Restrictions on successions – special rules

Slovenia

1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?

The Denationalization Act *(Zakon o denacionalizaciji)* lays down special rules concerning **succession in respect of privatised assets**.

These rules are applied in the event of a probate proceeding where the assets that are the subject of privatisation were not discussed, and no decisions have yet been taken. In that situation, the court may, at the request of a "legal successor", carry out a special, new probate proceeding concerning the privatised assets. The decision on privatisation is drawn up in the name of the individual who was the owner of the assets at the time of nationalisation.

There are special rules concerning the inheritance of the **assets of a company**. The rules relate to the transfer of assets that a deceased sole trader has been using to pursue a gainful activity or the transfer of the participating interest/shares from participation (membership) in a partnership or capital company to a legal successor or legal successors. The Inheritance Act *(Zakon o dedovanju)* does not contain any specific provision dealing with this. Under the Inheritance Act, at the moment of the death of the testator, a community of co-heirs is formed until the division of the inheritance, which means that the company is also jointly managed by the heirs. Where the inherited estate is the company, several situations might arise: if the successor of the company was appointed in the will, but does not wish to continue the company, a different solution must be accepted by all heirs. If the testator wrote a will without specifying the successor or has left no will, the heirs must agree on the continuation of the business. They may decide that none of them will continue the business as a sole trader, as a result of which the business ceases trading or is sold. Alternatively, they may decide that one of the heirs, as a sole trader, will continue the business or that some or all heirs will continue it. In the latter case, they transform the business into one of the types of company.

A general partnership ceases to exist with the death of one partner unless the partnership agreement provides otherwise. The participating interest of the deceased in a limited liability company may be inherited. If there are multiple heirs, the participating interest becomes the joint property of the community of heirs. They must manage the inheritance jointly until their respective shares are determined. When partitioning the inheritance, two situations are possible: the participating interest remains in the community of heirs, who agree to have equal or unequal parts of the participating interest, or the participating interest is divided by agreement unless otherwise provided in the memorandum of association. If the participating interest is divided, new participating interests are formed from the previous one.

Shares in a joint-stock company may be inherited. If there are multiple heirs, the participating interest becomes the joint property of the co-heirs. They manage and dispose of the participating interest/shares within the community of heirs.

There are special rules governing the inheritance of agricultural holdings, laid down in the **Inheritance of Agricultural Holdings Act** *(Zakon o dedovanju kmetijskih gospodarstev)*.

The overarching principle of these rules is to prevent farms from being divided up in the event of succession. Further provisions of the Act follow from that principle. As a rule, only one heir may be awarded ownership of the farm but must meet additional conditions. If the testator had full ownership of a protected farm, the farm is inherited by the heir that has the intention to work on the farm and was mutually chosen by all heirs. If the heirs cannot reach an agreement, the heir who has proved his/her intention to work on the farm, e.g. by completing training in the field of farming or by being trained in this field, takes precedence over all other heirs. Under the same conditions, the spouse of the deceased takes precedence over the descendants of the testator. If the protected farm was the joint property of the testator and his surviving spouse or the specific property of one of them or if the spouses were co-owners of the tangible farm property, the heir of the farm is the surviving spouse of the testator. If the protected farm was owned by one of the parents and his/her descendant or by the adopter and his/her adopted child, the heir is the descendant or the adopted child. The statutory participating interests of those persons who did not inherit the farm are considered to be reserved shares. In addition, the heir of a protected farm must be able to take over the farm under conditions that do not impose an excessive burden on him/her.

2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?

The inheritance of a protected farm is a case where the law of the country in which certain special categories of assets are located contains special rules laying down restrictions concerning or affecting the succession in respect of those assets. Therefore, in cases where a protected farm located in Slovenia forms part of the estate, national, Slovenian law applies, regardless of the law applicable to the succession (the Inheritance of Agricultural Holdings Act).

3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?

The Inheritance of Agricultural Holdings Act contains provisions that are not in the Inheritance Act or differ from those provisions. In the absence of more specific provisions in the Inheritance of Agricultural Holdings Act covering issues of inheritance of protected farms, general rules on succession, i.e. the provisions of the Inheritance Act, apply.

Last update: 24/06/2019

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