

SUCCESSION OF A COMPANY

Below some food for thought, about the succession of a company and inheritance aspects of a will.

CERTIFICATION OF SHARES

Certification of BV/NV shares can be useful in the situation that management and ownership is not in one hand. This includes the situation when after inheritance the shareholders are not the same people as the future management of the BV/NV. Furthermore you may think of the situation that the shares of a family business is donated to the children. And finally the divorce. I may be onerous that the (future) ex has still something to say.

With the certification of the shares the legal ownership of the shares is transferred to a 'Stichting Administratie Kantoor' (hereafter STAK). The original share-holders obtain the certificates. When the STAK receives dividend, she immediately distributes the dividend to the certificate holders. The management of the STAK exercises the voting rights.

Certification of shares is a method to prevent that the control of the company shreds after the death of the director/ shareholder. In order to ensure continuity of management, the board of the STAK needs to have sufficient qualifying members. In the beginning the board of the STAK is the shareholder himself. In addition, in the statutes a future Board is appointed, usually consisting of three persons. Ideally, a director on behalf of the family (child-successor), a director on behalf of the company (manager) and an independent third party. This independent third is normally hard to find. In general it is often the auditor of the company. For external directors it is recommended to include remuneration rules in the statutes. After the death of the director/shareholder the heirs can work out a scheme in peace for these heirs who want to convert the acquired shares into cash. For example, a private equity firm or other investors outside the family environment can be approached without this constant pressure of shareholders who have a high need for cash.

The STAK has statutes. These are usually relatively brief. The main aspects tend to be governed by the "trust conditions".

Examples are:

- Blocking transfer certificates (e.g. transfer only after approval of the board of the foundation);
- Pricing;
- Exclusion or limitation of cancellation (replacement certificates of underlying shares).

Certification of shares will not trigger income tax on profit resulting from the sale of a substantial interest. As we discussed

the STAK in combination with succession we also can make a link to some testament aspects.

IDENTIFY THE CURRENT WILL

Influence prenuptial agreement

- Prenuptial Agreement

Consider also the will of the partner

- Testament

Is there a disagreement between the heirs to expect?

- Executor
- Legitimate portion, disinheritance

Is deviated from the statutory right of inheritance (different inheritances, disinheritance, bequests, etc.)?

- Disinheritance

Where are the papers; who has the overview of the equity?

- P.m.

What advisors should be involved?

- P.m.

Who of the family takes the lead? Who regulates the funeral?

- Executor

International aspects? Consider also the second homes in other places!

- Marriage conditions
- Testament

Are there one or more stepchildren?

- Stepchildren

Are there one or more children with a mental disorder?

- Administration orders, disinheritance

Are there one or more children with alcohol or drug addiction?

- Administration orders, disinheritance
- Executor

Replacing hard exclusion clause by soft exclusion clause

- Exclusion clause

Are there (art) collections that must remain in tact?

- Collections