employed.</p> <p><b>Requirements</b> There are no requirements for being a freelancer. Some people do have some formal educational background such as in writing, journalism or programming. They may also have degrees. Once you start freelancing, the experience that you gain from it can be used to get higher paying projects in the future.</p> <p><b>Experience</b> When companies or business are looking for a freelancer, they usually look at the experience that a freelancer has from her portfolio of work. It can be hard for people who are just starting out as freelancers because they have no experience and people who are hiring will usually select freelancers who have proof that they are good at what they do. Learning how to market and sell yourself to clients will give you a distinct advantage compared to other freelancers who wait for clients to come to them.</p> <p><b>Flexibility</b> One of the advantages of being a freelancer is being able to work anywhere. Freelancers do not have to work inside a company or an office, so they can conveniently work at home. They also are not constricted by a time schedule and have the freedom to make their own schedule.</p> <p><b>Hiring</b> People can usually find and hire freelancers online. If you hire a freelancer, consultant or contractor it means that: they are self-employed or are part of other companies; they often look after their own tax; they might not be entitled to the same rights as workers, e.g. minimum wage.</p>
<p><b>Freelancer - statistics</b></p>	<p>Most of Polish freelancers have higher education and belongs to 26-40 age category (68.19%). Polish freelancers work in urban centres (63.24% declared it) and about 42% of them work in cities with more than half-million inhabitants. 71.4% of respondents are in this business from three years. More than a half of the sample (55.82%) declare a need of independency as a main factor for choosing this way of working. About a half of respondents (46.08%) represent IT or graphic design market branch.</p> <p>Other research shown that for young IT leaders salary is not the most important factor (although is important) of choosing the job offer. 45% of young IT professionals claimed that their motivation came from non-material aspects, such as self-development in their passions/hobbies. Money has been chosen by 40% of respondents. Although if we look at the axio-normative system of this social category we have to state that for about half of them family (57%) and friends (45%) is the most important. Achieving goals (35%), personal development (32%), feeling of freedom (32%) and work life balance (30%) are important for about 2/3 of the sample. Financial aspects were highlighted by less than 1/6 of sample: richness (16%) and career (11%).</p>

## 4.1 Statistics on SMEs in Poland

Data analysis during several years shows that the number of enterprises increases systematically: in 2008 - 1.790.000 companies while in 2014 - 1.840.000 companies (Figure 14).

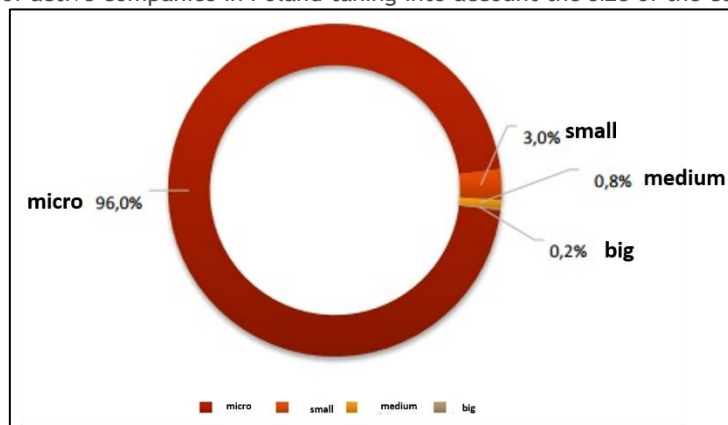
Figure 14: Number of active companies in Poland in 2008-2015.



Source: own research

The SMEs sector is the majority of companies in Poland - 99.8% of all companies. The smallest companies (micro) cover 96% of all companies. The participation of small companies in the structure of Polish enterprises is at 3.0%, medium - 0.8% and big - only 0.2% (Figure 15).

Figure 15: The structure of active companies in Poland taking into account the size of the company [in %]

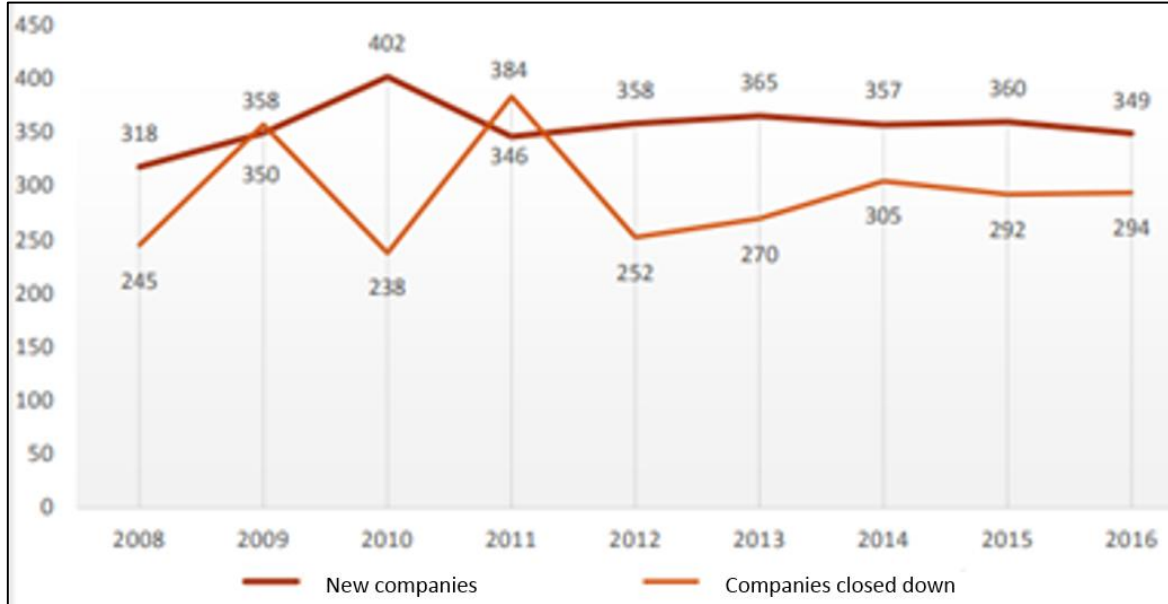


Source: own research



The statistics showing the numbers of new and closed down companies are presented in Figure 16.

Figure 16: The numbers of new companies and closed down companies in Poland in 2008 - 2015 [in thousands].

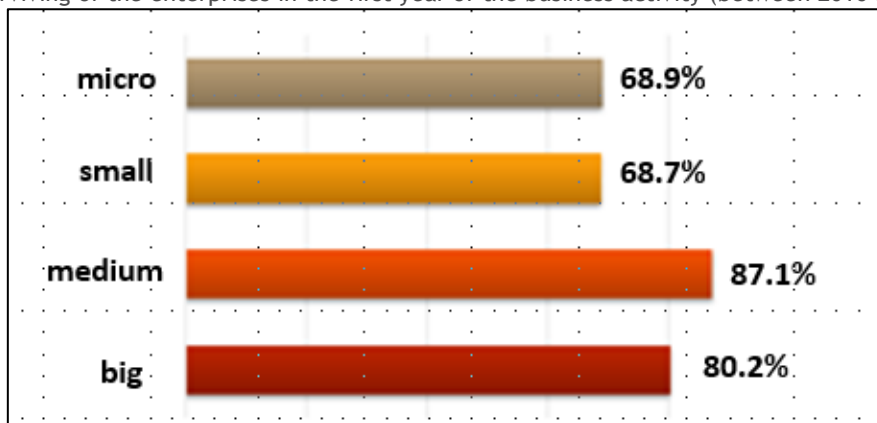


Source: own research

In 2015 245.572 new companies were opened and they maintained business activity till the end of 2015. The first year of business activity is the most difficult as only two for three companies are able to survive on the market (looking at the companies opened in 2015, 68.9% of them survived by 2016).

The indicator of the surviving is higher in the case of bigger entities - more than 80% of medium and big enterprises, which were opened in 2015, they still worked in 2016 (87.1% of medium companies and 80.2% of big companies). As far as it concerns micro and small enterprises, this indicator was lower than 69% (Figure 4).

Figure 17. The surviving of the enterprises in the first year of the business activity (between 2016 and 2015)



Source: own research

## 4.2 Defining the process

Defining a set of key activities and the specificities needed to realise the succession of ownership (defining what concrete steps are required to be carried out, for example, in relation to institutions)

Key activities necessary to undergo the succession in the company (also in a family company) are the following:

- the plan of the succession - the overview of the potential successors - the plan should be completed by making the choice,
- the indication of timeframes for the succession process,
- the implementation of the successor,
- the transfer of the company into hands of the successor.
- In the literature it is possible to find the statements that the first key activity is already the engagement in the succession process and other, also very important activities, such as:
  - the identification of formal & legal conditions of the successions - described in details in point 3 of this document,
  - communication with the employees of the company;
  - the plan and the organisation of alternative activities for the seniors.

The first task of a business owner, giving the sense of succession and conditioning it, is to shape the organisation so that it can function when he / she is no longer present in its structure. This can be compared with the preparation of the organisation for sale. It is safe to assume that a business that is relatively easy to deploy can be managed with a relatively high level of success in future years and a high value.

Therefore, a successor of the company (regardless of who is the successful candidate) should have a market value, achieve organisational and managerial maturity, and have several years of revenue growth (or at least keep them stable). In Polish family businesses, the organisational structure is not formalised, it is rarely optimised and often responds to the actual needs and not to the long-term perspective. It is usually based on the authority, charisma and omnipotence of the owner, which means that without him / her the smooth running of the company is at risk. Dominance of the owner should be transformed into more and more professional forms of organisation and management of the business. Even, when a company is already at an organisational maturity level, it is important to check if the degree and manner of its organisation is adequate for the succession process. The organisation of the company, including the organisational structure, is a tool for achieving strategic goals, which should also include the succession of the company. Hence, there is the need to adapt the organisation of the company to succession tasks and to provide resources for their implementation.

It is essential to define the stage of development in which the company is prepared for the succession.

A professionally organised family business is much less sensitive to the dangers of generational change. Adequate to the strategy of the family business structure and

organisational culture, professional management based on competent leaders, delegation of authority and responsibility, efficient information system - these are elements of organisational order, which are worth improving in the company in the preparation for the succession process.

### Plan of the succession

Succession planning is a kind of the development and implementation of a strategic scenario for the transfer of ownership and power by the current owner of a family business to a chosen successor, who will be able to ensure the continuation and the development of a family business according to the designed strategy.

The succession plan is a set of principles, values, and priorities that are relevant to the family and its business. It is implemented for many years, during which it can be necessary to introduce changes. It requires systematic verification and updating of previous solutions. The succession plan consists of a number of planning documents covering a range of functional solutions, such as family rules (family constitution, family council), property regulations (wills, donations, property division plan), the owner's financial security (financial products, corporate development strategy, organisational change, family business valuation, transformation of organisational and legal forms, etc. The elements of the succession plan include informal or formalised solutions in a written form.

Researchers point out that succession planning is a key factor in the longevity and survival of family businesses. Moreover, succession planning enables to:

- avoid property and power conflicts, quieten rivalry between siblings, communicate the desire to hand over power to the next generation;
- define the manner in which succession, transfer of assets and costs related to the transfer of ownership are carried out, with the continuity and financial security of the company;
- allow the whole family to create a vision of the future of the company and reduce the likelihood of further success;
- give appropriate time to prepare the successor.

The succession plan should answer the four key strategic questions:

- What is the succession (what to convey: ownership and / or authority)?
- Who is the successor (who to tell: family, non-family members)?
- How much time do we need for the succession process (time: succession plan)?
- How to undergo the transfer (methods and models of succession)?

Succession planning means the need for parallel development of family and business strategies. This approach makes it possible to balance family and business goals in a well-prepared mission, vision and strategic goals. Due to the complexity of the succession process, it is worthwhile to divide it into smaller steps and seek for specific solutions.

In planning succession from the perspective of a family business, it is important to analyse its key areas and to fulfil the following tasks:

- human capital - personal issues related to the choice and the preparation of successors to take over the company; preparing employees for succession; defining the role of the first owner after transfer of the enterprise; ensuring proper relations and preventing conflicts;
- a strategy - including the creation of a family business vision and mission and strategic goals, including succession;
- organisation of the company - issues of adaptation of the rules of functioning, organisational structure or ways of delegating the powers to change generations;
- legal status - the choice of successive organisational and legal forms of the company, the creation of procedures in case of accidents that may affect the owner of the company;
- economic area - development of a financial plan of succession; tax optimisation in the process of succession; financial security of the first owner after the transfer of the company;
- in order to increase the likelihood of successful succession.

#### 4.2.1 Identification of timeframes of the succession process in the company

Regardless of the type of business, ownership and other determinants, succession is always a complicated, long and multi-stage process that requires strategic planning and management. It is also a vital condition for the survival and development of a company after the introduction of a generation change. It is estimated that the process of succession usually takes several years.

Succession planning is strategic, as it includes a time horizon of up to several dozen years and involves a significant change in the functioning of a family business. Not everything can be predicted at the start. Therefore, the succession plan is created and modified over many years - according to necessary changes.

It is a good idea to plan the succession stages and their duration.

#### 4.2.2 Implementation of the successor

Deploying a successor is a time-honoured process. Therefore, it is important to plan the specific stages whereby the gradual process of transferring the successor company will be carried out:

The **pre-business phase** is carried out many years before the successor enters the company when he is still a child. From earliest years he meets company representatives.

The phase **introducing into the business** - a future successor learns more and more about the business, establishes relationships with employees, gains awareness of the relationship between family and business.

The **functional introductory** phase - a future successor takes up temporary employment in a family company, gains experience in other companies and improves managing education.

The **functional phase** - a successor begins full-time work in a family business and gains experience in various non-managing positions in various functional departments.

The **functional advanced phase** - entrusting increasingly responsible managerial functions and preparing the successor to the transfer of power. In the early succession phase, the successor is transferred to the successor, who then manages the whole company. However, at the early stage of succession, the authority of the new leader is strictly controlled by the senior, supervisory board or the family council.

The **phase of mature succession** is characterised by the fact that the successor is full of power and assumes total responsibility for running a family business. Successful implementation of the successor does not only mean passing on professional knowledge, but also introducing him / her to business. In this context, it is also important to have the proper education, experience, ability to be a leader and ethical attitude of the successor. The senior should shape in succession the awareness of the importance of continuous development of the company. He should also make sure that the successor is able to build strong authority towards the non-part employees and co-owners.

### 4.2.3 Company transfer

The concept of "company transfer" includes two different processes that make up the succession: the transfer of power (management of the company) and the transfer of ownership (assets and what constitutes the company).

The process of transferring power, if not due to random causes, should take place in phases (spreading over time the transmission of further areas of action). At the same time, in order not to block the successor's actions (each new leader gives the company another rhythm of work), it is important to specify the scope and duration of its activity. The apparent transmission of power can become dramatic for both the family and the company. That is why it is so important to communicate in a simple way with regard to company management and its development prospects, but also relationships and values.

Transmitting authority in a company does not have to be complete. In the case of partial transfer, the owner may continue to direct the company directly (e.g. while retaining the position of president), indirect (taking part in the supervisory board, or advising) or informally.

The following forms of power transfer are distinguished:

- delaying the transfer of power,
- alternating power transmission,
- gradual, accelerating transfer of authority,
- handing over power to someone outside the family,
- unexpected takeover of power.

Delayed transmission of power takes place when the managing owner announces the transfer of power to the successor and over time he / she passes some of the responsibility from the successor. However, the senior still has full control over the company, despite assurances of its successor.

This kind of situation can discourage the successor to remain in the company, and the company itself may lose momentum of development.

The alternate transmission of power consists in the quick dedication of power by the senior, distancing himself from the affairs of the company, and then - on its re-acquisition. This situation certainly does not serve to build the authority of the successor. It can rather arouse fructose in it and negatively influence the atmosphere prevailing among workers.

Gradual, accelerating handing over of power is a very rational way of achieving succession. It consists in the fact that the leader systematically passes on more and more duties and powers to the successor, and this naturally increases his competences and builds authority in the company. The role of the senior gradually decreases until it moves away from operational activity into supervisory positions.

The transfer of power to a non-family is a situation in which a manager gradually transfers power to a person selected from a company employee or a specialised manager. This approach points to the need to professionally manage the company's dynamic growth or lack the ability to succeed as a family member. The advantage of such a transfer is the ability to choose a person with high acidification.

In an unforeseen situation, e.g. caused by the death of the senior, power is taken over by the successor. This may cause problems due to lack of sufficient preparation of the successor as well as the company itself.

The most effective way of transferring power is gradual delivery of it, allowing the departing senior to make sure that the successor's choice is accurate and that the influence on the company's management is maintained for some time. Successors give the opportunity to develop competences, implement their own ideas and create business development with the support of the senior.

#### **4.2.4 Communication with the employees of the company**

An important aspect of succession in a family business is the negotiation stage between the current leader and the successor, and consequently the introduction of a change, which is critical not only for the stakeholders, but also for the company's employees. A clear and thoughtful vision of succession and a well-implemented information policy can save the company from any problems. Especially that the transfer of power is accompanied by uncertainty about the future of the company, and therefore also the staff working there and its professional future, including the relationship with the new leader. In addition, adapting employees to such profound changes in the company takes time. Minimizing the tension and fear involves the need for regular information: who and what will be responsible for the company, what will be the role of the new leader, and what is the outgoing owner's position, etc. In this context it is also important to prepare the so-expose the manager of the successor and present expectations to the team, the conditions of rewarding and discipline, and the strategy of the company and the main intentions.

#### 4.2.5 Planning and organisation of alternative activities for seniors

It is good practice to introduce a systematic delegation of responsibilities and responsibilities for the tasks performed. The team learn to engage in business affairs. The owner also develops a healthy distance, which allows him to do well beyond business. The consequence of resigning from his passion for professional duties is often the feeling of acute emptiness after the transfer of succession. Therefore, the issue of alternative business outside the family business should be carefully thought out and planned long before the succession. It is important to accurately define the role of the senior in the company until the transfer of power and to plan forms of non-professional involvement, such as in social activities or development of passion.

### 4.3 Legislative framework

Summarising business-related laws focusing on the succession of ownership (search of the Commercial Code and Trades Licensing Act)

The law of succession is based on legal principles, namely testamentary freedom and the protection of relationships between family members. The right to succession may result from two sources: the will or the statute (the Polish Civil Code). It should be noted that a will takes precedence over the statutory inheritance. A testate succession occurs when a testator (a person with full legal capacity) expresses his last will through one of three forms of will. The first is the simplest: the will should be written entirely by the hand of the testator, who must sign and date it. The second may be made in the form of a notarial deed. The third is to make a will by declaring its content orally before a local government officer in the presence of two witnesses.

Statutory succession should be applied when no (valid) testament exists or the persons who were appointed as heirs in the testament disclaimed the testament or are unable to become heirs. There are four groups of heirs under Polish succession law. The range of these entities is determined by family ties, such as blood ties, marriage or adoption.

In the first group, the **surviving spouse and descendants** will inherit. Here, the principle that children and a spouse inherit in equal parts applies; however, the spouse's share cannot be less than one-quarter of the entire estate.

In the second group, in the absence of descendants, the **spouse and deceased's parents** will inherit. In this case, the inheritance attributable to the spouse must correspond to half of the deceased's estate. If the deceased's parents have died, the inheritance attributable to this parent goes to the testator's siblings or, if the deceased's siblings have died, their children.

The third group of heirs is entitled to the succession solely when there are no heirs in the first two groups. This category includes: the deceased's **grandparents or, if they are also deceased, their children**.

The fourth group consists of children of the deceased person's spouse whose parents were not alive when the estate is opened. Last of all, the municipality in which the decedent last resided will inherit, or if the deceased's residence cannot be determined or is located abroad, the State Treasury.

A testator may appoint an executor to ensure that all the testamentary provisions will be properly conducted; however, the executor cannot be treated as a fiduciary or a trustee. Polish law forbids

mutual wills and contracts of inheritance, with the only exception to this rule being a contract of renunciation of inheritance, in which a person who belongs to one of the classes of statutory heirs renounces their statutory inheritance after the testator's death.

In Poland there is no single Act, which would regulate the aspect of **business succession** (including family business succession). However, at this moment the government is discussing the project of the Act on family business succession. The Polish law of business succession is now mainly regulated in:

- Act from 14 June 1960 - Administrative Process Law;
- Act from 23 April 1964 - Civil Law;
- Act from 17 November 1964 - Civil Process Law;
- Act from 26 June 1974 - Labour Law;
- Act from 28 July 1983 - Succession Law;
- Act from 14 February 1991 - Notary Law;
- Act from 26 July 1991 - Income Tax from the Individuals;
- Act from 15 February 1992 - Income Tax from Legal Entities;
- Act from 13 October 1995 - Evidence Rules and Identification of Taxpayers;
- Act from 29 August - Tax Statute;
- Act from 29 August 1997 - Banking Law;
- Act from 13 October 1998 - Insurance System law;
- Act from 9 September 2000 - Civil Activities Law;
- Act from 15 September 2000 - Trading Law.

There are many acts, which are not unified so that there is a need to introduce a unified law. The new project on business succession law discussed by the government should be into force in 2018.

At present, when the entrepreneur (the owner) dies, *de facto* the enterprise must be closed. Several problems can be perceived in the area of public and private law, which make impossible to continue the business activity by the successors of the entrepreneur. The main problems are the following:

- limited possibilities to use the name of the company after the death of the owner;
- the lack of possibilities to use, even in a limited time, NIP (Number of Fiscal Identification) and REGON (National Official Register of Business Entities) numbers, which identify not only the company, but also the entrepreneur;
- little chance to re-open the business activity in the case of the lack of the agreement between all the successors in the aspect of the continuation of the business activity;
- in the case if the successor is under 18, the necessity to have the agreement of the court in order to decide on anything in the company;
- the fact that with the death of the owner, all employment contracts are over and all administrative decisions are over as well;
- the problem to have the access to the bank account of the owner.

Additionally, time for the procedures related to come into inheritance, especially in the case of the lack of the agreement between successors, is very long (even several years) and it can thwart chances to resume the business activity.



After the death of the owner there are limits related to the following activities:

- a) to sell products and services;
- b) to regulate obligations towards employees and clients.

It decreases the possibility for the continuation of the business activity by the successor.

At the same time, it is necessary to underline that the social awareness, including the awareness of the entrepreneurs, in the relation to their death and its meaning for the company is very limited.

In actual law, the entrepreneurs - in order to avoid the problems - can transform business activity into other legal entity - commercial law company with the use of two solutions:

- a) to transform the company into capital company, in practice in one-person company;
- b) to make a contribution to the commercial law company.

The transformation of the company into capital company, in practice in one-person company, is convenient, because it ensures a large succession of rights and obligations. However, this solution is not good due to the aspect of taxes. In the case of the transfer of profits into a private wealth, the entrepreneur must pay tax twice.

In Poland there is a need to introduce changes into the law related to the succession of business. Therefore the following changes are proposed:

- a) the possibility to continue the company after the death of the owner. The government is proposing that the proxy could manage the company after the death of the owner without the agreement for the use of the name of the owner from the court;
- b) the access to the bank account - the proxy must have the access to the bank account of the owner, which is related to the company. The amount of money should be indicated by the owner (when he / she is alive) and after the death, the persons entitled to nominate the proxy or the court.
- c) the possibility to make partial division of the inheritance - it is very important in order to manage the company in an effective way.
- d) the necessity to announce on the possibility to buy of the company and the pre-emptive right by the employees - in the case when the company can be acquired by the government, it is proposed to announce that there is the possibility to buy the company or to use the pre-emptive right by the employees of this company. It would increase chances for the continuous development of the company.
- e) the possibility to use NIP and REGON numbers.

A major obstacle to succession is the unmatched form of the company activity. The predominant legal form of family business is the one-person business activity of natural persons. Such enterprises are 81% (in this form 63% of non-family businesses operate). The second most popular form of legal partnership is the partnership (11%). Corporations of individuals cannot be transferred to their successors in a liquid manner, as their existence expires at the end of their activities (either deliberately or in the event of a random event). The awareness of this threat is astoundingly low among entrepreneurs. In spite of many family tragedies, the death of the owner of the company in the form of one-man business occurred after the death. It is also possible that

some entrepreneurs ignore this danger and postpone the decision to change the legal form of their business.

It is apparent from discussions with experts and the owners that even an advanced form of business, such as a limited liability company or other commercial law company, does not guarantee a safe transfer of ownership and power. Owners do not pay sufficient attention to them for drawing up the company's contractual provisions regarding the succession of shares or the arrangements for efficient transfer of management. These facts make the majority of family businesses neither legally nor from the organizational side prepared to transfer ownership and power to the successors.

Thus, on the one hand, we are dealing with the small size of a family business and its legal form, which is often not sufficient for the transfer of power and property (e.g. single-person business of a natural person). On the other hand, it often goes hand in hand with low organizational level of the enterprise. It is the simplest organizational structure (all employees are subject to the owner), the direct management of employees by the owner, the lack (or very low degree of formalisation), and limited financial information to take decisions (lack of full accounting).

On 21<sup>st</sup> of August 2017 the meeting of the representatives of the Association of Family Business Initiatives and the vice-minister for the Development took place. The meeting concerned works on the Act related to the succession management on one-person company. The Association of Family Business Initiatives, the largest and oldest organisation of family entrepreneurs, the organiser of the meeting, has been active in the drafting of this bill for over a year. This will reduce legal barriers to the management of the company if its owner dies.

In recent weeks, public consultations on proposed changes have taken place. Polish entrepreneurs clearly state that this law is needed - all respondents confirmed the need to introduce it. Nowadays, unless the entrepreneur does not pass on his success to the company before death, his company actually dies with him. Negative effects are very wide as all contracts cease to exist because one side is dead. The time from inception to successful adoption can be counted in months or years. During this time, the company may go bankrupt. The Succession Board is to enable the trader's family to continue their business on an almost unchanged basis despite the death of the owner.

#### **4.4 Business succession and specific circumstances such as inheritance, fusion, acquisition, etc.**

There are legal solutions that enable seniors to transfer their family businesses to their successors. A decision on how to delegate authority and ownership of a family business often means the need to transform a business into a proper legal form, to change a company agreement and to make a will. However, it must be borne in mind that the planned succession will secure not only the company but also the life of the family.

Succession can be made during the senior's life as a regulation of *inter vivos* (between people, who are alive) or death (*mortis causa*). In the process of succession of a family business transfer of property can be carried out in various forms, e.g. as:

**Inheritance** - this is the most popular form of succession. There are two types of inheritance in the Polish Civil Code: the law and the will (with the precedence of the will, which does not mean

that the existence of the will determines the exclusion from inheritance of statutory heirs). Inheritance from the law occurs not only when the testator did not make a will in which he indicated the heirs, but also when no one appointed by the will of the person cannot be the heir. But if inheritance is not linked to the preparation of successors to running a family business can shake the company.

**Donation** - is a civil law contract governed by the Civil Code. It should be in the form of a notarial deed (or other form of qualified, e.g. notarial signature) on the beneficiary side.

Receiving a company in the form of a donation is exempted from the Act on Personal Income Tax as taxable inheritance and donation tax. At the same time receiving a business in the form of a donation gives you the opportunity to make a significant tax optimization on income tax on the receiving side.

The special role of donations in the succession process results from three basic characteristics:

- free transfer of assets to the successors is still seen as the most natural form of transferring Nestor's assets to his successors;
- relatively simple solution. It usually requires a notary visit, but in comparison with other forms of succession, the range of necessary actions required to take is limited;
- the Polish tax regulations are extremely donor friendly. In practice, with low requirements, the transfer of property to the closest family members is not subject to taxation.
- Fall - transfer of a family business by way of fall, which may take place only after the owner's death. From the owner's point of view, this is a good solution as he / she usually wants to keep the idea of transferring to the next generation as long as possible. In fact, it is very unfavourable, both for the successor and the company, as it involves radical and unexpected changes that can distort the functioning of the company.

Another legal solution is to **sell a part of an enterprise (or the whole) to a third party**. The successive introduction of successors to the management of the company can be combined with donations or the sale of part of the shares to the younger generation. Family businesses significantly affect the economy and allow for multi-generational property. However, there are situations when passing a family business can be perceived as a mistake: when none of the children wants to take over the business and does not identify with the entrepreneur's business. The second situation is a few possible successors and at the same time there is no agreement between them on the directions of development and the form of enterprise management. Owners do not want to offend any child and as a result they cannot divide new roles. The third situation is the lack of a suitable successor who could take responsibility for the business.

So if there is no successor or he cannot or does not want to run the business, you must consider the sale of the company, thus ensuring the descendants financial security. There are several possibilities, including: selling a business to a professional or financial investor; sales of the company to the board of directors, family and / or employees. The redemption form can guarantee full satisfaction to all parties. Based on just one transaction, new owners acquire ownership and control over the company. Taking into account business perspective, this is a typical sales contract, however from the perspective of a family it is linked to the loss of a company. It is however better to sell the company than to let to ruin it by the successors.

When a business owner wants to withdraw his capital and retire, property can also be transferred **by distributing the company's shares to non-family members**. This form can also be used to

motivate the crew, retain the best-paid employees in the company, or raise additional capital through the issue of company shares.

Generally, the departure of the owner of the company triggers the institutions and rules of inheritance law that are designed to separate the property (the right to retain, the inheritance of court proceedings, the formalism of the authorities). In this context access to assets is hindered, and repayment of receivables and debt immediately. Avoiding these types of problems requires that you choose the right form for your business in advance - the most secure from the point of view of succession appear to be a commercial law firm.

Companies are suited to succession, change-of-business transformation, independent legal entity, or separation of corporate and personal assets. They are also not dependent on family property events. Besides, they are built so that you always know who replaces it. The choice of a company depends mainly on the type and size of the activity, the skills of the people concerned, the family roles and what the owners would like to do on their own and what to outsource. The model of running and passing a family business from generation to generation in the case of companies is simple and above all real. How to do it ideally? There are several ways. You can gradually introduce family members into the company so that business matters always remain in the hands of the family. You can divide the company so everyone has their honor, but only the management and part of the financial profit remained in the family. Finally, the company can also sell or donate a donation.

Entities / institutions, existing schemes / models or websites / portals / programs at national or private level focusing on business succession,

No	Name of the organisation / fund / company / other	Existing schemes
1	Trigon. Broking (counselling)	<b>Manager buyout</b> - succession of a company by its manager team. Aim: re-structuralization, changes in management, keeping workplaces, development of a company.
2		<b>A leveraged buyout (LBO)</b> is an acquisition of a company or a segment of a company funded mostly with debt. A financial buyer (e.g. private equity fund) invests a small amount of equity (relative to the total purchase price) and uses leverage (debt or other non-equity sources of financing) to fund the remainder of the consideration paid to the seller. The LBO analysis generally provides a "floor" valuation for the company, and is useful in determining what a financial sponsor can afford to pay for the target and still realize an adequate return on its investment.
3	RSM Poland (counselling)	<b>Vendor due diligence</b> - it is due diligence carried out at the expense of, and at the behest of, the seller, by independent third parties.
4	FIZ AN Venture Capital SATUS	Venture Capital
5	Innovation Nest Fund Ltd.	
6	<b>Giza Polish Ventures Fund Ltd.</b>	
7	IMPERA Seed Fund Ltd. Capital Fund	
8	<b>Helix Venture FIZ (MCI)</b>	
9	<b>Internet Ventures FIZ (MCI)</b>	
10	Win Ventures Fund Ltd.	
11	Assets Management Black Lion Ltd.	
12	ZERNIKE-META VENTURES Fund	
13	Skyline Venture Ltd.	
14	Speed Up Innovation Fund Ltd.	
15	INOVO Venture Fund	
16	AVANU Venture Capital Management	
17	Bastion Venture Fund Ltd.	
18	EXPERIOR Venture Fund	
19	Nomad Management Ltd.	
20	Poland Growth Fund III "HEYKA Capital Markets Group	

21	Grant Thornton	International network: Grant Thornton International. Aim: identification of companies for the succession (in Poland and abroad - more than 130 countries).
22	CMT Advisory (counselling)	Identification of branch investor. The aim of the investor: <ul style="list-style-type: none"> <li>• The improvement of the position of the company on the market</li> <li>• The financial optimisation</li> <li>• The enlargement of the business activity</li> </ul>
23	PM Business Counselling	Aim: succession planning in family enterprises
<b>Initiatives/ programs</b>		
24	“White knight” initiative	Company transfer by the external investor - the continuation of the business activity is survived. Aim: to prevent so-called ‘hostile take-over’, (in Poland such a situation took place once - the company W. Kruk S.A was hostile took over by the company Vistula Group S.A).
25	Ministry of Development	The project of legal act on the succession of family companies - described in details in point 3. Aim: to encourage to continue the business activity even there are not people in the family of the owner, who would like to take the business.
26	Project: ‘Guide to the succession in family companies’	<a href="https://sukcesja.org/">https://sukcesja.org/</a>
27	The Perspectives of the Europeanization of the Law of Succession	<a href="http://bibliografia.icm.edu.pl/g2/main.pl?mod=p&amp;iid=98200&amp;a=1&amp;s=32346&amp;imie=Konrad&amp;nazwisko=Osa jda&amp;lim=25&amp;ord=1">http://bibliografia.icm.edu.pl/g2/main.pl?mod=p&amp;iid=98200&amp;a=1&amp;s=32346&amp;imie=Konrad&amp;nazwisko=Osa jda&amp;lim=25&amp;ord=1</a>
28	Family Businesses and the Polish Economy - Opportunities and Challenges	<a href="https://en.parp.gov.pl/images/PARP_publications/pdf/2009_familly_busines.pdf">https://en.parp.gov.pl/images/PARP_publications/pdf/2009_familly_busines.pdf</a>
29	Family Enterprise Initiative	<a href="http://firmyrodzinne.pl/">http://firmyrodzinne.pl/</a> Statutory objectives: <ul style="list-style-type: none"> <li>– to integrate family business environment;</li> <li>– to support the family businesses activities;</li> <li>– to encourage and promote ethical standards in business;</li> <li>– to support and promote the idea of economic freedom;</li> <li>– to support and promote the idea of the rule of law and civil society.</li> </ul>
<b>Websites</b>		
30	T. Malesa: Sukcesja w firmie rodzinnej - droga do rozwoju czy upadku. Studium przypadku (Succession in a family company - a path to the development or collapse. Case study (article)	<a href="http://www.sim.wz.uw.edu.pl/sites/default/files/artykuly/7_t_malesa.pdf">http://www.sim.wz.uw.edu.pl/sites/default/files/artykuly/7_t_malesa.pdf</a>

31	Firmy rodzinne w polskiej gospodarce - szanse i wyzwania (Family companies in Polish economy - chances and challenges) - a report	<a href="https://www.parp.gov.pl/images/PARP_publications/pdf/2009_firmy_rodzinne_szanse.pdf">https://www.parp.gov.pl/images/PARP_publications/pdf/2009_firmy_rodzinne_szanse.pdf</a>
32	Institute for Family Business	<a href="http://familybusiness.ibrpolska.pl/category/firmy-rodzinne/">http://familybusiness.ibrpolska.pl/category/firmy-rodzinne/</a>
33	Polish Agency for Enterprise Development	<a href="https://www.parp.gov.pl/files/74/81/545/13066.pdf">https://www.parp.gov.pl/files/74/81/545/13066.pdf</a>
34	Family Business Foundation	<a href="https://ffr.pl/pl/">https://ffr.pl/pl/</a>
35	A. Lewandowska, J. Greser, J. Jakubowski: Succession in a family company (article)	<a href="http://www.firmyrodzinne.eu/sites/default/files/attachments/sukcesja.pdf">http://www.firmyrodzinne.eu/sites/default/files/attachments/sukcesja.pdf</a>
36	Stępniewska: The elements of succession process in selected Polish family companies (article)	<a href="http://yadda.icm.edu.pl/yadda/element/bwmeta1.element.ekon-element-000171365657">http://yadda.icm.edu.pl/yadda/element/bwmeta1.element.ekon-element-000171365657</a>
37	Ł. Sułkowski (ed.) Family companies - current challenges of the family entrepreneurship. Directions and strategies for the development (article)	<a href="http://piz.san.edu.pl/docs/e-XIII-7.pdf">http://piz.san.edu.pl/docs/e-XIII-7.pdf</a>
38	Succession in family companies (article)	<a href="http://radagospodarcza-sws.pl/2017/06/05/sukcesja-w-firmach-rodzinnych/">http://radagospodarcza-sws.pl/2017/06/05/sukcesja-w-firmach-rodzinnych/</a>
39	Information on the aspects of the succession in family companies	<a href="http://www.biznes-firma.pl/od-2017-roku-latwiejsza-sukcesja-firm-rodzinnych/29621">http://www.biznes-firma.pl/od-2017-roku-latwiejsza-sukcesja-firm-rodzinnych/29621</a>
40	D. Figuła: Succession in family companies - how to prepare it? (article)	<a href="https://prawo.money.pl/aktualnosci/okiem-eksperta/artkul/sukcesja;w;firmach;rodzinnych;jak;ja;przygotowac,219,0,1547739.html">https://prawo.money.pl/aktualnosci/okiem-eksperta/artkul/sukcesja;w;firmach;rodzinnych;jak;ja;przygotowac,219,0,1547739.html</a>
41	Succession problem in family companies (article)	<a href="http://een.org.pl/index.php/rynki-zagraniczne-archiwum/page/4/articles/problem-sukcesji-w-firmach-rodzinnych-3661.html">http://een.org.pl/index.php/rynki-zagraniczne-archiwum/page/4/articles/problem-sukcesji-w-firmach-rodzinnych-3661.html</a>
42	Zych: Succession planning (article)	<a href="http://hrstandard.pl/2011/11/14/planowanie-sukcesji/">http://hrstandard.pl/2011/11/14/planowanie-sukcesji/</a>
43	Business succession (different aspects)	<a href="http://www.sukcesjabiznesu.pl/wpis/co-jest-rzeczywistym-bogactwem-rodziny">http://www.sukcesjabiznesu.pl/wpis/co-jest-rzeczywistym-bogactwem-rodziny</a>

## 5 Croatia

### 5.1 Current state of SMEs

Micro, small and medium enterprises are an important generator of new employment and creation of added value of each national economy. In 2014, 104,116 micro, small and medium enterprises (99.7% of the total number of registered enterprises) operated in Croatia, which achieved a share of 53% of total revenues, 68.4% of employment and 48.5% of Croatian exports<sup>1</sup>.

Criteria for classification of entities in the small and medium enterprise sector in Croatia are defined by the Accounting Act<sup>9</sup> and the Small Business Development promotion Act<sup>10</sup>. In accordance with the Accounting Act, entrepreneurs (enterprises) are classified as small, medium and large, depending on the amount of total assets, the amount of revenue, and the average number of employees during business year.

Small entrepreneurs are those that don't satisfy two of the following conditions:

- Total assets HRK 32,500,000.00
- Revenue HRK 65,000,000.00
- Average number of employees during business year: 50.

Medium entrepreneurs are those that satisfy at least two out of three conditions for small entrepreneurs, but do not satisfy two of the following conditions:

- Total assets HRK 130,000,000.00
- Revenue HRK 260,000,000.00
- Average number of employees during business year: 250.

Large entrepreneurs are those that satisfy two conditions from the definition of medium entrepreneurs.

The Accounting Act and Small Business Development Promotion Act still do not have harmonised revenue size and total assets criteria for classification of small and medium enterprises in Croatia (Table 11), although this issue has been identified for quite some time.

<sup>1</sup> Calculated on the basis of data from FINA, Croatian Chamber of Economy and Croatian Exporters



Table 11: Enterprise structure with regard to size from 2010 to 2014

Type of business entity	Number of employees EU/Croatia	Annual revenue in million EUR EU/Croatia	Assets (active/long-term assets) in million EUR EU/Croatia
Micro	0-9	2	2
Small	10-49	10	10
Medium	50-249	50	43

Source: Small Business Development Promotion Act, 2016,

In 2014 there was an increase in the total number of business entities in Croatia in relation to 2013, by 3.2%. However, Croatian economy still has the same structure, in which 99.7% of business entities come from the small and medium enterprise sector, while only 0.3% are large enterprises. As in the previous year, in 2014 there was an increase in the number of small enterprises (3.3%), a decline in the number of medium enterprises (3.7%), and an increase in the number of large enterprises by 1.1% (Table 12).

Table 12: Enterprise structure with regard to size from 2010 to 2014

	2011		2012		2013		2014		2015	
	Number of entities	%	Number of entities	%	Number of entities	%	Number of entities	%	Number of entities	%
<b>Small and medium enterprise sector</b>	90,831	99,6	96,906	99,6	100,841	99,7	104,116	99,7	106,221	99,7
<b>Small enterprise</b>	89,539		95,597		99,573		102,895		105,029	
<b>Medium enterprise</b>	1,292		1,309		1,268		1,221		1,192	
<b>Large enterprise</b>	359	0,4	348	0,4	350	0,3	354	0,3	348	0,3
<b>TOTAL</b>	91,19	100	97,254	100	101,191	100	104,47	100	106,569	100

Source: Croatian Chamber of Economy, 2016

## Education for entrepreneurship

Education for and about entrepreneurship is weak and insufficiently represented at all formal levels in the Croatian educational system. Entrepreneurial education is still not recognised and is minimally represented in the curriculum at the primary level of the Croatian education system. In secondary education, entrepreneurship is recognised as an important set of knowledge and skills only in vocational schools, and exists as a mandatory subject in the curriculum of economy secondary schools. In the higher education system, entrepreneurship is present on at least one level of study at six Croatian universities, four polytechnics and two colleges.

Non-formal education for beginner entrepreneurs and/or already launched enterprises is offered by institutions such as centers for entrepreneurship, Croatian Chamber of Economy, Croatian Employers' Association and private companies active in the sector of adult education.

## 5.2 Legal and institutional framework

### 5.2.1 Distribution of competences for making and implementation of policy decisions

The efficiency of the legislative and institutional framework related to the small and medium enterprise sector can be analysed at several levels:

- Distribution of competences for making policy decisions related to the small and medium enterprise sector
- Implementation of those decisions at the level of state institutions (ministries and agencies)
- Direction of development of national and regional development policies for the small and medium enterprise sector
- Availability of support to the small and medium enterprise sector.

Following are the main actors in formulation, adoption and implementation of the policy framework for activity of the small and medium enterprise sector.

**Ministry of Entrepreneurship and Crafts** ([poduzetnistvo.gov.hr](http://poduzetnistvo.gov.hr)) is responsible for the creation of policies aimed at the development of small and medium enterprises and creation of a favourable environment for entrepreneurship.

**Croatian Bank for Reconstruction and Development - HBOR** ([www.hbor.hr](http://www.hbor.hr)) is the development and export state bank whose main task is to encourage the development of the economy through providing loans, insuring exports from political and commercial risks, issuing guarantees and business consulting.

**Croatian Agency for SMEs, Innovations and Investments - HAMAG-BICRO** ([www.hamagbicro.hr](http://www.hamagbicro.hr)) was created in 2014 by merging the Croatian Agency for SMEs and Investments (HAMAG INVEST) and the Business Innovation Center of Croatia (BICRO) with the aim to create a unique system that will provide support to entrepreneurs through all the stages of business development. The agency is involved in activities related to encouraging the establishment and development of small and medium enterprises. Its activities fall under the jurisdiction of the Ministry of Entrepreneurship and Crafts.

**Croatian Employers' Association - CEA** ([www.hup.hr](http://www.hup.hr)) - is a voluntary, non-profit and independent organisation of employers that protects and promotes the rights of its members. Associations' activities are in the fields of labour-social legislation, industrial relations, protection of private property, promotion of development and regulation of market conditions, strengthening competitiveness and favourable entrepreneurial climate.

**Croatian Chamber of Economy - CCE** ([www.hgk.hr](http://www.hgk.hr)) - is a non-profit, non-governmental association of all active legal entities (membership in CCE is obligatory), which consists of 98.06% of small enterprises, 1.52% medium and 0.42% large enterprises.

**Croatian Chamber of Trades and Crafts - CCTC** ([www.hok.hr](http://www.hok.hr)) - is an independent professional and business organisation of craftsmen founded to promote, harmonise and represent the common interests of craftsmanship. Membership in CCTC is obligatory, and it operates through 20 district chambers, 116 craftsmen associations and 18 sections and guilds.

**European Bank for Reconstruction and Development** ([www.ebrd.com](http://www.ebrd.com)) - is an organisation which, through its "Small Business Support team", provides support to small and medium enterprises aimed at achieving growth, improvement of export potential and new employment opportunities.

**SMEs and Entrepreneurship Policy Center - CEPOR** ([www.cepor.hr](http://www.cepor.hr)) - is an independent policy center that deals with the issues of small and medium enterprises in Croatia, whose aim is to influence the public-political environment emphasizing the role of entrepreneurship and small and medium enterprises in the development of Croatian economy. CEPOR is focused on creating stimulating institutional and regulatory framework for entrepreneurial activity. Since 2014, **Center for Family Businesses and Business Transfer - CEPRA** operates within CEPOR, whose goal is to provide support to family and other small and medium enterprises in the field of business transfer and other specific challenges related to the management of family businesses.

## 5.2.2 Government incentive programs and subsidised credit lines

Through promotion of investment, grants - supports within the Entrepreneurial Impulse program and loan programs, the Government of the Republic of Croatia implements measures aimed at promoting the development of the small and medium enterprise sector.

### Grants of the Ministry of Entrepreneurship and Crafts

#### Program to Encourage Entrepreneurship and Crafts-

The novelties are aimed at simplifying the application procedure for the interested entrepreneurs and craftsmen, and are related to reducing the list of mandatory documentation, longer period of time between the publication of the invitation to tender and the start of receipt of applications, and the prolongation of the time for project implementation from 6 months to one year. Grants are awarded through 10 measures divided into 4 priorities:

- Enhancing the competitiveness of small business,
- Improving the entrepreneurial environment,
- Promotion and learning for entrepreneurship and crafts and
- Easier access to financing.

#### Program of improved lending to entrepreneurship and crafts

The program implements measures of favourable financing of the small business sector through subsidised interest on entrepreneurial loans approved by commercial banks. The goal of the Program is to facilitate access to finance to the small business sector in a way that improved loan terms stimulate improvement of business activity, new investment or maintaining business continuity.

#### Credit lines of the Ministry of Entrepreneurship and Crafts for the development of small business at the local level

Within the credit lines “Local projects for small business development” and “Local development projects - microcrediting” started in 2009, involving the participation of the Ministry of Entrepreneurship and Crafts, counties and commercial banks.

#### Croatian Bank for Reconstruction and Development (HBOR)

Croatian Bank for Reconstruction and Development finances the establishment and development of small and medium enterprises through a range of loan programs. Loan programs are implemented directly and/or through commercial banks, according to the model of risk sharing or subordinated debt, and the loan terms depend on purpose, type and area of investment.

### Croatian Credit Insurance (HKO)

Croatian Credit Insurance d.d. (HKO) owned by HBOR, since 2010 specialises in insurance of short-term receivables arising from sales of goods and services between business entities. HKO insures receivables of all business entities (regardless of their economic activity and size) that sell goods and services with deferred payment. The purpose of insurance of receivables is to protect liquidity and assets, i.e., ensure collection of payment, enable more secure entry into business relations with new buyers, and reduce costs of additional measures for collection of receivables.

### Croatian Agency for SMEs, Innovations and Investments (HAMAG-BICRO)

Activities of the Croatian Agency for SMEs, Innovations and Investments (HAMAG-BICRO) include the promotion of establishment, development and investment in small enterprises, financing the operation and development of SMEs by loans and issuing guarantees for approved loans, and providing grants for research, development and application of modern technologies. Agency provides financial support to innovative and technology oriented small and medium enterprises in Croatia, and is focused on developing and coordinating national policy measures related to innovation and the necessary financial instruments with the ultimate goal to motivate the private and public sector to invest in research and development.

## 5.2.3 National and regional policies and programs

Strategy for Development of Entrepreneurship in the Republic of Croatia 2013- 2020, from 2013, whose aim is to increase the competitiveness of small businesses in Croatia by improving economic performance, improving access to finance, promoting entrepreneurship, improving entrepreneurial skills and improving the business environment;

National Strategy for Entrepreneurial Learning 2010-2014, from 2010, whose aim is to sensitize the public about entrepreneurship and develop a positive attitude towards lifelong learning, and to introduce learning and training for entrepreneurship as a key competence to all forms, types and levels of formal, non-formal and informal education and learning;

### Strategy of Women Entrepreneurship Development in the Republic of Croatia

**2014-2020**, from 2014, whose aim is to improve the coherence and interconnectedness of public policies, to improve systemic support for women entrepreneurship through the entire institutional structure, and to promote women entrepreneurship;

Action Plan for Implementation of the Strategy of Women Entrepreneurship Development in the Republic of Croatia 2014-2020, from 2014;

Cluster Development Strategy in the Republic of Croatia 2011-2020, from 2011, whose aim is to improve the management of Croatian cluster policy, strengthen clusters and cluster

associations, to promote innovation and transfer of new technologies, conquer new markets and internationalisation of clusters, and strengthen the knowledge and skills for cluster development;

**Strategy for Innovation Encouragement of the Republic of Croatia 2014-2020,**

from 2014, which aims to build an efficient innovation system and improve the legal and fiscal framework, establish a means of communication and models of cooperation between the public, scientific research and the business sector in order to develop new products, services, business processes and technologies, and the manner of applying the results of scientific research in the economy and society as a whole;

**2014-2015 Export Support Action Plan,** from 2014, which was developed by the Government's Commission for Internationalisation of Croatia's Economy, whose purpose is to consolidate and display in one place all activities and measures that must be taken by the appropriate state bodies and institutions to ensure systematic and sustained support for Croatian exporters and to facilitate the placement of Croatian goods and services to foreign markets;

**Strategic Plan of the Ministry of Entrepreneurship and Crafts for the period 2015-2017,** from 2014, whose general aim is to increase the competitiveness of small businesses in Croatia by improving economic performance, access to finance, entrepreneurial skills and business environment, and promoting entrepreneurship, which are also the strategic goals of the Strategy for Development of Entrepreneurship in the Republic of Croatia 2013-2020

## 5.2.4 Regulatory environment

The following acts constitute the regulatory framework for the small and medium enterprise sector in Croatia:

- Act on Improving Entrepreneurial Infrastructure (Official Gazette, NN 93/13, 41/14)
- Small Business Development Promotion Act (Official Gazette, NN 29/02, 63/07, 53/12, 56/13)
- State Aid Act (Official Gazette, NN 47/14)
- Companies Act (Official Gazette, NN 111/93, 34/99, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 68/13, 110/15)
- Ownership and Other Proprietary Rights Act (Official Gazette, NN 91/96, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15)
- Act on Investment Promotion (Official Gazette, NN 102/15)
- Foreign Exchange Act (Official Gazette, NN 96/03, 140/05, 132/06, 153/09, 145/10, 76/13)
- National Payment System Act (Official Gazette, NN 133/09, 136/12)

- Concessions Act (Official Gazette, NN 143/12)
- Capital Market Act (Official Gazette, NN 88/08, 146/08, 74/09, 54/13, 159/13, 18/15, 110/15)
- Alternative Investment Funds Act (Official Gazette, NN 16/13, 143/14)
- Cra\_ s Act (Official Gazette, NN 143/13)
- Trade Act (Official Gazette, NN 87/08, 116/08, 76/09, 114/11, 68/13, 30/14)
- Court Register Act (Official Gazette, NN 1/95, 57/96, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15)
- Act on Services (Official Gazette, NN 80/11)
- Act on Public-Private Partnership (Official Gazette, NN 78/12, 152/14)
- Accounting Act (Official Gazette, NN 109/07, 54/13, 78/15, 134/15)
- Competition Act (Official Gazette, NN 79/09, 80/13)
- Public Procurement Act (Official Gazette, NN 90/11, 83/13, 143/13, 13/14)
- Environmental Protection Act (Official Gazette, NN 80/13, 78/15)
- Physical Planning and Building Act (Official Gazette, NN 76/07, 38/09, 55/11, 90/11, 50/12)
- Labour Act (Official Gazette, NN 93/14)
- Consumer Protection Act (Official Gazette, NN 41/14, 110/15)
- Bankruptcy Act (Official Gazette, NN 71/15)
- Enforcement Act (Official Gazette, NN 112/12, 93/14)

Tax system legislation consists of the following acts:

- General Tax Act (Official Gazette, NN 147/08, 18/11, 78/12, 136/12, 73/13, 26/15)
- Contributions Act (Official Gazette, NN 84/08, 152/08, 94/09, 18/11, 22/12, 144/12, 148/13, 41/14, 143/14)
- Profit Tax Act (Official Gazette, NN 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14)
- Income Tax Act (Official Gazette, NN 177/04, 73/08, 80/10, 114/11, 22/12, 144/12, 120/13, 125/13, 148/13, 83/14, 143/14, 136/15)
- Value Added Tax (Official Gazette, NN 73/13, 148/13, 153/13, 143/14)
- Real Estate Transfer Tax Act (Official Gazette, NN 69/97, 26/00, 153/02, 22/11, 143/14)
- Excise Duties Act (Official Gazette, NN 22/13, 32/13, 81/13, 100/15, 120/15)

The principal act of the customs system is:

- Act on Implementing Customs Regulations of the European Union (Official Gazette, NN 54/13)

During 2017, there have been changes in the legislative framework that affects the activity of the small and medium enterprise sector.

## 5.3 Taxes

The major tax burdens in Croatia are value added tax, income tax, profit tax, and surtax (income of local communities - municipalities and towns).

### VALUE ADDED TAX:

Tax payer: Physical and legal entity (entrepreneur) that delivers goods or performs services

Tax base: Fee for goods delivered or services performed

Tax rate: 25%

5% reduced rate applicable to bread, milk, newspapers, books, textbooks, scientific journals, medicines, medical equipment and supplies, cinema tickets

13% reduced rate applicable to services in tourism and hospitality industry, cooking oil, sugar, baby food, newspapers and magazines, water supplies, tickets for concerts

### INCOME TAX:

Tax payer: Physical entity that earns taxable income

Tax base: Total income earned by local tax payers in Croatia and abroad and by foreign tax payers in Croatia

Tax rate: 12% on income up to HRK 26,400.00 per annum

25% on income above HRK 26,400.00 to HRK 158,400.00 per annum

40% on income above HRK 158,400.00 per annum

### PROFIT TAX:

Tax payer: Enterprises and other legal and physical entities that perform activity with the aim of making profit

Tax base: Profit (difference between income and expenses)

Tax rate: 20%

15% on withholding tax

12% on dividends and profit shares



#### SURTAX:

Tax payer: Tax on income of tax payers

Tax base: Income tax

Tax rate: Municipality: up to 10%

Town with population less than 30,000: up to 12%

Town with population above 30,000: up to 15%

City of Zagreb: up to 30%

## 5.4 Access to information and advisory services

Access to information and advisory services is a significant factor in the development of entrepreneurial activity.

The most important institutions that provide support to the development of the small and medium enterprise sector in Croatia are:

**Croatian Chamber of Economy (CCE) - Entrepreneurship and Innovation Department,**  
[www.hgk.hr](http://www.hgk.hr)

Entrepreneurship and Innovation Department operates within the CCE's Industry and IT sector, whose activities are aimed at providing information and support to entrepreneurs. The scope of work of the Department includes proposing measures to improve the entrepreneurial climate in Croatia, monitoring and analysis of business performance of the small and medium enterprise sector, representing interests and providing expert assistance to members regarding the financing of entrepreneurial projects, counselling concerning applying to support schemes for small and medium enterprises and regarding access to relevant EU programs, cooperation with relevant ministries on the implementation of 10 principles of the Small Business Act, as well as cooperation with educational and other institutions in organising educational programs for entrepreneurs.

**Croatian Chamber of Trades and Crafts (CCTC),** [www.hok.hr](http://www.hok.hr)

The main activities of the CCTC are: promoting craftsmanship, representing the interests of craftsmen before state authorities in shaping the economic system, giving opinions and suggestions to state authorities when enacting legislation in the field of craftsmanship, establishing commissions for apprentice and master exams, and providing help to craftsmen during the establishment and operation of crafts. CCTC is also active in the organisation, cofinancing and encouraging appearances of craftsmen at trade fairs in the country and abroad. Participation and presentation of members of the CCTC at trade fairs is co-financed in the amount from 30% to 50%, while for local trade fairs CCTC grants aid to the organisers.

**Croatian Employers' Association (CEA) - Small and Medium Sized Enterprises' Association,**  
[www.hup.hr/hup-udruga-malih-i-srednjih-poduzetnika.aspx](http://www.hup.hr/hup-udruga-malih-i-srednjih-poduzetnika.aspx)

Small and Medium Sized Enterprises' Association of the Croatian Employers' Association actively participates in the processes of creating a better legal framework and improving business environment, and is continuously working to improve and promote the importance of small and medium enterprises for the Croatian economy. The Association is included in the development of legislative and other solutions either through direct involvement of entrepreneurs in the drafting of specific laws, or through participation of the Association's representatives in working groups, bodies, commissions or committees, and it has so far been involved in the preparation of the following laws and strategies: Labour Act, Act on Vocational Rehabilitation and Employment of persons with Disabilities, Occupational Safety and Health Act, Crafts Act, Act on Mortician Activities, Bankruptcy Act and other tax and financial laws, Strategy of Women Entrepreneurship Development, Industrial Strategy, Smart Specialisation Strategy, Education Strategy, Innovation Strategy, Social Entrepreneurship Strategy, Anti-Corruption Strategy.

**SMEs and Entrepreneurship Policy Center - CEPOR,** [www.cepor.hr](http://www.cepor.hr)

CEPOR is the first think-tank in Croatia whose goal is to influence the public-political environment emphasizing the role of small and medium enterprises in the development of Croatian economy and contribute to the development of entrepreneurial culture and stimulating institutional and regulatory framework for entrepreneurial activity.

**European Bank for Reconstruction and Development (EBRD),** [www.ebrd.com](http://www.ebrd.com)

Advice for Small Business Team (ASB)

Through the Advice for Small Business Team - ASB, the European Bank for Reconstruction and Development provides support to small and medium enterprises in accessing professional business information and advisory services significant for achieving growth, exports and increasing employment, with a special emphasis on the area of women entrepreneurship.

**Entrepreneurial zones and business support institutions**

The Act on Improving Entrepreneurial Infrastructure defines entrepreneurial infrastructure in the broad sense as the totality of all spatially specific forms of performing of various entrepreneurial activities created as a result of deliberate and organised spatial development concept of units of local and regional self-government, that is, the Republic of Croatia. In the narrow sense, entrepreneurial infrastructure comprises a system of entrepreneurial zones and business support institutions, which include development agencies, entrepreneurial centers, business incubators and accelerators, business parks, science and technology parks and competence centers. The purpose of improving business infrastructure and business environment is to encourage economic growth by planning and building entrepreneurial infrastructure, which is in the function of balanced regional development of the Republic of Croatia, faster growth of entrepreneurship and increasing investments and employment within the area where entrepreneurial infrastructure is planned or built.

### **Entrepreneurial zones**

Entrepreneurial zones are infrastructurally equipped areas defined by spatial plans, intended for carrying out certain types of entrepreneurial or commercial activities. The main characteristic of entrepreneurial zones is common use of infrastructurally equipped and organised space by entrepreneurs, to whom performing business operations within the entrepreneurial zone enables the streamlining of operations and use of available resources of the entrepreneurial zone together with other users of the entrepreneurial zone.

### **Development agencies**

In terms of the Act on Improving Entrepreneurial Infrastructure, development agencies are registered legal entities that are involved in the operational implementation of measures for the development of the economy and entrepreneurship at the local (regional) and national levels, encouraging and attracting investments and initiating and implementing projects to encourage economic development and entrepreneurship, unifying the work of economic entities, local and regional entrepreneurial institutions, and higher education institutions and knowledge centers. There is a distinction between local development agencies, established by units of local self-government, and county development agencies, which are founded by regional self-governments. County development agencies in the role of regional coordinators, in accordance with the Act on Regional Development of the Republic of Croatia, are responsible for efficient coordination and encouraging regional development of units of regional self-government. The law also recognises development agencies for certain activities, such as energy development agencies.

### **Entrepreneurial centers**

Entrepreneurial centers are part of the business support infrastructure, whose objective is to provide advisory and educational services to support entrepreneurs when launching and developing entrepreneurial ventures. Entrepreneurial centers organise seminars and other forms of additional education and cooperate with local and regional administration on implementation of development programs aimed at supporting the development of the small and medium enterprise sector. Centers operate as parts of county/city administrations, as independent enterprises or as associations, and are financed from local budgets, European Union projects, Ministry of Entrepreneurship and Crafts supports and own sources of financing. Over the years of work some of entrepreneurial centers have developed into regional development agencies.

### **Business incubators and accelerators**

Business incubators provide support to beginner entrepreneurs through a range of business services and resources, including business (working) spaces under favourable conditions, typically until the third or no later than the fifth year of operation. Business incubators represent an important link in the system of support for the generation of new small enterprises, which become financially self-sufficient and independent after leaving the incubator.

Unlike incubators, business accelerators are specialised business entities in charge of providing support services to entrepreneurs in the post-incubation stage, or the stage of development and business expansion in the domestic and foreign markets.

### **Business and science and technology parks**

Business parks are registered legal persons that provide physical space, land and resources for accommodation of businesses entities on a commercial basis.

Technology Parks connect experts and entrepreneurs with the intention of achieving economic goals with the help on new technologies. Technology parks place emphasis on development and scientific-research activities, and they are established primarily in the vicinity of higher education institutions and research centers, i.e. important economic-technological systems.

### **Competence centers**

Competence centers carry out research projects of development or production character and develop competences in specific areas. They are focused on developmental and applied research and its commercialisation, and supporting and strengthening intellectual property within specific subject areas and branches of competence. They are designed to support the strengthening of the capacity of the business sector, mainly small and medium enterprises, which lack their own capacities for research and development, in order to carry out research and development projects.

Competence centers can be organised as a consortium between entrepreneurs and one or more organisations for research and dissemination of knowledge, as an innovation cluster, whose members are involved in research and development activities, or as a legal entity that manages research infrastructure that performs economic activities.

### **European Enterprise Network (EEN)**

European Enterprise Network (<http://een.ec.europa.eu/>) provides support and advisory services to entrepreneurs in Europe with the aim to exploit the opportunities provided by the EU and the Single European Market. The network was started in 2008. Services of the European Enterprise Network are designed primarily for small enterprises, but they can also be contacted by large enterprises, universities and research centers with queries related to the internationalisation of business, technology transfer, access to finance research funding, advice on EU law and standards, intellectual property and patents.

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