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Restrictions on successions – special rules

Portugal

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-----English-----

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 immovable property, certain enterprises or other special categories of assets located in this Member State?

Yes, there are rules that impose restrictions on or affect succession in respect of certain assets.

IN THE CIVIL CODE

Articles 1476(1)(a) and 1485 of the Civil Code (*Código Civil*) stipulate that usufruct and the right in rem of use and habitation are rights in rem that are extinguished by the death of their holder, by force of law.

Articles 2103-A and 2103-B of the Civil Code provide for a legal legacy: the surviving spouse has priority, at the time of partition, as regards the right to habitation of the family home and the right to use its contents, subject to certain conditions laid down in the Code.

The updated version of the Civil Code can be consulted in Portuguese at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis&so_miolo=&

IN THE COMPANIES CODE

Article 184 of the Companies Code (*Código das Sociedades Comerciais*) provides that, if a partner of an ordinary partnership dies, unless the articles of association stipulate otherwise, the remaining partners or the company must settle the respective value with the successor to whom the rights of the deceased accrue, unless they choose to dissolve the company and notify this to the successor within 90 days of the date on which they became aware of the partner's death. Surviving partners may, however, continue the company with the successor of the deceased, provided the successor gives their express consent.

Article 225 of the Companies Code states that a private limited company agreement may establish that if a partner dies, their share may not be transferred to the deceased's successors, and may also make the transfer subject to certain requirements.

If, owing to such an agreement, the share is not transferred to the successors of the deceased partner, the company must amortise it, acquire it or have it acquired by a partner or third party; if none of these measures is carried out within 90 days after any of the directors become aware of the partner's death, the share will be considered transferred.

Under Articles 469 and 475 of the Companies Code, the same system applies in the event of the death of a partner of a limited partnership.

Under Article 252(4) of the Companies Code, management of a private limited company may not be subject to succession by virtue of death, even in conjunction with a share.

The updated version of the Companies Code can be consulted in Portuguese at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=524&tabela=leis&so_miolo=&

THE LEGAL FRAMEWORK FOR WEAPONS AND AMMUNITION

Article 37 of the legal framework on weapons and ammunition (*Regime Jurídico das Armas e Munições*), approved by Law No 5/2006 of 23 February 2006, provides that the acquisition by succession *mortis causa* of any declared weapon is only permitted by authorisation of the national director of the PSP (*Polícia de Segurança Pública* (police force)), which can be obtained pursuant to the aforesaid legal provision.

The legal framework on weapons and ammunition, approved by Law No 5/2006 of 23 February 2006, can be consulted in Portuguese at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=692&tabela=leis&so_miolo=

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 answer is yes in the event of extinction due to death of the usufruct and of the right in rem of use and habitation, as well as of the rules set out in the Companies Code and in the legal framework on weapons and ammunition, referred to above.

This conclusion also derives from the provisions of Article 1(2)(h), (k) and (l) of Regulation No 650/2012.

The answer is no in the case of the legal legacy provided for in Articles 2103-A and 2103-B of the Civil Code.

However, the above answer does not prejudice different interpretations by the Courts.

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

In the case of the opening of a succession, there are rules in the Civil Code that confer powers of administration of the inheritance and that can ensure compliance with the special rules referred to above.

The procedures and precepts of the Civil Code are as follows:

When the inheritance is still in abeyance – in other words, opened but not yet accepted or declared unclaimed for the State – the successors in title (Article 2047) or executor of the inheritance in abeyance (Article 2048) may arrange for the administration of the assets if a delay in such measures could be detrimental;

After the acceptance of the inheritance, the administration of the inheritance falls to the estate administrator (Article 2079 and 2087);

The estate administrator may ask the heirs or third parties to hand over the assets to be administrated, and use repossession or eviction actions against them to uphold or secure recovery of possession of the items subject to their management (Article 2088);

The estate administrator may collect inheritance debts receivable when recovery could be jeopardised by delay or when the payment is made voluntarily (Article 2089);

In addition, the heir may bring an inheritance claim to seek judicial recognition of their capacity as successor and the recovery of all of their inheritance assets, or part thereof, against those who possess them as an heir or by another title, or even without title (Article 2075).

N.B.

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