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Intergenerational Transfer of Family-run Enterprises by Means of Civil Law in Serbia³

- **ABSTRACT:** *Family-run enterprises are business organisations in which the reins of control are concentrated in the hands of a single family or an individual who for the enterprise aims to continue operation through successive generations of the family. In Serbia, family-run companies usually begin as an individual entrepreneurship, a form of closed company (general and limited partnership) or relatively closed company (limited liability company). The legal difficulties that arise following the death of an individual entrepreneur (natural person) differ from those following the death of a member in a company (legal entity). Companies are imbued with rights and responsibilities separate from the personal rights and responsibilities of their members. Members of a company, including the head, are not considered owners of the company's property in legal terms. Instead, they have shares in the company, and those shares entitle them to membership (management and proprietary) rights. Thus, when a member dies, the company's property, in whole or in part, is not subject to inheritance (although that deceased member's share is). This differs from the situation following an individual entrepreneur's death. The law does not recognise a natural person conducting business as an individual entrepreneur as having two legal personalities (personal and business); everything is treated as personal. Therefore, all the assets and debts of a deceased individual entrepreneur are subject to inheritance, regardless of whether or not they were accrued in the course of business. The succession of a share following a member's death is regulated separately for each company form, and all issues not governed by the Companies Act or a company's incorporation document are subject to the rules of Serbia's Law of Inheritance. Inheritance rules differ greatly for a share in a personal company (general or limited partnership) and a share in a capital company (limited*

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liability or joint-stock company). In principle, whether or not a deceased member's rights and responsibilities can be passed through inheritance depends on the company's form, its incorporation document, and the relevance of the heirs' connection to the deceased and the company. The less complicated these are, the fewer the legal obstacles to inheritance.

- **KEYWORDS:** family-run enterprises, inheriting company shares, individual entrepreneurship, general and limited partnership, limited liability companies.

1. Introductory remarks

Family-run enterprises in Serbia, similar to other countries in the region, usually hold the legal form of an individual entrepreneurship or a closed-type company (general or limited partnership)⁴ or a relatively closed-type company (limited liability company).⁵ Only rarely are family-run companies established as joint-stock companies because that form is more suitable for enterprises with greater business volume.⁶ Thus, this paper focuses only on the succession (intergenerational transfer) of the assets gained and debts arising from individual entrepreneurs' activity and the succession of shares in partnerships and limited liability companies. The Serbian Companies Act regulates the legal status of entrepreneurs and recognises four forms of companies: general partnerships (Serb. *ortračko društvo* or O.D.), limited partnerships (Serb. *komanditno društvo* or K.D.), limited liability companies (Serb. *društvo s ograničenom odgovornošću* or D.O.O.), and joint-stock companies (Serb. *akcionarsko društvo* or A.D.). However, the statutory regulation does not have special rules for the inheritance of entrepreneurs' assets and shares in family-run companies; thus, it does not recognise the special nature of family-run enterprises. The rules for the succession of shares in companies differ by

4 Partnerships, either general or limited, are imbued with the personal relationships of their members. They are considered a closed company form since their ownership structure rarely changes, if ever. This is primarily attributable to the rule that a share of a general or limited partner can be transferred to a third party only with the other partners' consent. Likewise, when a partner dies, that person's share is not generally subject to succession but is added proportionately to the other partners' shares.

5 A limited liability company is usually considered a relatively closed company because the other members have a right of pre-emption if one member intends to transfer his or her share to a third party. Similarly, if a member dies, his or her share is regularly subject to succession. However, the incorporation document might call for the compulsory sale of the share by the heir on behalf of the other members or the company, allowing them to prevent the heir from gaining part ownership in the company. See Marjanski and Dudás, 2020, p. 131–146.

6 Banks, insurance companies, and similar major enterprises are usually established as joint-stock companies.

company form. However, the same rules apply to all companies of the form, regardless of whether their ownership is intertwined with family relationships or not.

This paper is divided into two parts. The first covers the succession of shares in companies. The second covers succession of the assets and debts arising from the activities of individual entrepreneurs.

2. Succession of shares in companies

■ 2.1. General remarks

Under Serbian law, companies are legal entities established to generate profit.⁷ They gain legal/corporative personality through incorporation at a registry in accordance with the statute pertaining to the registration of business organisations.⁸ The Agency administers the registry for commercial registries (Serb. *Agencija za privredne registre*), following the Agency for Commercial Registries' rules on registration procedures.

All companies are considered independent legal entities under Serbian law. This means that they have their own juridical and contractual capacity; acquire rights, assets, and obligations in legal transactions independently; can be a claimant or respondent in litigation; and can be a party in administrative, tax, and similar procedures. Likewise, they have their own property, separate from the property of their members. The members are not considered owners (or joint or co-owners) of the company's assets. They merely have specific membership rights based on their shares (managing⁹ and rights related to the property of the company¹⁰). Thus, when a member dies, the company's property is not subject to inheritance; only the decedent's share—that is, the membership rights—is subject to inheritance.

Therefore, the members of a general or limited partnership or a limited liability company are the owners of shares (expressed as a percentage)¹¹, registered by the Agency that administers commercial registries. Since the members are the owners of their company shares, they have the right to dispose of their shares as they see fit. Furthermore, as part of their separate property, the shares might be subject to inheritance according to the rules of the Companies Act, the enterprise's incorporation document, and the general rules prescribed by Serbia's Law of Inheritance.

General and limited partnerships and limited liability companies are predominantly family-run companies. The Companies Act does not define the notion of family-run companies; however, the Code of Corporate Governance adopted by the Serbian Chamber of Commerce does. The Code defines a family-run company as follows: 'the

7 Companies Act, Art. 2.

8 Companies Act, Art. 3.

9 Management rights include the right to participate in an assembly, vote at an assembly, obtain information, and challenge the decisions of an assembly, among others.

10 Members' proprietary rights include the right to participate in the distribution of profits and liquidation surplus, among others.

11 The share is a membership relationship in the company.

majority of voting rights belong to the family controlling the company, including the company founder intending to transfer the company to his or her descendants and make company operation sustainable down through the generations of this family'.¹² Family-run companies represent a large portion of the total number of companies and contribute significantly to the national economy and employment. Therefore, the emergence, growth, and sustainability of these companies are of major importance to the prosperity of the national economy. Nevertheless, in contrast to public joint-stock companies, they have not attracted special attention from the legislature or other regulatory bodies.¹³

When a member of a family-run company dies, the decedent's share can be subject to succession. This implies that the management and property rights can be transmitted—that is, the company's controlling mechanisms can be passed down from one generation to another.¹⁴ The Companies Act does not have special rules that apply to the death of an owner-operator of a family-run company; hence, the rules that apply are those applicable to all companies. However, the Act allows family-run companies to include their own succession plans in the incorporation document to specify what happens to shares following an owner-operator family member's death. Similarly, the Code of Corporate Governance adopted by the Serbian Chamber of Commerce also contains principles and recommendations that are not mandatory; instead, they represent a form of soft law on the best practices of corporate governance recommended to all members of the Chamber of Commerce.¹⁵ These soft-law rules are partially related to the transfer of management from one generation to another. The following are some of the most important recommendations from the Code: A family must have a general plan of inheritance, including one for extraordinary situations, outlining the course of action to be taken when the members are hindered in managing the company and its business. Deferring succession-planning for executive members until the latest possible moment can create crises and is one of the most common reasons why most family-run companies cease to exist before they reach the hands of the family's third generation. First and foremost, the succession plan should regulate the criteria and procedure for the successor's election and financial, tax, and other implications. The family protocol¹⁶ should define the criteria for choosing a successor when multiple family members lay claim to the position.¹⁷ Family-member candidates should be subject to the same conditions in a free competition that other professionals would apply to the positions. The contracts on managerial position concluded by family members should be the same as

12 Code of Corporate Governance, Glossary, Sec. 6.

13 For the economic aspects of inheritance in family-run enterprises, see Đulić, Kuzman & Radosavljević, 2012, pp. 123–140.

14 Code of Corporate Governance, Glossary, Sec. 7.

15 Code of Corporate Governance, Scope of Application, Sec. 1.

16 For the best practices in family protocols, see Koeberle-Schmid, Kenyon-Rouvinez & Poza, 2014, pp. 222–243.

17 For a content analysis of documents on managing family-run companies, see Đurić-Kuzmanović & Ljubojević, 2016, pp. 95–110.

those concluded with the company's non-family executives. The transfer of knowledge and preparation of the heir requires careful planning and time. The plan of succession is only complete when it includes policies on employing family members.¹⁸

As indicated earlier, the Code is not a binding source of law. The transfer of a deceased family member's share to an heir is regulated specifically for each company form in the Companies Act; however, for all legal questions not regulated by the Companies Act or incorporation document, the general rules of Serbia's Law of Inheritance apply.

Considering that general and limited partnerships and limited liability companies are considered closed or relatively closed, the Companies Act prescribe some limitations regarding the share succession following a member's death. However, the Act enables members to develop company-specific rules on share succession in the incorporation document.

Generally speaking, the succession rules for shares in partnerships differ significantly from those in limited liability and joint-stock companies. In principle, the possibility of inheriting a share depends on the relationships of the members to the decedent and their liability for the company's debts. Usually, the closer the relationship, the easier the inheritance.¹⁹

■ 2.2. *Inheritance of a member's share in a general partnership*

2.2.1. *General remarks*

A general partnership is a company organised by two or more legal entities or natural persons who are jointly and severally liable for all obligations.²⁰ It bears all the traits of personal companies (e.g., the unlimited liability of members for company debts, all partners conducting actions in the course of regular company business and representation,²¹ decision-making based on the principle of 'one partner, one vote'²² rather than representation based on share percentage, etc.). A general partnership is a closed company. The membership structure rarely changes; the founding members usually remain the only members until the company's dissolution. This general partnership feature is also supported by the rules restricting transferring shares to third parties²³ and restricting the inheritance of shares.²⁴

2.2.2. *The share of a deceased general partner usually not subject to inheritance*

The share of a partner who dies is not subject to inheritance. It shall be distributed to other partners in proportion to the shares they possessed on the day the partner died

18 Code of Corporate Governance, Glossary, Second Part: Additional principles and recommendations for family-run limited liability companies and joint-stock corporations.

19 Vukotić, 2018, p. 167.

20 Companies Act, Art. 93, Sec. 1.

21 Companies Act, Art. 101–114.

22 Companies Act, Art. 110.

23 Companies Act, Art. 99.

24 Companies Act, Art. 119.

unless the incorporation document mandates that the company continue carrying out its activity with the decedent's heirs.²⁵ Therefore, the general rule is that the deceased partner's share is not subject to inheritance unless the incorporation document specifies another course of action. This rule is in line with the nature of general partnerships and their requirement for deep mutual trust among the partners in the closed-form company.²⁶ Thus, the Act departs from the presumption that the partners will not want another person to take over the late partner's position and enables the partners to establish a different set of rules in the incorporation document.²⁷

The heirs who did not take over the position of the deceased partner (either because the incorporation document precluded this or they did not agree to do so; the latter case will be discussed in detail later) are entitled to compensation for the proportionate value of the share they inherited, according to the rules applicable to a withdrawal from the partnership.²⁸ Death, along with withdrawal, is one form of termination of a partner's membership;²⁹ thus, the heirs' rights and duties are regulated by referring to the article of the Companies Act on the consequences of a partner's withdrawal. The effects are the same: the share of the partner who withdraws from a partnership or dies shall be distributed to other partners proportionately unless the incorporation document provides otherwise. However, the partnership is obliged to compensate the withdrawing partner or the deceased partner's heirs for the share's value within six months from the day the partner withdrew or died, unless the incorporation document specified a different deadline. The payment obligation amounts to the sum the partner would have been entitled to if the partnership had been liquidated without considering the ongoing and unfinished business transactions.³⁰

The legislature seems to have made a mistake with the aforementioned rule concerning heirs who do not take over a deceased partner's membership position. According to the rules of universal succession, the right to compensation belongs to the estate until its division of all the heirs' joint ownership. This means that the allocation of the right to compensation depends on the heirs' decision on the division of the estate. Thus, when a partner dies, the right to compensation for the share's so-called liquidation value belongs to the decedent's assets. Therefore, the heirs could decide that it belongs to only one or divide it in some proportion other than that of their shares in the inheritance.³¹

25 Companies Act, Art. 119, Sec. 1.

26 The same arguments for this rule can be found at Babić, 2019, pp. 97–111.

27 Vukotić, 2018, p. 179.

28 Companies Act, Art. 119, Sec. 4, and Art. 122. The former Companies Act from 2004, in force until 1 February 2012, did not clarify the heirs' rights following the death of a partner in a general partnership. For a critique of the regulatory framework, see especially Jovanović, 2012, pp. 23–44.

29 There are different grounds for terminating a partner's membership status: withdrawal, exclusion, death (of a natural person), deletion (of a legal entity from the competent registry), or share transfer to another partner or a third party. The incorporation document could add other grounds. Companies Act, Art. 117, Sec. 2.

30 Companies Act, Art. 122, Sec. 2.

31 Vukotić, 2018, p. 187.

Conversely, suppose the value of the partnership's assets on the day of a partner's withdrawal or death is not enough to meet its debts. In that case, the withdrawing partner or deceased partner's heirs are obliged to make sufficient contributions to the company to cover the debts. Their contributions must be proportionate to the value of the share of the withdrawing or deceased partner and are payable in six months unless otherwise specified by the incorporation document. In other words, the deceased partner's heirs need to make up the difference between the company's debts and the company's assets. As a matter of course, the heirs' liability is limited to the estate's value, according to Serbian inheritance law's general rules.³² Thus, the heirs can be held liable for the decedent's debts only up to the value of the estate inherited.³³ This rule is supported by the general rule on partners' joint and several liability for the partnership's debts.³⁴ After five years from the day of the partner's withdrawal or death, the liability for the partnership's current debts ceases unless the incorporation document specifies a longer period.³⁵

Finally, the withdrawing partner or the deceased partner's heirs participate in the profit and losses from business transactions that were not yet finished at the time of the partner's withdrawal or death unless the incorporation document specifies otherwise.³⁶

2.2.3. The continuation of business with the deceased partner's heirs when the incorporation document so provides

The incorporation document can allow the company to continue to perform its business further with the deceased partner's heirs. This can happen in one of two legal situations, depending on which the heirs have agreed to.

First, suppose the incorporation document specifies that the company will continue its business with the deceased partner's heirs, but the heirs disagree. In that case, the deceased partner's share is distributed to the other partners in proportion to the value of the shares they held when the partner died.³⁷ Additionally, the heirs are entitled to compensation for the share's value in proportion to their share in the estate, according to the rules on a partner's withdrawal.³⁸

Second, suppose the incorporation document specifies that the company will continue its business with the deceased partner's heirs, and the heirs agree. In that case, there are two legal alternatives: (a) the heirs can take over the deceased partner's membership position, or (b) they can request that the form of the company be changed legally to a limited partnership and register as limited partners.³⁹

32 Vukotić, 2018, p. 180.

33 Law of Inheritance, Art. 222, Sec. 1.

34 Companies Act, Art. 93, Sec. 1.

35 Companies Act, Art. 122, Sec. 4.

36 Companies Act, Art. 123, Sec. 1. For more on the attribution of profit and loss to a partner in general partnership, see Šogorov, 2000, pp. 1–10.

37 Companies Act, Art. 119, Sec. 2.

38 Companies Act, Art. 119, Sec. 4, and Art. 122.

39 Companies Act, Art. 119, Sec. 5.

In variant (a), the heirs have 30 days from the probate procedure's conclusive ending to ask the company to declare them partners. The regulation's wording implies that the deceased partner's share is not subject to inheritance.⁴⁰ However, the heirs have the right to exercise the option granted by the incorporation document (that is, to request to step into the deceased partner's position) within the 30-day deadline.

In variant (b), the deceased partner's heirs can request that the company's legal form be changed to a limited partnership and register as limited partners. This rule enables the heirs to become limited partners in the company, protecting them from being personally liable for the company's debts. (They would be liable if they became general partners.) However, the other partners can refuse to transform the enterprise into a limited partnership. In that case, the heirs become general partners in the general partnership, but they can withdraw according to the rules on the withdrawal of a partner from a general partnership.⁴¹ In the case of a withdrawal caused by the refusal of the surviving partners to transform the enterprise from a general to a limited partnership, the heirs remain liable for the company's existing debts up to the value of the estate received, according to the general inheritance rules on the heirs' liability for the decedent's debts.⁴² Changing the company's form can occur if all the surviving partners agree; it cannot be the deceased partner's heirs' exclusive decision.

Finally, the incorporation document can specify a ratio in which the heirs can participate as limited partners in the company's profits should the surviving partners agree to transform the enterprise into a limited partnership. This ratio depends on the degree to which the deceased partner participated in the profit distribution as a general partner.⁴³

■ 2.3. *Inheritance of a share in a limited partnership*

2.3.1. *General remarks*

According to the Companies Act, a limited partnership is a company organised by two or more legal entities to conduct business under a common name. At least one of the partners must accept unlimited liability for the company's debts (general partner), and at least one partner's liability will be limited to the value of that partner's agreed contribution (financial or otherwise) to the company's capital (limited partner).⁴⁴ Thus, a limited partnership presupposes at least two founding members who are in different legal positions: at least one is a general partner, and at least one is a limited partner.

The general partner is the 'active member' of the company who conducts the business and represents the company^{45 46} and has unlimited liability for the company's

40 Similarly, Vukotić, 2018, pp. 186–187.

41 Companies Act, Art. 119, Sec. 6.

42 Companies Act, Art. 119, Sec. 7, and Law of Inheritance, Art. 222, Sec. 1.

43 Companies Act, Art. 119, Sec. 8.

44 Companies Act, Art. 125.

45 Companies Act, Art. 119, Sec. 8.

46 Companies Act, Art. 131, Sec. 1.

debts. The legal position of a general partner in a limited partnership is the same as the legal position of a partner in a general partnership in terms of liability for the company's debts, authority to conduct business and represent the company, different company roles that partner can assume, and the shares and transfers of shares, including through inheritance.⁴⁷

A limited partner is a 'passive member' of the company who is not entitled to conduct business or represent the company.⁴⁸ Limited partners' rights are restricted to participation in the profit distribution and the right to exert control over the company's business activities. Limited partners are only liable for the company's debts up to the amount of their agreed contribution (financial or otherwise). Once they have fulfilled their obligations to pay or enter contributions to the company's capital, their personal liability for the company's debts ceases.

The inheritance rules for the shares of general and limited partners also differ.

2.3.2. The continuation of company activity with the heirs of a general partner in a limited partnership

If a limited partnership has two or more general partners, and one of them dies, the rules on the legal consequences of a partner's death in a general partnership apply. A deceased general partner's share shall be distributed among the surviving partners unless the incorporation document specifies that the company will continue to conduct business with the heirs in place of the deceased partner. Thus, if a limited partnership has two or more general partners, and one of them dies, the deceased partner's share will not be subject to inheritance; instead, the share will be distributed among the surviving general partners (unless the incorporation document specifies otherwise). In such cases, the same rules apply as those in the case of a continuation of business with the heirs of a deceased partner in a general partnership.⁴⁹

However, if a limited partnership has only one general partner (the usual case), and that general partner dies, different rules apply. When a sole general partner dies, the company continues to conduct business with the deceased partner's heirs, providing that the heirs file claims with the registry to be recognised as general partners; they must do so within three months of the probatory procedure's conclusive ending.⁵⁰ This rule is quite unusual since the legislature departed from its presumption that a general partner's personal standing is relevant only as it relates to other general partners, not limited partners, which is certainly not the case.⁵¹ Since general partners conduct the business and represent the company, the company's success depends on their personal efforts and facilities.⁵² Thus, the general partner's personality is relevant to all partners in a limited partnership. Limited partners, who provide some or all of the limited

47 Companies Act, Art. 126, Sec. 2.

48 Companies Act, Art. 131, Sec. 2.

49 Companies Act, Art. 119.

50 Companies Act, Art. 137, Sec. 4.

51 Vukotić, 2018, p. 191.

52 Ibid.

partnership's capital, have a practical interest in the business being conducted well and represented by reliable and skilled persons. The rule prescribed by the Serbian legislature puts limited partners in a delicate situation by requiring them to accept that the company will continue to conduct business with the heirs in place of the deceased general partner—whether or not they believed those heirs possess the required knowledge, skills, and facilities.⁵³

Furthermore, the heirs who decide not to take over the deceased general partner's position are entitled to reimbursement of a part of their share in proportion to their share in the estate. However, the Companies Act does not regulate what happens with the share of a deceased general partner when none of the heirs submits a request to the registry within 30 days requesting recognition as a general partner. In this respect, the rules of the Companies Act need amending.

The Companies Act rules only cover the situation in which a company loses all its general or limited partners, regardless of the cause (e.g., withdrawal, transfer, or death). In such cases, the partnership needs to do one of three things: register a new partner (limited or general, depending on which position is vacant) within three months, change from a limited to a general partnership in compliance with the Companies Act or initiate voluntary liquidation. Otherwise, a compulsory liquidation will be initiated; the Companies Act prescribes a six-month deadline for this decision.⁵⁴ If the decision is to change the legal form, there must be a unanimous agreement by all the remaining limited partners (if the company is left without general partners) or all the remaining general partners (if the company is left without limited partners). If the limited partnership is left without general partners, the limited partner(s) can decide to re-form the enterprise as a limited liability company or joint-stock company. Similarly, if the company loses all its limited partners, the general partners can decide to re-form the enterprise as a general partnership, or, if only one general partner remains, that person can choose to continue the business as an individual entrepreneur.⁵⁵

2.3.3. *Inheritance of the share of a deceased limited partner*

If a limited partner who is a natural person dies, that partner's heirs can take over the decedent's position in the limited partnership. If a limited partner is a legal entity that ceases to exist, that entity's legal successors can take over its position in the company.⁵⁶ This rule is mandatory; the incorporation document cannot specify a different regime of legal succession. It could be inferred from this rule that a limited partner's position in a limited partnership is subject to inheritance. That would be in line with the nature of the legal position of a limited partner. As indicated earlier, limited partners cannot conduct business in the name of the company nor represent it; they are not personally liable for the company's debts, so their skills, knowledge, and facilities are not crucial

53 Ibid.

54 Companies Act, Art. 546, Sec. 1, Subsection 3

55 Companies Act, Art. 137, Secs. 3–7.

56 Companies Act, Art. 137, Sec. 2.

for the business success of the limited partnership. Therefore, there is no reason to deny the heirs the right to inherit the limited partner position in a limited partnership.

■ 2.4. *Inheritance of the share of a member in a limited liability company*

2.4.1. *General remarks*

According to the Companies Act, in a limited liability company, one or more members must have shares in the company's share capital, and none of them can be held personally liable for the company's debts except in the cases described in Article 18 (cases of piercing the corporate veil).⁵⁷ However, the company is fully liable for all its debts with all its assets.

Limited liability companies belong to the group of capital companies. Since there is a mandatory share capital, specific organs of the company must be nominated, members cannot be held personally liable for company debts, and the enterprise can be established as a uni-personal company. However, limited liability companies also share some of the features of personal companies. For instance, the membership structure is relatively stable since there are restrictions on the transfer of shares to third parties. They also usually have a small number of members.

Limited liability companies can have only one member (uni-personal LLC) or multiple members.⁵⁸ Membership in an LLC is acquired when the applicant (natural person or legal entity) has been duly recorded in the registry.⁵⁹ The members are the owners of their shares in the LLC, and every member can have only one share,⁶⁰ although the shares need not be equal. The shares are expressed as a percentage and represent the member's participation in the share capital of the company. This means that if one member acquires another's share, that new share will be added to his or her existing share, which will lead to an increase in percentage.⁶¹ The members' percentage of share ownership in an LLC gives them different rights (proprietary and management rights) in proportion to the shares' value.⁶²

2.4.2. *Inheritance of a member's share in an LLC*

The Companies Act prescribes that if a member of an LLC dies, that partner's heirs acquire his or her share according to the statute governing inheritance.⁶³ Thus, a share of the LLC is regularly subject to inheritance. If there are multiple heirs, they become co-owners of the deceased partner's share. Nonetheless, there is only one share; they own a percentage of the share. This means that the heirs are considered to be one member of the LLC, and they all share joint and several liability for the company's

57 Companies Act, Art. 139.

58 Companies Act, Art. 139.

59 Companies Act, Art. 143, Sec. 1.

60 Companies Act, Art. 151, Sec. 2.

61 Companies Act, Art. 151, Sec. 3.

62 Companies Act, Art. 152, Secs. 1–2.

63 Companies Act, Art. 172, Sec. 1.

obligations.⁶⁴ However, the Companies Act requires co-owners to regulate their mutual relationship in relation to the share by a special agreement.⁶⁵ They exert their voting rights via a common representative whose identity they must report to the company.⁶⁶ Until they have notified the company of their representative's identity, their shares cannot be taken into account at the assembly. At the same time, legal acts taken against one of the co-owners will have a legal effect on all of them.⁶⁷ Once the legal co-owners (multiple heirs) have nominated a common representative and notified the company thereof, any legal acts and notifications effected to the common representative will have a legal effect on all the co-owners.⁶⁸ The individual shares held by the co-owners in the LLC do not have to be equal. The situation of unequal shares usually occurs when the co-owners obtain the percentage of a deceased partner's share under Serbia's Law of Inheritance, which recognises orders of inheritance as defined by the heirs relationships with the decedent. In any case, the co-owners are always free to dissolve the co-ownership by agreement. The Companies Act forbids adding a clause in the incorporation document that would restrict the co-owners' dissolution of the co-ownership of a share.⁶⁹

For the sake of protecting the company's and heirs' interests while the probate procedure is ongoing, the Companies Act allows the company or any of the heirs to ask the court to nominate a temporary guardian who will act in the name and on behalf of the deceased member's heirs and exert membership rights.⁷⁰ The guardian has the mandate to exert the membership rights until the probate procedure has ended conclusively, at which point the heirs legally acquire the share in the LLC; from that moment, the heirs can exert their membership rights in relation to the inherited share without a proxy.

2.4.3. Compulsory purchase of the share from the heirs

LLCs are relatively closed companies, so the Companies Act enables members to devise different succession regimes. The incorporation document can specify the right of the company or one or more members to exert the right of compulsory purchase and buy a deceased member's share from the heir(s). This must happen within six months from the day of the member's death and within three months of the day when the heir(s) registered their membership status in the registry (the Companies Act uses the wording 'decide on the compulsory purchase of the share').⁷¹ Suppose a company institutes the compulsory purchase of the share. In that case, it must express its intention to exert the right in the form of a decision adopted by the majority of all members, unless

64 Companies Act, Art. 153, Sec. 4

65 Companies Act, Art. 153, Sec. 2.

66 Companies Act, Art. 153, Sec. 3.

67 Companies Act, Art. 153, Sec. 6.

68 Companies Act, Art. 153, Sec. 5.

69 Companies Act, Art. 176, Sec. 2.

70 Companies Act, Art. 172, Sec. 2.

71 Companies Act, Art. 173, Sec. 1. See Marjanski, 2015, pp. 679–680.

another majority is prescribed by the incorporation document (note: the deceased member's share is not considered when determining whether there is a quorum for the decision).⁷² This would be the case of the company acquiring an own share by an onerous contract—that is, by paying compensation equal to the value of the share.⁷³ The company's decision to exercise the right of compulsory purchase is a decision on acquiring an own share. Nonetheless, no qualified majority of 2/3 is prescribed for this decision. On the other hand, such a majority is required for the decision to acquire an own share by an onerous contract, that is, by paying compensation to a member.⁷⁴ Since this would be a case of compulsory purchase, the deceased member's heirs' consent is not required. Thus, the change of a member in the registry will be effected based solely on the company's decision to exercise the right of compulsory purchase (acquisition of an own share), and there is no need to conclude a contract on the share transfer.⁷⁵ However, the company's acquisition of an own share through compulsory purchase is subject to certain restrictions. First, if the incorporation document allows the compulsory purchase of a share, it must also prescribe a means for determining the amount of compensation and the deadline for payment to the heir(s); otherwise, the incorporation document's clause on compulsory purchase must be considered non-existent.⁷⁶ If the company, a member, or multiple members decide to exercise the right to compulsory purchase, the deceased member's heirs have the right to a compensation determined by the incorporation document, payable in the same Act's specified deadline.⁷⁷ Unless the incorporation document (or a decision of the assembly on the exercise of the compulsory purchase) provides otherwise, the deadline for the payment of compensation starts from the delivery date of a conclusive decision declaring the heirs the legal successors of the deceased member's share.⁷⁸ These rules have been instituted to protect the heirs' interests. However, they remain incomplete since the Companies Act does not prescribe further rules on the means of effecting compensation payments. Furthermore, by enabling the members to determine the compensation payment deadline in the incorporation document—there is no definitive mandatory statutory deadline—it is possible for companies to delay the payment to the heirs endlessly.

Of course, the company might not decide to exercise its right to compulsory purchase if doing so would be contrary to the Companies Act's rules on restricted payments.⁷⁹ Finally, the Companies Act does not require that the share must be entirely paid for or entered into the company's capital when it is obtained from the deceased member's heirs unless it is an own share (or part of one) purchased from an existing

72 Companies Act, Art. 173, Sec. 2.

73 Companies Act, Art. 157, Sec. 2, Subsection 4.

74 Companies Act, Art. 211, Sec. 2.

75 Marjanski, 2015, p. 679.

76 Companies Act, Art. 174, Sec. 1.

77 Companies Act, Art. 174, Sec. 2.

78 Companies Act, Art. 174, Sec. 4.

79 Companies Act, Art. 174, Sec. 3.

member.⁸⁰ Similarly, the Companies Act does not specify mandatory reserves⁸¹ to secure the payments to the heirs in case the compulsory purchase is effected on behalf of the company, regardless of whether it concerns an own share acquired by an onerous contract (by purchasing a share or part of it from a living member).⁸²

3. Inheritance of an individual entrepreneur's assets

■ 3.1. General remarks

Family-run enterprises in Serbia most often begin as individual entrepreneurship. Individual entrepreneurs are natural persons who conduct business to generate profit and are registered according to the statute pertaining to business organisations' registration.⁸³ Individual entrepreneurs have unlimited liability for debt accrued in relation to their entrepreneurial activity. Their liability extends to all assets, regardless of whether they were obtained in the course of conducting business.⁸⁴ Entrepreneurs' unlimited liability for their companies' debts does not end with their removal as private entrepreneurs from the registry.⁸⁵

The individual entrepreneurship enterprise form does not create separate legal and corporate personalities. Individual entrepreneurs are not considered legal entities, as companies are. When they obtain rights, accrue obligations, act as parties in litigation or administrative procedure, or obtain assets, they do so as individuals, not legal entities—that is, they are people, not companies.⁸⁶ There are no shares in enterprises formed through individual entrepreneurship; the property, rights, and debts are intertwined with the owner personally, the one natural person. Therefore, the inheritance of shares does not apply, but the inheritance of the owner-operator's (the natural person) rights and assets do apply.

■ 3.2. Inheritance of an individual entrepreneur's assets and debts

Since individual entrepreneurs do not have separate legal-corporate personalities, when they die, all their assets and debts are transmitted to their heirs through Serbia's Law of Inheritance, including those attained or accrued in the course of business. Legal succession comprises the assets and debts related to the decedent's activity as individual entrepreneurs in addition to those that are not. For individual entrepreneurs, in

80 Companies Act, Art. 157, Sec. 3.

81 For information on the relationship between payments from the non-allocated profit account and those from the reserves, see Marjanski, 2020, pp. 218–221.

82 When the company acquires an own share by purchasing all or part of the share, the compensation payment to the heir must be effected from the reserves allocated for this purpose. Companies Act, Art. 157, Sec. 4.

83 Companies Act, Art. 83, Sec. 1.

84 Companies Act, Art. 85, Sec. 1.

85 Companies Act, Art. 85, Sec. 2.

86 Arsić & Marjanski, 2018, p. 26.

principle, there is no difference between the assets obtained in the course of conducting business and those obtained as private persons.⁸⁷ For instance, if an entrepreneur owned a vehicle used for business purposes and another used for personal purposes, both vehicles pass to the heirs under the same inheritance rules.⁸⁸

If there is only one heir, the fate of the enterprise depends on that person's decision of whether to continue the decedent's business. However, the situation becomes more perplexing if there are multiple first-order heirs (spouse and children, whether natural or adopted). In this case, the estate belongs to all the first-order heirs in undivided joint ownership.⁸⁹ Before the estate's division, the heirs manage and dispose of it unanimously.⁹⁰ Thus, the fate of the enterprise depends on the heirs' decisions. There are no restrictions on the heirs' decision. They could nominate one of the heirs to continue the family-run enterprise.⁹¹ They could agree that the right to use the name of the enterprise and the assets needed for conducting business also belonged to one of the heirs. If such an agreement is reached in the probate procedure, the court will include it in the probate decision; thus, the nominated heir can register to continue the business on the grounds of the court's decision.⁹² However, after the probate decree becomes conclusive, there is no requirement for the heirs to agree on the division of the estate. Resolution after the conclusion of probate would necessitate an out-of-court settlement concluded in written form and signed by all heirs to enable the designated heir to register as the a member continue operations.⁹³ If the settlement involves real estate, the agreement must be confirmed by a notary public. If the heirs cannot reach a common understanding, the court decides how the inheritance will be divided, and that procedure can be initiated by any heir, not just a first-order heir. When deliberating on the division of the inheritance, the court must consider the 'legitimate claims and interest of joint owners'.⁹⁴ If a joint owner requests sole ownership of a certain asset, the court must examine the 'special reasons' on which the request is based. These broadly defined legal standards have major significance in the division of deceased entrepreneurs' estates. Weighing these standards appropriately, the court could decide to allocate an enterprise's assets to one heir whom the court considers the most suitable to continue the business.⁹⁵ In any case, it seems undisputable that the regulations allow outcomes in which one of the heirs takes over decedent's enterprise, either through

87 Vukotić, 2018, p. 168.

88 Ibid.

89 Vukotić, 2018, p. 173.

90 Law of Inheritance, Art. 229.

91 Vukotić, 2018, p. 174.

92 Law on Non-Contentious Procedure, Art. 122, Sec. 3.

93 Companies Act, Art. 91, Sec. 7.

94 Law on Non-Contentious Procedure, Art. 153, Sec. 1.

95 For instance, suppose one of the heirs has training, experience, and qualifications relating to the decedent's trade or profession, but the others do not. The court would likely assign the enterprise-specific assets to that heir. Such a solution would be advantageous not only for the heir who wants to continue the deceased entrepreneur's business but also for the public since it would allow the enterprise to outlive the entrepreneur who developed it.

unanimous agreement among the first-order heirs or through a court's decision on the division of the inheritance.⁹⁶ It is also possible for a prospective heir to take over a family enterprise before the death of the original individual entrepreneur if the two parties sign a contract to that effect specifying the division of the future estate, according to the Law of Inheritance.⁹⁷

Concerning the heirs' liability for the deceased individual entrepreneur's debts accrued in relation to business activities, Serbian law does not have special regulations that apply if an heir continues the decedent's enterprise. Thus, the general rules of inheritance apply: all the heirs are liable for all of the debts accrued as of the decedent's death, but each is only liable for a portion of the debt up to the value of the estate that person inherited.⁹⁸ That is, no one owes more than they inherit.

4. Conclusions

Family-run enterprises in Serbia usually begin their legal form as individual entrepreneurship, a form of closed (general and limited partnership) or relatively closed company (limited liability company). Thus, this has focused on the inheritance (inter-generational transmission) of assets and debts arising from conducting business in the form of general and limited partnerships, limited liability companies, and individual entrepreneurship.

Different legal difficulties arise following the death of an individual entrepreneur and the death of a member of a company. Company forms establish a separation between personal and business property. Company members, even the titular heads, are not considered legal owners of the company's property. Instead, they are owners of shares in the company, and those shares entitle them to specific membership (management and proprietary) rights. Thus, when a company member dies, its property (or even a part of it) is not subject to inheritance, but the deceased member's share is. In contrast, there is no such personal-business separation in individual entrepreneurship. Natural persons conducting businesses as individual entrepreneurs do not have two separate legal identities. Therefore, when they die, all their assets and debts are subject to inheritance, including those accrued in the course of conducting business.

Serbia's statutory framework does not offer specific rules pertaining to the inheritance of assets and debts of individual entrepreneurs or shares in family-run companies. Thus, Serbia's company and inheritance statutes fail to address some circumstances and their social implications. The specific rules that have been devised are currently applied only according to the enterprises' form (i.e., general partnership, limited partnership, limited liability company, or joint-stock company), with no distinction of whether they are family-run or not.

96 Vukotić, 2018, p. 174.

97 Companies Act, Art. 91, Sec. 9.

98 Law of Inheritance, Art. 222, Sec. 1.

A company is considered family-run if most of the voting rights belong to a single family that exerts control over the enterprise, including its founding member who intends to transfer the company to his or her descendants to continue operations throughout generations within the same family.⁹⁹ The death of the owner-operator of a family-run company triggers succession by inheritance, which comprises the transfer of management and proprietary rights (control) from one generation to another.¹⁰⁰ The Companies Act does not establish a special legal regime for the death of a family-run company's head. Thus, any rule that applies to all companies of the same form must also apply to family-run companies. However, the Companies Act does provide some freedom for the members to set up different succession schemes in their incorporation documents, the scope of which varies depending on the company's form.

The succession of a decedent's share is regulated separately for each form of company. For all issues not governed by the Companies Act or an incorporation document, the rules of Serbia's Law of Inheritance apply. General and limited partnerships are closed companies, and limited liability companies are relatively closed; therefore, in these cases, the succession of decedent's share to one or more heirs is subject to certain limitations specified in the Companies Act. In addition, the Act allows members include in the company's incorporation document a different succession scheme for a deceased member's share.

Furthermore, the Serbian Chamber of Commerce adopted a Code of Corporate Governance, a set of voluntary principles and recommendations for its members to follow. The Code contains soft-law rules on the best practices of corporate governance, including those relating to the intergenerational transfer of companies' management. The gist of these principles and recommendations is that a family-run company ought to have a general succession plan and a special succession plan for extraordinary situations.

In conclusion, Serbia's company and inheritance laws do not distinguish between family-run and other companies. This lack of distinction can lead to difficulties when a member dies because of the difference between inheriting a share in a general or limited partnership and share in a capital company such as a limited liability or joint-stock company. In principle, whether or not a deceased member's rights and responsibilities can be passed through inheritance depends on the company's form, its incorporation document, and the relevance of the heirs' connection to the deceased and the company. The less complicated these are, the fewer the legal obstacles to inheritance.¹⁰¹

99 Code of Corporate Governance, Glossary, Sec. 6.

100 Code of Corporate Governance, Glossary, Sec. 7.

101 M. Vukotić, 167.

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