

## ENTER TRANSFER

D.T1.2.4 Measures towards successful accomplishment of the business succession process (linked to the pilot action O.T2.5 in the region of Upper Austria)

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## 1. Objectives

This report identifies legal aspects related to business succession, measures for facilitation of power transfer (e.g. smooth assumption of role of top manager, incumbent adaptability to attain new role when leaving leading position, creation of good relations).

Other factors important in the power transfer processes were analysed. More specific the involved stakeholders and their conflict potentials, the personal competences of the successor and the change management which automatically occurs after a business succession.



## 2. Identification of legal aspects related to business succession

Besides personal and psychological aspects a main factor for a successful transfer of businesses are legal aspects along the process. So business successors and incumbents have to be aware of the possible pitfalls along the way. As each company is different to each other, the legal aspects differ as well. It is therefore important to state that this document can only provide a rough overview - legal advice will still be inevitable for any company facing succession.

### 2.1. Legal aspects to be considered

Basically the following legal aspects have to be considered during the succession process:

- Legal structure
- Deed of partnership
- Commercial law prerequisites
- Ownership structure
- Asset structure
- Liability structure
- Existing liabilities
- Patents, trademarks, licenses, etc.
- Rent / Property
- Long-term agreements

### 2.2. Excerpts of legal aspects from the mapping process

#### 2.2.1. Slovakia

##### 2.2.1.1. 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, the heir is obliged to fulfil 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 Korbelová 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

## 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.

### **2.2.1.2. 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.

### 2.2.1.3. 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.

### 2.2.1.4. 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.

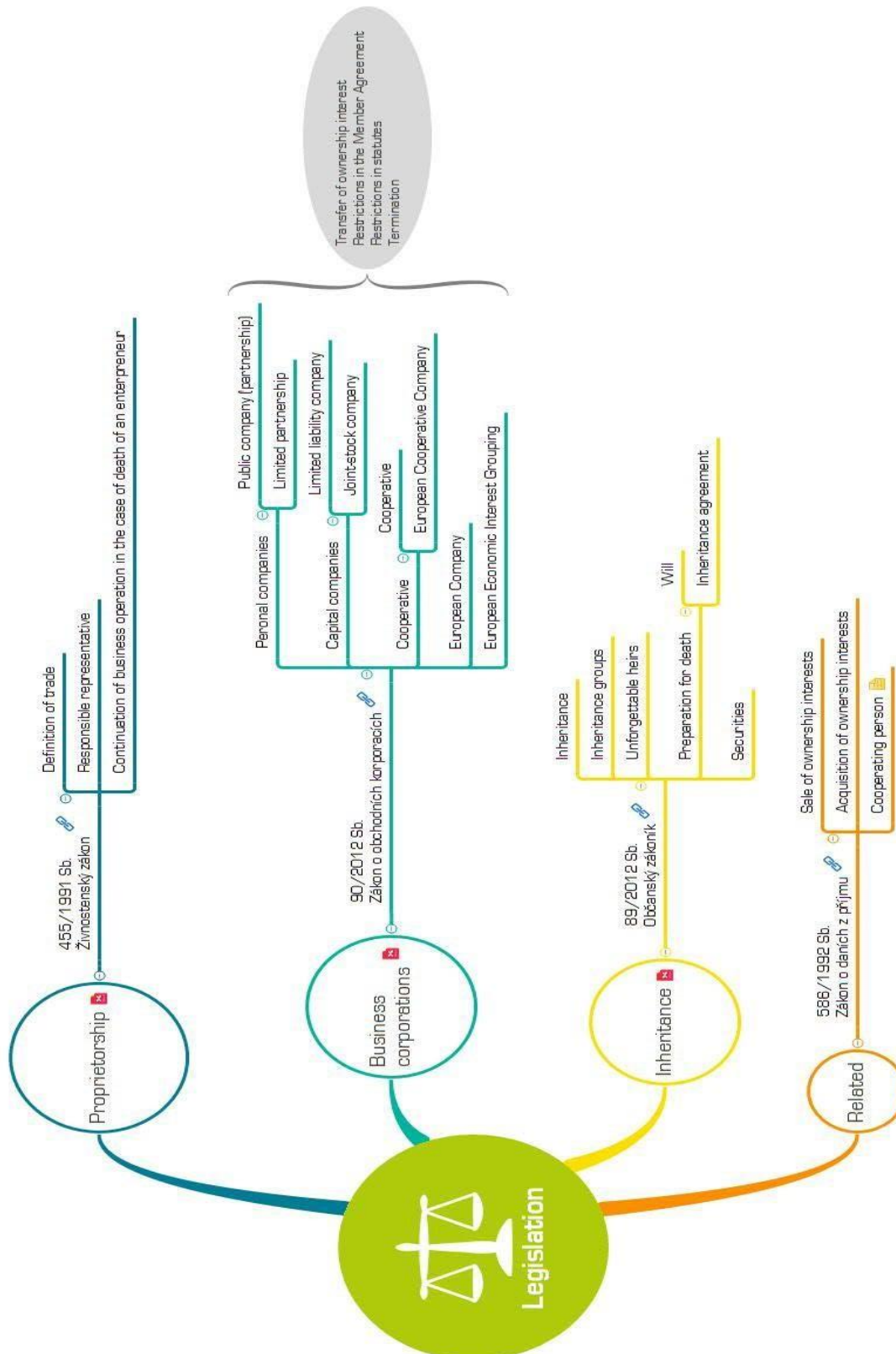
### **Memorandum on takeover**

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.



## 2.2.2. Czech Republic





## 2.2.3. Austria

### 2.2.3.1. Taxes

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

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

### 2.2.3.2. 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).

### 2.2.3.3. 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.

#### 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)

#### 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)

### 2.2.3.4. Poland

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:

- to sell products and services;
- 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:





- 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;
- 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.
- the possibility to make partial division of the inheritance - it is very important in order to manage the company in an effective way.
- 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.
- 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.

### 2.2.3.5. Croatia

#### 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.

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.

## 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%



### 3. Other factors

#### 3.1. Conflict potentials during a power transfer

A power transfer is a critical situation where many conflicts can occur.

##### 3.1.1. Stakeholders involved in a power transfer

The most important stakeholders during a business succession are the “old” entrepreneur, the successor and the employees. Other important stakeholders are costumers, suppliers and in the case of a family business, other family members.

All of these stakeholders follow their own interests and goals and are in interrelation to each other. Especially the entrepreneur, the successor and the employees are dependent on each other.

##### 3.1.2. Potential conflicts of the involved stakeholders

The dependency of the stakeholders to each other can lead to conflicts (Figure 3). The different interests and goals of each stakeholder mainly cause this high potential for conflicts. (Seeghitz, 2000)

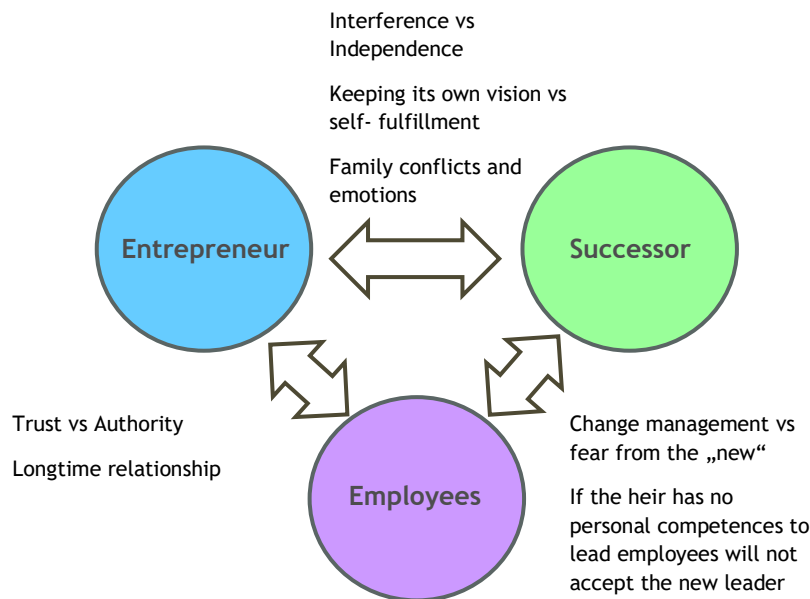


Figure 1: Conflict potentials of the involved stakeholders (Source: modified after Seeghitz, N. 2000; p101)

The entrepreneur and the successor are in a situation where great tensions can exist as the entrepreneur wants “his/her” company to be continued and protected as they put most of their time and passion in this company. The successor within a family usually also learns this passion in early stages but self- fulfillment in young ages is a common human desire. The “letting go” aspect is very difficult for many entrepreneurs (Cadieux, 2007). This process is especially difficult during the transfer of the founder to the second generation. Transferors in older family business do not have such a strong bound to the founder and are therefore emotionally less attached to the company which makes it easier to transfer the business.

The successor has to find his management style and include some changes in the company. However, employees are usually rather “afraid” if a new leader enters the company. Therefore he successor might



be experiencing pressure against him and his change management. In this situation, especially personal competences are needed to lead the business. If the successor has no personal competences, the employees will rather sooner than later realise this and not accept the new leader. The relationship between employees and the entrepreneur is usually long-time and is tailored to the “old” entrepreneur. This relationship can on the one hand be very trustful but also out- dated due to e.g. an authority leadership.

These conflicts during the succession can be avoided by checking the personal development/competences (see chapter 3.1.2. and 4.2.) and by performing a structured and planned change management.

## 3.2. Personal competences

The personal qualification of family internal leaders is usually not considered. Very often, the inter-family role makes the involved family members “blind” what competences are needed and who can fulfil the future tasks best. In former times this problem was even more critical than today. In the last centuries the oldest son (primogenitor concept) had to take over the business. Nowadays this concept is not applied anymore and a stronger awareness of the personal competences of a business leader occurs.

This chapter concentrates on the needed personal competences of a business leader. The personal competences strongly define a successful power transfer. However, needed competences in a SME are not easy to analyse. Big companies have scientifically analysis for employees and leaders. In smaller companies this is not possible. Also, because the tasks of a business leader vary greatly between the successors. A business leader of a technical company must have specific technical/engineering knowledge and not only be a good sales man. However, only good technical experience is also not enough.

### 3.2.1. The big five: characteristics of entrepreneurs

Generalized, company owners have a typical character. They are very often extroverted and open minded people. Very often, they are seen as “uncomfortable” people who are very precise. Barrick and Mount (1991) described the “big- five” characteristics of an entrepreneur:

1. **Neuroticism** describes the emotional stability of a person. The lower this value, the better a person can deal with emotional stress.
2. **Extraversion** describes the enthusiasm and sociability. An extrovert person is sociable and active, able to lead people. Extroverts represent their opinion and assert themselves.
3. **Openness to experiences** includes curiosity as well as the willingness and ability to learn. Openness for experience is a good Indicator of corporate success.
4. **Compatibility** describes the altruistic and benevolent side of a person. Compatible people are open- minded to situation of others. They're tolerant, cooperative and less confrontational. In the literature compatibility is also called friendliness or social conformity.
5. **Conscientiousness** means sense of duty and reliability, but it is also an indicator that a person has the will to enforce something.

### 3.2.2. Competences and Motives of successors

Successors might need different competences than the generalized big- five. Therefore a study of 212 potential successors in Germany tried to analyse the needed personal competences in a family business (Hülsbeck et al. 2014):

The picture of the personality of a successor can be drawn quite detailed. The study showed that this personality picture differs generally from that of a company founder. Successors are not entrepreneurs who enforce a certain vision against all odds like the founders did. Rather, they are quite socially-minded



and value-oriented. They are more interested in preserving the existing than in creating something new. This is something that any entrepreneur looking for a successor should have in mind.

The successors show explicit motives that correspond to the expectations of their environment and the type of entrepreneur. On the other hand, their implicit, deeply socialized motives are completely individual. This does not necessarily have to be problematic, for example if an explicit motive situation only represents an increase in an implicit one. However, if there is a conflict between implicit and explicit motives, this can lead to personal and corporate failure in the medium term, in the worst case to health problems (e.g. burnout).

A successor can only be successful if they are in inner peace with themselves. Recognizing and prioritizing one's own motives is a prerequisite for a high long-term motivation to work.

Another key finding is that the attractiveness of succession as a career decision is where it should not be: Successors often choose their succession because they want to avoid pressure to perform and not be on risk on the career and labour market. The successors want to take over the business if they have the feeling that they can generate a maximum return with little risk and effort. Although a pre-drawn career path may seem comprehensible and tempting, care must be taken to ensure that this does not become the primary decision criterion for or against succession.

### 3.3. The change management theory

Change management is a very important issue. A business transfer automatically leads to a change management as each owner (or leader of a company) leads a company differently and strongly defines the company culture. A successful business succession therefore is always a deep social and cultural process of "change". However, especially in family businesses the continuity of the "tradition" of the company is a very important issue. A successor has to find a balance of "changing" the company and add his own "soul" to the firm while at the same time reinforce the (family and) company tradition.

The conflict potential during a succession has been already mentioned, especially the fact that employees are very often afraid of something new. If the successor does not show good personal competences to lead a company, employees will boycott the change plans. Here it is important that the successor finds somebody he can trust. In the best case it is a long-term employee who also has trust from most employees. Very often only 20% of employees are open-minded to new ideas and changes. Another 60% are indifferent and 20% do not accept changes. Here it is of high importance to concentrate on the 20% who are open-minded to the change. These people can easily motivate the 60% who are indifferent to join the changes. It would be a mistake concentrating on the 20% who do not accept any changes. Sometimes it can help to dismiss only one employee who is working too much against the new leader.

The creation of a strategic change management is a very important tool for successors as it positively influences power transfer. An active change management can lead to a faster acceptance of the new owner in the eyes of the employees. Also, the incumbent might be able to let go easier. However, it can also be the opposite, that the transferor and the employees do not accept the changes and therefore not the new owner. Thus, a strategic planning of the management of the new owner is very critical.

#### 3.3.1. Lewins change model

There exist several different theories and models on this topic. Kurt Lewin developed one of the oldest theories on change management (Figure 4).



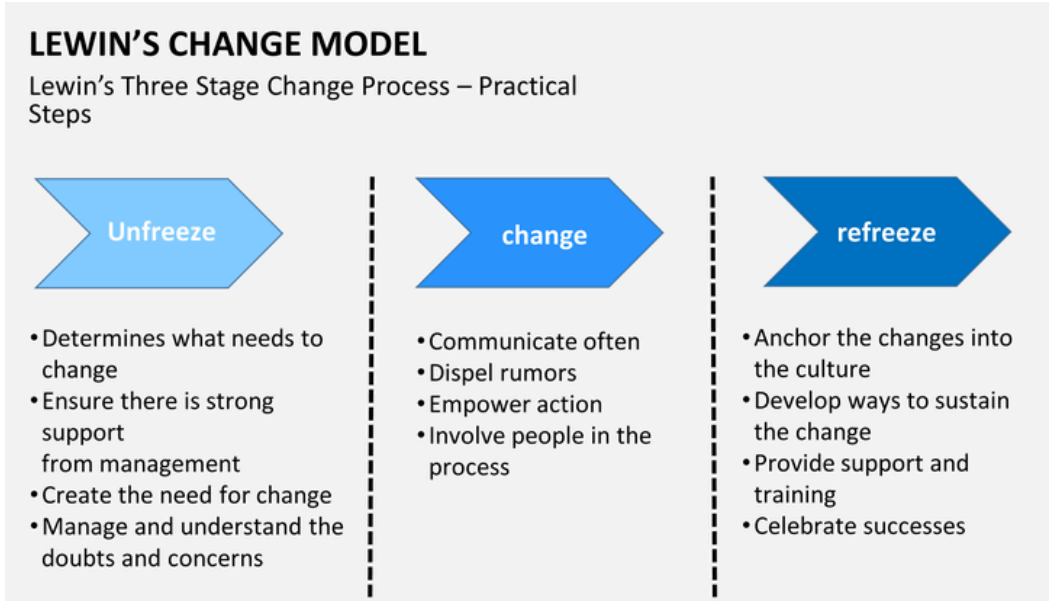


Figure 2: Lewins change model, Source: <https://www.sketchbubble.com/en/presentation-lewins-change-model.html>

In Lewin's theory, "unfreezing" describes that the current situation in the company no longer corresponds to reality and should be changed. In this phase, forces in the organization that signal a change must be reaffirmed and the old balance disturbed in order to initiate an awareness of change.

The "change" phase stands for the process of finding new solutions. Old procedures and structures need to be re-thought or tested on the market in partial experiments. An attempt is being made to find a new balance.

The aim of "refreezing" is to integrate and stabilize the new functioning solutions into the corporate culture and organization. This is intended to create a new equilibrium with consolidated processes, which ensures the continuity of the company's progress.

### 3.3.2. Kotters change model

John P. Kotter developed another important theory on change management in the sense of creating innovation (Figure 5). The first step of Kotters theory is to create a sense of urgency. If a transfer of a company to a new business leader takes place this automatically creates a sense of urgency.

The next step is to build a core coalition. This is very important especially if a "new" person enters the company to find a small group with whom you can form and share a strategic vision (3<sup>rd</sup> step). This core group can help to get everyone else on board (4<sup>th</sup> step). The next step is to remove barriers and reduce friction (5<sup>th</sup> step). In the 6<sup>th</sup> step the company should try to generate short-term wins and then sustain acceleration (step 7). The last step is to strengthen the change to "set the change in stone".

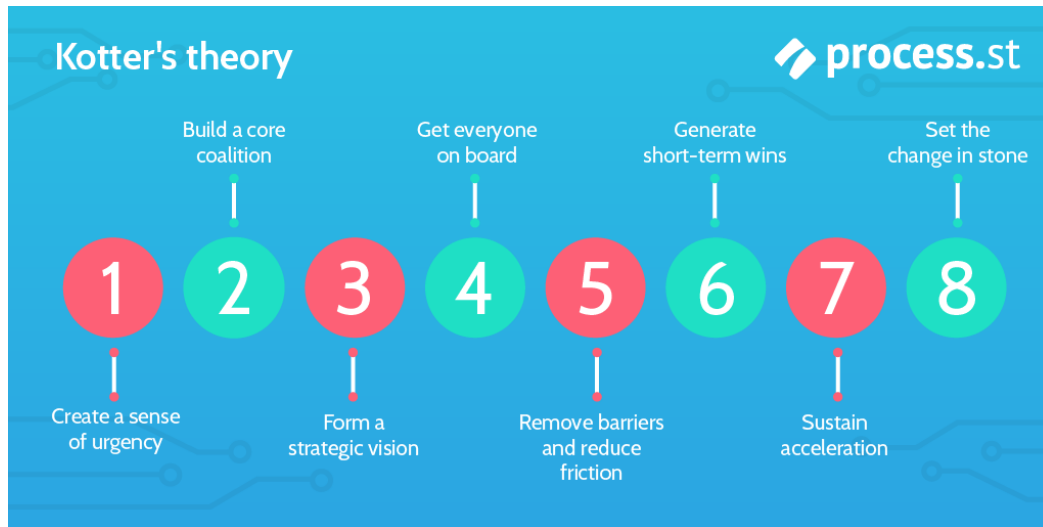


Figure 3: Kotters theory Source: process.st

### 3.3.3. Other relevant change models

Other important change models are (Mullholland, 2017):

- The McKinsey 7-S model
- Nudge theory
- ADKAR
- Bridges' transition model
- Kübler-Ross' change curve
- The Satir change management model



## 4. Measures for the facilitation of power transfer

As outlined above, personal and psychological aspects have a strong impact on the succession process in family businesses. There is no predetermined process, as each family, each company and - most important - each successor is different. Though, a framework process needs to be defined.

### 4.1. Outline of Coaching programme for successor

This chapter gives a short overview for a coaching programme for transfer of power in family businesses.

#### 4.1.1. Self-check - personality of successor

Before starting the succession process/coaching the successors have to ask themselves following questions:

- Why do I want to take over?  
Is it my own decision? Do I feel responsible? Do I feel obliged to my parents?
- Am I interested in the business purpose of the company?  
Am I ready to commit myself to the company and take it further?
- Am I ready to participate in the process of change that comes with takeover?  
Any successor will be different to his or her predecessor. So not only the transferor but also staff and clients will have to adapt to changes. This will surely have potential for conflict. It is therefore important for the successor to prepare oneself for this process.
- Do I have the necessary knowledge and skills to lead a company?  
Which additional training do I need?
- Am I an entrepreneur? → There are a lot of self-tests out there online

This questions should be included in a self-check questionnaire for the successor to prepare for the consulting/coaching programme.

#### 4.1.2. Personal Development and Succession Plan

Based on the above self-check the coach/consultant can then develop a personal development and succession plan together with the successor (and ideally with the predecessor).

In this stage also the situation of the company has to be taken into account:

- In which stage of development is the company right now (period of growth, maturity stage, Consolidation/shrinkage phase - we assume that no-one will take over a company in its founding stage or in the phase shortly before closure)?
- What will be the main challenges in the next 2, 5 and 10 years? How will the business sector develop?
- Company profile (size, number of employees, age structure of employees, ...)
- Is there an investment backlog? Is there an innovation backlog? (There probably will be ...)



For the personal development plan of the successor a needs analysis should be performed considering the following:

- Technical/specialist knowledge
- Business/Managerial knowledge
- One-on-one coaching for personal development

### 4.1.3. Milestones of the power transfer process

The following milestones can be found in any succession process. For a smooth process it is advisable to take on external guidance - a neutral broker is of essential importance. Also for each step open communication and taking enough time are essential. (Junge Wirtschaft Oberösterreich, 2018)

#### 4.1.3.1. Onboarding of the successor and transfer of power

There are different ways a successor can enter the company. We mainly want to distinguish between a gradual/incremental and an immediate entry. Both succession paths need to be well prepared as not to cause too much stress for all parties (Owners, staff, customers ...).

A **gradual entry** could basically start in the youth of the successor if they show interest in the family company. Then the successor will probably work in their school holidays in the company thus getting to know the company at an early age. This can lead to choosing an educational path related to the company's purpose already.

Further, successors can enter the company in an incremental way at many stages of their education or professional life. The later this is, the more it will sensibly be an **immediate** transfer of responsibility and decision-making power from the incumbent to their successor.

Each company has to develop their own individual path for this process (s. figure below). In some companies the successor will start to work in the company a long time before taking over decision-making power (proxy at first, probably), and the transferor can stay in the company after the transfer of power or leave immediately. This also influences the definition of roles between transferor and successor which will be addressed below.

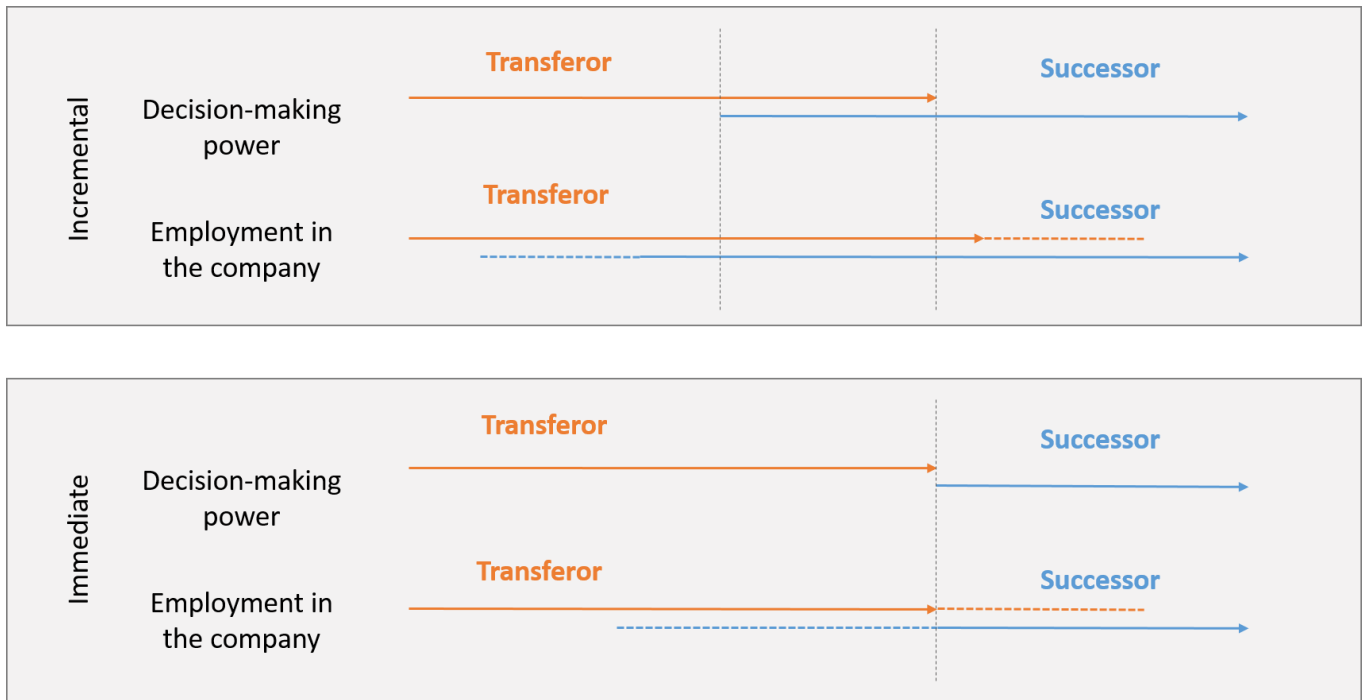


Figure 4: Incremental and immediate transfer of power

At this point the legal aspects have to be taken into account and a lot of rights and obligations have to be transferred (deeds of association, lease agreements, supplier contracts, etc.).

#### 4.1.3.2. “Inthronisation” of the successor

As emotions have to be respected, rituals and celebrations are important milestones along the transfer process. Further, open communication is important to reduce uncertainty of all stakeholders. Transferring decision-making power to the successor should therefore be celebrated in an appropriate manner and communicated well to all parties. This gives a clear message to staff, suppliers and customers of the new rule in the company. It can also help the incumbent to let go of the leading role and the successor to take it over with more ease.

Of course all celebrations and rituals are worthless if they are not lived. So the way they are put into practice will demonstrate this to all parties concerned.

#### 4.1.3.3. Retreat of the incumbent and clarification of roles

This step in the succession process is one of the most crucial points in (family) business transfers. The incumbent has still a lot to give: expertise, experience, personal relationships both to customers and staff. On the other hand, the fresh view of the successor at internal processes and strategies, up to date knowledge and more modern approaches will be important to lead the company into the future.

Within this process personal issues have great influence. Especially the relationship between the “old” and the “new” generation, the tact in dealing with each other, the ability of the incumbent to let go and the courage of the successor to take on will carry weight in this stage of the process.

These factors have to be faced when decisions are taken on how and when the transferor will actually leave the company, what role he or she will still play during this time. Absolute honesty with oneself and one’s counterpart is a valuable asset in this situation. For example in a situation of high conflict potential between generations or a strong personality of the incumbent - making it hard for them not to interfere - it can be better for both generations if there is no phase of working together at all. On the other end of



the “spectrum of relationship quality” a long phase of working together and sharing power and responsibility can work quite well.

Again it is emphasized that external guidance is of high importance for success at this point.

#### 4.1.4. Point-of-view of the transferor

To give a full picture the following figure shows the transfer process from the point-of-view of the transferor. This goes in line with the above described process from the perspective of the successor.

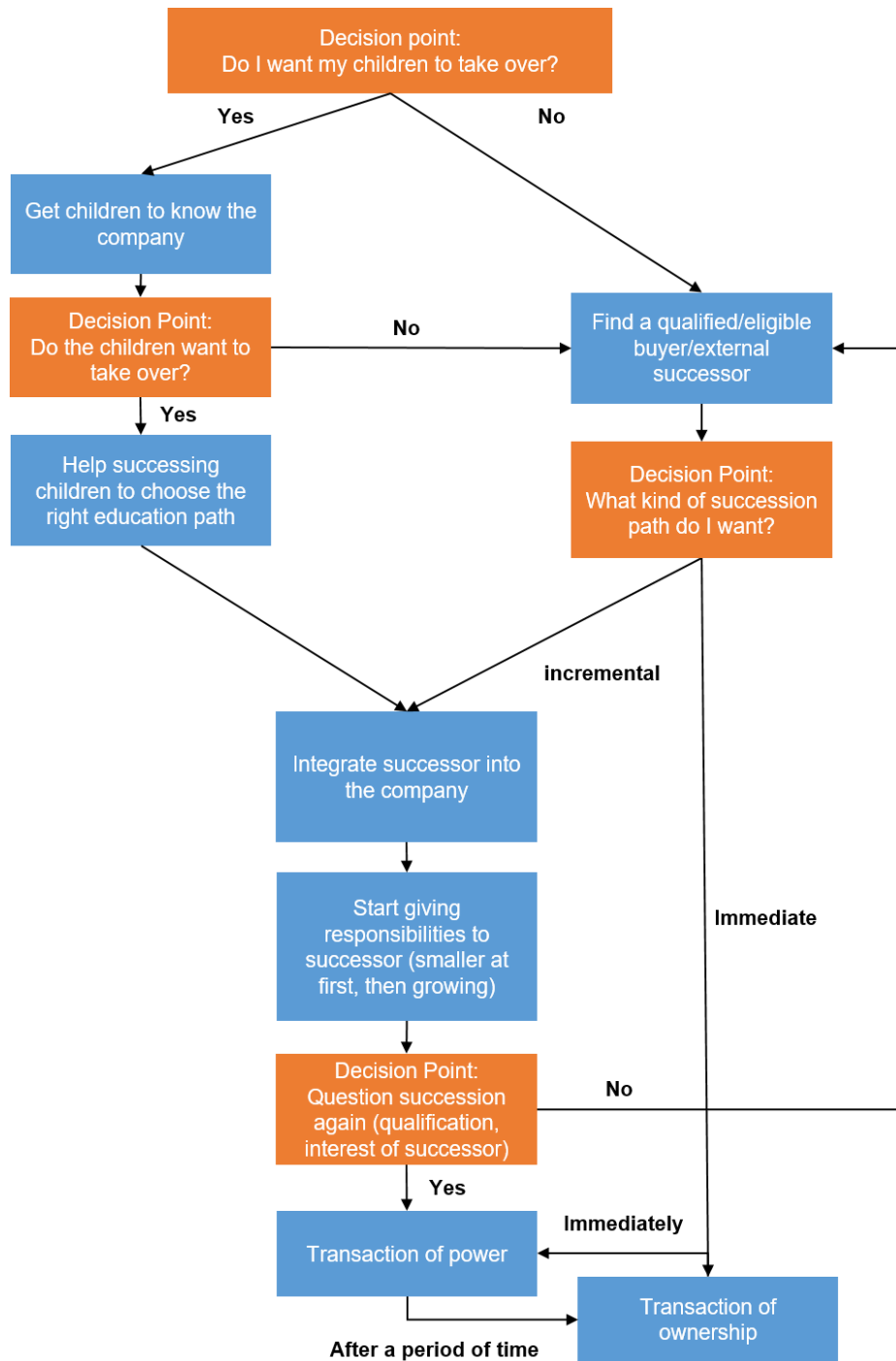


Figure 5: Transfer process from the point of view of the transferor



## 5. Literature

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