UNIVERSITY OF LJUBLJANA
SCHOOL OF ECONOMICS AND BUSINESS

MASTER'S THESIS

SELECTING APPROPRIATE LEGAL-ORGANISATIONAL FORM OF FAMILY BUSINESS AND THE LEGAL ASPECT OF SUCCESSION.

Ljubljana, February 2021 JURE MOČNIK

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LIST OF ABRIVIATIONS

AJPES Agency of the Republic of Slovenia for Public Legal Records and Related services

FURS Financial administration of the Republic of Slovenia

PRS Slovenian Business Register

SPIRIT Public Agency of Entrepreneurship, Internationalization, Foreign Investments and Technology

SPOT Slovenian Business point

SURS Statistical Office of the Republic of Slovenia

INTRODUCTION

Almost 83 % of companies in Slovenia are family owned businesses, with less than 50 employees. They are on average at least 20 years old and have an income of 4 million euros or less (Antončič, Auer Antončič & Juričič, 2015). Family businesses are responsible for creating 40% of Slovenian GDP and are employing 70% of working population, which makes it extremely important for Slovenian economy (Antončič, Auer Antončič & Juričič, 2015).

According to Statistical Office of the Republic of Slovenia (hereafter as SURS) (2018), there were 195.756 business entities in Slovenia in 2017. They together accounted for 881.920 jobs and created income of 108.840 million of euros. Amongst business entities there are 54,7% of natural persons, including sole proprietorships (s.p.[1]) (here after entrepreneurs) and others (natural person with a business…), and 45,3 of legal persons, including limited liability company (d.o.o.), public limited company (d.d.), limited partnership (k.d.) and unlimited liability company (d.n.o.), and others (SURS, 2018). In 2019 the number of newly opened business entities stopped at 24.288 and 19.159 ceased their activities (AJPES, 2020).

Family businesses can be defined in different ways (Rosenblatt, 1991; Vadnjal, 2008). The wider definition includes those businesses in which family has a control over strategic direction. The narrower definition includes businesses that have more than one generation or one family member with managerial responsibility (Astrachan & Shanker, 2003). Ernest&Young (2015) defines family business as: joint stock companies with a minimum shareholding or voting power of 32 %, or personal companies with a minimum 50% share owned by a family. Family businesses are mostly led by first or second generation, only 5% are managed by the third or younger generation. The reasons behind it is that privately owned companies were allowed only since 1990, but also statistics in North America and Western Europe show that only 10 % of family owned businesses survive the third generation (Antončič, Auer Antončič & Juričič, 2015). From the 1950s to the end of communism, the law allowed craftsmanship. Many craft manufacturers have grown into modern medium-sized industrial companies in more than thirty years of operation (Vadnjal, 2008).

Literature provides us with information on how family businesses operate and how they grow. This master thesis will discuss the factors mentioned in theory and compare them with factors provided by in depth interviews. By doing so, we will create a list of factors, supported with both theory and real life experience. With every new generation, less family businesses survive and with third generation, only 10% survive (Vadnjal, 2008.). To continue the trend of being the backbone of economy, new family businesses have to be created. But not only created, but also able to survive in current and future economic environment. What legal-organisational form to choose, how to manage new generations and succession

[1] Slovenian abbreviations will be used in the thesis for better understanding of Slovenian readers.

plan are just few of the problems arising in these years and years to come. The figures themselves testify to the importance of family-owned businesses for the economy, as they create more jobs than other businesses, are innovative and growth-oriented. They are renowned for running their business with employees and the environment to high standards of social responsibility, to nurture their values, and to create a conducive environment for reconciling work and private life. Multigenerational character family businesses enhance the stability of the economy, family businesses usually play a key role in regional development, transfer of expertise and regional planning (Poročilo o družinskih podjetjih v Evropi, 2014).

The purpose of the thesis is to create clear and transparent way of choosing legal-organisational form for family owned business entities, by finding and understanding the factors that motivate entrepreneurs in selecting specific legal-organisational form. Factors will then be analysed and described. While employing current literature, the thesis seeks to address the importance of previously selected factors and create guidelines that will be able to help and ease the decision. Furthermore, problems with succession planning and implementing will be described and guidelines to tackle the problem better created.

The goals are:

- describe and analyse each of the legal-organisational form available and their advantages and disadvantages,
- to analyse and determine decisive factors that influence the decision,
- analyse succession planning and entrepreneurs view on the matter,
- create a legal overview of succession and inheritance process,
- compare existing analysis with the findings of our interviews.

Research questions:

1. What is the combination of factors that influence decision when choosing legal-organisational form of family business?

2. What are important combinations of factors that should influence the decision highlighted by literature?

3. What legal (e.g. contracts) and non-legal (e.g. parents' wishes) precautions can entrepreneur use to smoothen the process of succession and therefor avoid negative impact on business?

4. How to avoid long and costly inheritance processes?

This master thesis consists of five chapters. The first chapter is about describing the importance of family businesses and represent the situation and characteristics of the field I will be investigating. In second chapter the theory behind different legal-organisational

forms will be presented and advantages and disadvantages highlighted. In third chapter possible changes in legal status will be presented. Forth chapter will focus on describing the problem of succession in Slovenia and in second part give us options on how to smoothen the process of succession. In the last chapter I will present and discuss key finding of the interviews.

1 FAMILY BUSINESS

In the developed world, family business has been one of the important forms of entrepreneurship for many years, where the fundamental things in running a business happen in the family circle. The generally accepted view that this is primarily a small business is misleading, as there are world-renowned cases where families control even large groups with internationally recognised brands. Names such as Playboy Enterprises, Harley-Davidson, Levi Strauss & Co., Ford, Procter & Gamble, DuPont, Wendy's International in the US; and BMW, Lego, Tetra Pak, Sainsbury, Bata, Guiness, Benetton, Fiat, Mercedes-Benz, Marks & Spencers in Europe, and Mitsubishi in Asia, prove that family businesses can be much more than local shops and pubs. In some cases, families are also controlled by large multinationals (Vadnjal, 2018).

1.1 Different definitions of family businesses

Almost 83 % of companies in Slovenia are family owned businesses, with less than 50 employees. They are on average at least 20 years old and have an income of 4 million euros or less (Antončič, Auer Antončič & Juričič, 2015). The basic problem that arises is, there is no uniform definition of family businesses and each author uses their own, making identifying family businesses that much harder.

Some relate to the ownership aspect, where family holds a majority stake in the company (Barry, 1975), while others emphasise the role of management, thereby designating the family firm where family members occupy managerial positions (Handler, 1989). It could also be said that a family business employs mostly family members, or that they must be involved in the business for at least two generations, as argued by Syms (1992). Leach (1991) defines that family is any business that is influenced by family ties and thus family emotions. Vahčič (1994) points out the following definition: " A family business is a company that primarily employs family members and provides them with long-term income. '' The wider definition includes those businesses in which family has a control over strategic direction. The narrower definition includes businesses that have more than one generation or one family member with managerial responsibility (Astrachan & Shanker, 2003). EY (2015) defines family business as: joint stock companies with a minimum shareholding or voting power of 32 %, or personal companies with a minimum 50% share owned by a family.

A family business is most often defined by four dimensions that separate it from a non-family business (Handler, 1989, p. 260). The author defines these dimensions as:

- degree of ownership and management,
- the degree of involvement of the family in the business,
- readiness for transmission from generation to generation,
- a combination of several dimensions.

Table 1: Different definitions of a family business.

Author	**Definition**
OWNERSHIP-MANAGEMENT	
Alcom (1982)	Profit organization (s.p., d.o.o., d.n.o., ...). If a portion of the shares is publicly owned, the family must also run the business (d.d.).
Barry (1975)	A business controlled by members of a single family.
Barned & Hershon (1976)	Majority share in the hands of an individual or members of the same family.
Dyer (1986)	Ownership and ownership transfer are influenced by family relationships.
Lansberg, Perrow, Rogolsky	A company in which family members hold a majority stake.
Stern (1986)	The company is run and owned by members of one or two families.
INVOLVEMENT OF FAMILY MEMBERS	
Beckhard & Dyer (1983)	Subsystems in a family business: company, founder, family. They are linked by a board of directors - a board of directors not provided for in our legislation. The Supervisory Board could play this role.

Table continious)

Table 1: Different definitions of a family business (cont.).

Author	Definition
Davis (1983	Interaction between two organizations: family and business.
TRANSITIONS BETWEEN GENERATIONS	
Churchill & Hatten (1987)	The younger family member takes control of the business from the older one.
Ward (1987)	Management and ownership will be passed on to the younger generation.
COMBINED DEFINITIONS	
Donnelly (1964)	We refer to a business as family if it is related to two generations of the family, which affects the business and the family.
Rossenblatt, de Mik, Anderson &Johnson (1985)	Rosenblatt, de Mik, Anderson & Johnson (1985) The majority owner is the family and at least two family members have been involved.

Source: Handler, (1989, p. 260).

According to the Daily and Dollinger (1992, p. 129-133), differences between family and non-family businesses are also due to the ownership structure that causes:

- that family businesses do not have formal decision-making systems in place,
- have no internal control procedures in place, no use of performance indicators, efficiency and growth,
- not to separate ownership and management,
- the dominant person is the founder, who usually does not want the company to go beyond his or her own abilities,
- that competent external experts are not involved in the control,
- there is often an unconscious decision to make against the growth of the business.

1.2 Current situation in the field of family businesses

In spite of great importance of family businesses, until the early 1970s, the field of family businesses had been neglected in developed economies and also in Slovenia. Family businesses were left without the proper help of counsellors and other types of support. Therefore, statistic in the US, where only every seventh family business survives the second transition, that is, the transition from the second to the third generation, is not a surprise. In Slovenia, data on family businesses are not collected separately and only few experts are devoted to this field.

Family businesses are mostly led by first or second generation, only 5% are managed by the third or younger generation. The reasons behind it are, that privately owned companies were allowed only since 1990 (Antončič, Auer Antončič & Juričič, 2015), but also statistics in North America and Western Europe show that only 10 % of family owned businesses survive the third generation. From the 1950s to the end of communism, the law allowed craftsmanship. Many craft manufacturers have grown into modern medium-sized industrial companies in more than thirty years of operation (Vadnjal, 2008).

Family businesses are responsible for creating 40% of Slovenian GDP and are employing 70% of working population, which makes it extremely important for the economy of Slovenia (Antončič, Auer Antončič & Juričič, 2015).

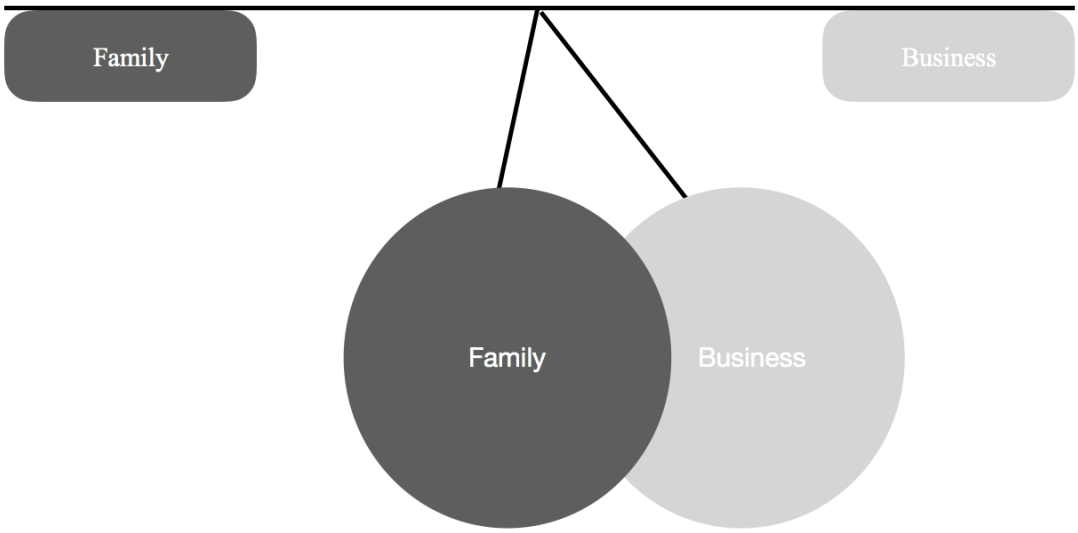
Family business owners are most often men in their fifties, with no formal business education. These are charismatic, complicated people who control both business and family. They manage to do this as long as the business is small enough. Personal satisfaction means more to them than money. Parents expect their children to get involved in the family business, whether they want it or not, since they have built a business for them in some way. The future of a business is strongly affected by the ability and willingness of the future generation (Leach 1991, p. 26).
It is highly probable that the typical problems of family businesses with transition and succession will soon appear in Slovenia, if they have not already. It is necessary that we learn from the experiences of others and prepare ourselves accordingly (Kelbl, 2002).

1.3 Main characteristics of family businesses

There are two powerful structures in place: family and business, which are based on very different values, they mix and cause conflict and disagreement between family members. Overlapping the demands of the family and their company requires a light and very specific approach from the point of view of leading and managing the company (Davis & Stern, 1988, p. 71). An entrepreneur is emotionally very attached to his business. It is about his creation, which he/she has been building for many years and became a part of his/her life. This passionate attachment of the founder to the enterprise and business has a great impact

and consequences on the founder's family. An entrepreneur cannot leave family relationships at home and he/she brings problems to the family that are otherwise a matter of a business. Family and business are closely connected and often inseparable, causing conflicts (Benson, Crego & Drucker, 1990, p.17). In no case, we can and should not neglect the effects of one system on another system. Impacts that cannot be rationally limited can interfere with both systems, rarely in the positive direction. Often, the family system is stronger than the business system. If the family system prevails, family system invades the business system and causes problems that could be classified as follows (Benson, Crego & Drucker, 1990, p. 8):

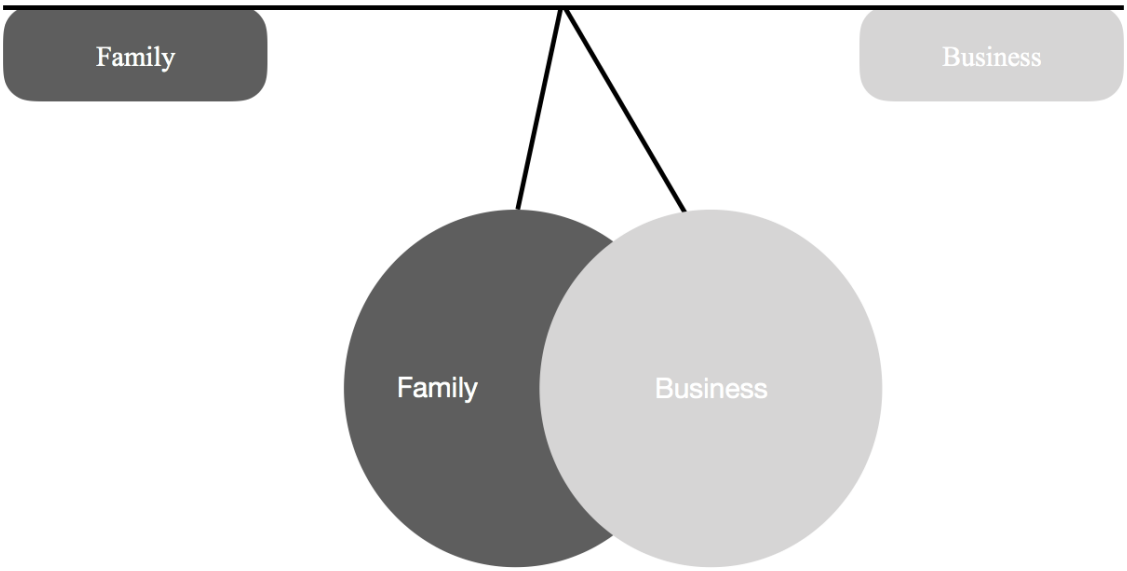
Figure 1: Strong influence of the family and its values over the business.



Source: Benson, Crego & Drucker, (1990, p 17).

- Family values put pressure on business, the consequences are problems in the company and tension between relatives.
- Family members are paid higher salaries than other employees and higher than market salaries. The salaries of family employees may also be lower than market salaries.
- Family disputes do not stop at the door of a business and emotional conflicts greatly influence business's decision-making.
- Equality in the family is transferred to the company so that there is no real hierarchy within the company.
- Business decisions take family interests into account.
- Relationships and behaviour in the family are transferred to the company. What is normal and acceptable in the family often puts the affected person in an awkward position.
- Children are accepted into jobs in the company regardless of their skills and education. If there are no vacancies, they are created.

Figure 2: Strong influence of the business and its values over the family.



Source: *Benson, Crego & Drucker, (1990, p.17).*

Entrepreneurs/founders live for their business, which often means more to them than family. Having a good business usually gives the family a higher social status and adequate security, which should not mislead the family into believing that only material goods are important, and emotions are side lined. The impact of the business system on the family should be limited and some assumptions considered (Benson, Crego & Drucker, 1990, p.17):

- The behaviour in the place of business has to be professional, it should not be allowed to transfer hierarchy from the business to family and vice versa.
- Family and children should not be kept away.
- Competition between family members in the company is not recommended. The company has to compete against competitors. Problems of a company should not be brought to the circle of the family.
- Family takes time each should take in order to communicate in respected manner.

2 INSTITUTIONAL FRAMEWORK AND LEGAL OPTIONS

This section defines some key concepts that will be emerging thorough the thesis. Concept of enterprise is commonly replaced by concept of company, but these two concepts are not synonyms. Enterprise is a set of organised assets, intended to carry on business. The pursuit of the activity must be organised in a legal-organisational form. Legal-organisational forms are divided into personal companies, capital companies and sole proprietorships. Company

is a legal entity which independently carries out gainful activities. Sole proprietorship (hereafter as entrepreneur) is a natural person, who independently carries out gainful activities in the market, within an organised enterprise (Cepec & Kovač, 2019, p. 148-169).

2.1 Institutional framework for incorporation

Constitution of Republic of Slovenia (URS, Officail Gazette of the RS, No. 33/91 and amendments) in article 74 states that the economic initiative is free. The right to free economic initiative enables a person to organise an enterprise as an individual/entrepreneur, or to establish for this purpose, one of the possible legal-organisational forms of company, which are defined by the law and determine the activity that the company will carry out (Korže, 2014, p.70). The law that defines the conditions for establishing business entities [2]and their fundamental characteristics is the Companies Act (ZGD-1, Official Gazette of the RS, No.42/06 and amendments).

Coase (1937) defined corporate law as the study and analysis of legal-organisational forms of companies. It deals with the legal situation of private equity owners associations invested in enterprises in order to achieve certain economic goals (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 201). In his award winning article, The Nature of the Firm, Coase claims that companies are formed because they have a better option to deal with transaction costs that emerge during production and exchange than individuals are. Companies that manage to facilitate low transactions costs can accelerate economic growth (Coase, 1937).

According to Korže (2014, p. 69), entrepreneurship is "game" between the enterprises, whose goal is to increase their wealth. Enterprises are business entities that bring a specific amount of assets to the table. The game is governed by cogent norms (ius cogens) and autonomous rules, rules of business morality and ethics, standards and good business practices. Therefore, enterprise is a generic term to describe a set of organised assets.

2.2 Legal options for incorporation

Slovenian law recognises 9 legal-organisational forms (Korže, 2014, p. 89-129), but only 7 will be mentioned through the thesis. The reason is that SPE[3] does not even exist yet in Slovenia and Double company is a combination of k.d and any capital company. For the purpose of this master thesis, only those that can be related to family business will be discussed.

[2] All enterprises registered at Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES).
[3] SPE is an European Private Company that European Commission adopted in 2003.

ZGD-1 distinguishes between; 1. personal companies (d.n.o., k.d.), 2. capital companies (d.o.o., d.d., k.d.d., SE) and 3. entrepreneur (s.p.). In 2019, 72% of all business entities in Slovenia have been either an entrepreneur (s.p.) or a limited liability company (d.o.o.) (AJ-PES, 2020). Hereby the assumption can be made, that most family business are also either entrepreneurs or limited liability companies, but other appropriate forms will also be presented, and their positive and negative sides explained.
Table below shows the number of different legal-organisational forms at the end of 2019 and the percentage they represent.

Table 2: Total number of companies and entrepreneurs and their legal-organisational form.

Legal-organisational form	**Number of business entities**	**Percentage of total number**
d.d	558	0,33%
SE	1	0,00059%
d.o.o.	71.380	41,76%
k.d.d.	2	0,0012%
d.n.o	491	0,29%
k.d	267	0,16%
Sole proprietorship (s.p.)	98.094	57,39%
Total	170.929	100%

Source: AJPES, (2020).

Individuals, who are starting their entrepreneurial path, are firstly confronted with the question between which legal-organisational forms to choose to realise their business idea. The decision depends mainly on which legal-organisational form enables the entrepreneur to operate in a simple and transparent manner while optimising management costs, tax social burden and ensuring adequate social security (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 5).

2.3 Entrepreneur

A person who independently engages in a gainful activity on the market within an organised business entity and is not a company is called an entrepreneur (s.p.). This is the most basic form of business in Slovenia and unless otherwise provided by law, an entrepreneur can carry on any economic activity. (Cepec & Kovač, 2019, p. 169).
According to ZGD-1, the following requirements have to be met:

- An entrepreneur can only be a natural person,
- in order for an individual to obtain the status of an entrepreneur by virtue of the law, he must pursue a gainful activity,
- an entrepreneur is a business entity, since profitability is the main reason for doing business. In this regard, he/she is equated with a company as a business entity,
- entrepreneur carries out the activity on a permanent basis and with a purpose of profit.

Entrepreneur is liable for debts of his/her enterprise with all his/her assets.

2.3.1 Procedure of incorporation of an Entrepreneur

Natural person gains the right to engage in economic activity after he/she has been registered in Business Register of Slovenia (PRS) at AJPES. A register procedure is free and can be done in a few minutes, either online via SPOT or in person at SPOT[4] point. There is no initial capital required. The acquisition of the status of entrepreneur does not require a special authorisation of an individual body, but the expressed will to register in the PRS, or the application, which the future entrepreneur submits to the competent authority, which checks the formal and substantive adequacy (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 71-84).

After the decision on registry of the entrepreneur in the PRS, the entrepreneur must enter the activity in the tax register within eight days at the latest at Financial Administration of Republic of Slovenia (FURS), submit an application to the Health Insurance Institute of Slovenia (ZZZS) and identify himself for value added tax (DDV) (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 80).

2.3.2 Monthly obligations of an Entrepreneur

All working active citizens of the Republic of Slovenia have to pay into the social security system once a month. A social security system is a system in which an individual who is in a legal relationship with the social security institution is entitled to material and natural social security benefits when a social case occurs (Mežnar, 2008, p. 140)

In the case of being employed, social security contributions are partly paid by employer and partly by employee, according to the amount of employee's salary and are automatically deducted from the salary of the employee. In the case of an entrepreneur, he/she must do so himself. Since entrepreneurs do not have a regular monthly wage and their revenue is connected with revenue of their enterprise, the minimum basis for social security contributions is estimated at 60% of the last known gross average wage (FURS, 2018a).

[4]The SPOT portal provides you with information on business conditions in Slovenia and electronically supported procedures related to funding and starting a business.

Slovenian legislation has set up a relatively wide system of social security insurance contributions, it includes:

Table 3: Types of contributions and contribution rate for self employed persons.

Type of contribution	Employee contribution rate	Employer contribution rate
Pension and disability insurance	15,50%	8,85%
Health insurance	6,36%	6,56%
Unemployment insurance	0,10%	0,10%
Parental protection insurance	0,14%	0,06%
Work-related injuries and occupational diseases insurance		0,53%
Total	**22,10%**	**16,10%**

Source: Social Security Contributions Act (ZPSV, Official Gazette of the RS, No. 5/96 and amendments).

As well as minimum bases for social security contributions, basis for maximum social security contributions are prescribed. These amounts to 3.5 times the average gross wage. Billing information is created automatically in application eDavki[5] and can be paid on one account only. Table below shows minimum and maximum amount of contributions for social security, a self employed person has to pay.

Table 4: *Minimum and maximum social security contributions in 2020, for self-employed person.*

Average Gross Wage (AGW) in 2019		**1.753,84 EUR**	
	Rate	**Minimum basis for contributions (60% AGW)**	**Maximum basis for contributions (350% AGW)**
		1.052,30 EUR	6.138,44 EUR

(Table continious)

[5] Online platform powered by FURS for fulfilling and submitting tax forms.

Table 4: Minimum and maximum social security contributions in 2020, for self-employed person (cont.).

Pension and disability insurance contribution			
Insured	15,50%	163,11 EUR	951,46 EUR
Employer	8,85%	93,13 EUR	543,25 EUR
Health insurance contribution			
Insured	6,36%	66,93 EUR	390,40 EUR
Employer	6,56%	69,03 EUR	402,68 EUR
Unemployment insurance contribution			
Insured	0,10%	1,05 EUR	6,14 EUR
Employer	0,10%	1,05 EUR	6,14 EUR
Parental protection insurance contribution			
Insured	0,14%	1,47 EUR	8,59 EUR
Employer	0,06%	0,63 EUR	3,68 EUR
Work-related injuries and occupational diseases insurance contribution			
Employer	0,53%	5,58 EUR	32,53 EUR
Together		**401,98 EUR**	**2.344,87 EUR**

Source: FURS, (2018a); SURS (2020).

In 2013, Slovenian government introduced the new Pension and Disability Insurance Act (ZPIZ-2, Official Gazette of the RS, No. 96/12 and amendments). It introduced a partial

exemption from paying contributions for pension and disability insurance upon first entry in the register. Self employed persons got their first 12 months contributions for pension and disability insurance reduced by 50% and 30% for the following 12 months. The purpose of the partial exemption is to reduce the burden on the self-employed when starting their business and to encourage entrepreneurship.

The vast majority of entrepreneurs pay a minimum pension and disability insurance contributions. There are several reasons for this. Many simply have too low incomes to afford higher payments. However, if the revenues are higher, they prefer to use them as an investment in further developing their entrepreneurial idea. They do not think ahead towards their retirement. And the calculation is inexcusable. If an entrepreneur continues to spend his/her entire working life by paying minimum contributions, you could count on a pension that is deeply below the "at risk of poverty threshold" (ZPIZ, 2019).

According to SURS (2019), the "at risk of poverty threshold" was 662,17 EUR. This number represents the amount of minimum guaranteed monthly income that an individual can still make through the month. However, after supplementing the current conditions for retirement and assuming that he would be paying the minimum contributions, the pension for the self-employed would be only 530,00 EUR (ZPIZ, 2019).

2.3.3 Corporate income taxation of an Entrepreneur

Corporate income Tax or in case of entrepreneur Personal income tax is regulated by Personal income Tax Act (ZDoh-2, Official Gazette of the RS, No. 117/06 and amendments). The income tax base is the profit, which is determined as the difference between the income and expenses achieved in connection with the activity. Entrepreneur has to collect issued and received invoices and other business related documentation. At the end of the year, usually an accountant prepares. Income statement. If expenses are higher than income, there is no tax to be paid. If income is higher than expenses, entrepreneur has to pay an income tax according to the table below.

Table 5: Income tax table for self employed persons.

Basis for income tax			**Tax**
	to 8.500,00 EUR		16% (1.360,00 EUR)
from 8.500,00 EUR	to 25.000,00 EUR	1.360,00 EUR	26% (4.290,00 EUR)

(Table continious)

Table 5: Income tax table for self employed persons (cont.).

Basis for income tax			**Tax**
from 25.000,00 EUR	to 50.000,00 EUR	5.650,00 EUR	33% (8.250,00 EUR)
from 50.000,00 EUR	to72.000,00 EUR	13.900,00 EUR	39% (8.580,00 EUR)
from 72.000,00 EUR		22.480,00 EUR	50%

Source: Article 122, ZDoh-2.

Example: Company X d.o.o. has an income of 45.000,00 EUR and managed to collect 15.000,00 EUR of expenses. The difference is 30.000,00 EUR, profit. This profit is a base for calculating an income tax. If we take a look at the table above, we can see that first 8.500,00 EUR will be taxed at 16% rate (1.360,00 EUR). The next 16.500,00 EUR (25.000,00 EUR — 8.500,00 EUR) will be taxed at 26% rate (4.290,00 EUR). There is 5.000,00 EUR left and they will be taxed at 33% rate (1.650,00 EUR). If we sum up the amount in the brackets, we get the total amount of income tax we have to pay, 7.300,00 EUR. We have to point out that this simulation was made on a very simple basis.

In the analysis of tax breaks recognised by the law for an entrepreneur, we must distinguish between tax reliefs granted to an entrepreneur in connection with the pursuit of his business activities[6] and tax reliefs granted to an entrepreneur as a natural person in determining taxation in the context of personal income tax. Therefore, an entrepreneur is entitled to two types of tax reliefs.

Tax reliefs of a natural person when assessing personal income tax (Articles 111 to 117 ZDoh-2):

- General relief: Each resident is entitled to a reduction in the annual tax base of 3.500,00 EUR per year, provided that another resident does not claim him/her as a dependent family member. In case that resident's income[7] does not exceed 13.316,83 EUR, his/her tax base is also reduced by amount calculated from the formula: 18.700,38 EUR — 1.40427 x income. It is important to understand that second applies to profit before deducting contributions for social security insurance and the first mentioned reduction.
- Personal tax relief: A resident with a 100% disability is entitled to a reduction in the annual tax base of 14,971,00 EUR per year, if he or she has been granted the right to outside

[6] Tax reliefs in connection with an activity will be represented in chapter 3.2.7 Tax reliefs
[7] Resident's income equals profits of his/her enterprise.

care and assistance, on the basis of a decision of the Pension and Disability Insurance Institute of Slovenia, the Centre for Social Work or an Administrative body responsible for the protection of war veterans and the war disabled.

- Special personal tax relief: Residents who are specialised in culture, journalism and sports are entitled to 15% reduction of tax base, up to the amount of 25.000,00 EUR. Residents who are younger than 26 and have status of Student, or are older, but have enrolled in before 26. birthday are entitled to reduction of tax base in amount of 3.500,00 EUR.
- Special tax relief:

Table 6: *Reduction of tax base in case of dependent children.*

Tax relief for dependent children	**Yearly tax base reduction**
For the first dependent child	2.066,00 EUR
For dependent child who needs special care	7.486,00 EUR
For second dependent child	2.246,00 EUR
For third dependent child	3.746, 00 EUR
For forth dependent child	5.246,00 EUR
For fifth dependent child	6.746,00 EUR
For the sixth dependent child	Additional 1.500,00 EUR for every other dependent child

Source: Article 114, ZDoh-2.

- Dependent family members: A spouse who is unemployed and does not perform other activities, or has no subsistence income, or this income is less than 13.316,83 EUR. Dependent family member is also a child under 18 years of age and child under 26 years of age, if he/she is a student, not employed and does not perform any other gainful activities, or is income from these activities does not exceed 7.486,00 EUR.
- Voluntary supplementary pension insurance relief: The taxpayer's annual tax base may be reduced by the amount of the voluntary supplementary pension premium paid by the taxpayer for himself / herself to a pension scheme provider established in Slovenia or in another EU Member State, but not more than 24% of the pension and disability insurance contributions for the insured person and not more than 2.390,00 EUR per year.

Tax reliefs granted to an entrepreneur in connection with the pursuit of his business activities are described in chapter 3.2.7 Tax reliefs.

2.3.4 Natural person with complementary activity

The pursuit of complementary activity is appropriate for a full-time employee, whose social security contributions are already paid for. Typically, an activity is registered when the range of activities would be smaller, a regular job does not suffice or this way he/she would fulfil his/her desire to become entrepreneur. (FURS, 2020b).
Legal status is the same as for entrepreneur. They have the same rights and obligations, the only difference is the amount of paid contribution for social security. As mentioned, entrepreneur with complementary activity is already insured by his employer, but he/she still needs to pay partial fixed amount for a case of injury at work and occupational disease and in the event of disability or death resulting from occupational disease or injury at work. Contributions amount to 71,97 EUR per month (FURS, 2020b).

2.3.5 Overview of the facts

Entrepreneur can be quickly and easily incorporated. There is no initial capital required. Entrepreneur can freely operate with enterprises money. Entrepreneur monthly pays contributions for social security insurance, minimum of 401,98 EUR. Entrepreneurs profit is considered as his personal income and is progressively taxed, according to the table 5. Base for income tax calculation can be reduced, if any of the above requirements are met. Entrepreneur is liable for debts of his/her enterprise with all his/her assets.

2.4 A limited liability company

2.4.1 Basis for incorporation of a limited liability company

A limited liability company (d.o.o.) is a capital company whose initial capital consists of partners contributions, which value may vary. In proportion to the value of its initial capital contribution, the partners acquire a business share, which is expressed as a percentage. Each partner may only contribute one initial contribution at the incorporation and have only one business share. The partners are not responsible for the company's obligations (Korže, 2014, p. 117).

A limited liability company is legally conceived as a company with a small number of shareholders who know each other and are also involved in its management. It is incorporated with a memorandum of association (hereafter social contract), which can be concluded in the form of a notarial record or in a special form, in physical or electronic form. The social contract must be signed by all shareholders and must contain all the provisions of Article 474 of the ZGD-1 (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 94-95).
Founders of a limited liability company can be both legal and natural persons, which then become partners. There may be only one partner, or more, but not more than fifty. Initial capital must be at least 7.500,00 EUR and can be higher, if so specified in the social contract.

Partners can invest either cash or non-cash contribution (car, real-estate, rights, patents…) (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 97-98).

2.4.2 Process of incorporation of a limited liability company

ZGD-1 in article 533-526 recognizes existence of single member company. In case of single member[8] limited liability company or simple form of a limited liability company enterprise can be incorporated online via SPOT or in person via SPOT point. The following requirements have to be met (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 35-36):

- Founder is natural person, with digital certificate,
- initial investment has to be in cash, deposited in company's bank account,
- act of incorporation[9] is concluded via online SPOT documentation, same goes for other necessary documentation,
- founder is also the CEO.

In case of simple form of a limited liability company with more partners, the social contract has to be signed in front of member of authority at SPOT point.

In the case of the incorporation of a more complex form of a limited liability company, where there are more partners and the relationships between them are more complex, the services of a public notary are needed. We are talking about complex form of a limited liability company, when one the following statements holds (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 95):

- When partners are also married,
- initial capital is not only in cash, or when it exceeds 7.500,00 EUR.
- the social contract in physical form has to be signed in front of member of authority,
- if the social contract is signed and sent by post, signatures have to be certified by notary.

After the proposal and accompanying documentation is submitted through SPOT point, the SPOT authority will check the proposal and the documentation and wait for proof of payment of initial capital. The documentation will then be sent to AJPES. After the technical check is done, AJPES assigns a company data that are under AJPES jurisdiction. Both proposal and the documentation are then transferred to competent court. Court on the basis of the proposal supplemented by AJPES, formally and substantively verifies the correctness and completeness of the received proposal and decide on the entry. If the court approves the request for incorporation, a decision on incorporation of the company is issued. The company is registered in the court register and consequently acquires the status of a legal entity (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 37-38).

[8] Only one founder

[9] In case of single member limited liability company there is no need for memorandum of association

2.4.3 Business share in a limited liability company

The partner acquires, in proportion to its value of initial capital, its business share, which is expressed in percentages. Each partner may only contribute one initial contribution at its establishment and have only one business share. The amount of initial contribution may be different and correspondingly also business shares are different. For example, if in a limited liability company with two partners, one partner contributes 750,00 EUR to the initial capital of 7.500,00 EUR, then his business share is 10% and the business share of the other partner is 90%. According to business shares, profit sharing and voting rights are then balanced (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 101).

2.4.4 Single member limited liability company

At this point, the thesis will shift its focus to single member limited liability company. With regard to the topic being discussed, this legal-organisational form is much more exposed and more easily comparable to the entrepreneur.

It has to be pointed out that it is possible to find a similarity in the very essence and appearance in the entrepreneurial game between a single member limited liability company. in one hand and an entrepreneur in the other. However, there is a significant difference between the two. In any case, a single member limited liability company is a capital company in all its characteristics, which means that the company is liable for its liabilities with all its assets. However, the partner is only liable for the company's liabilities by the contribution he has made. Otherwise, it should be noted that for a single-person limited liability company all characteristics applicable to normal limited liability company are applicable except those which are incompatible with the one-person nature of that company or are expressly provided for by a different regulation (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 228).

In practice, a one-person company can be created in a few different ways. It is most common for a company to be founded by one natural person (described above). Given the possibility of a transfer and legal turnover of business interests, it is also possible for a single member company to be formed by merging all of its interests in the hands of one and only one partner. Considering the fact that business shares are interests in legal transactions, it can also lead to the acquisition of them by a single partner. Such options include, exit or exclusion of one or more partners. In addition to the above methods, it is necessary to emphasise the third, independent way of incorporation. This is the situation where a single member limited liability company is incorporated from the sole proprietorship, which is a special form of transformation that will be presented in the following sections (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 229-233).

2.4.5 Contributions for social security insurance

Founder of a single member limited liability company can in accordance with Slovenian legislation, from social and labour protection point of view, choose between different legal statuses he/she would like to adopt. He/she can only be a partner, a manager in a civil law relationship or a manager who is employed by his/her own company by contract of employment. Practise has shown that in single member limited liability company partner is almost always also a manager of the company (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 37-38).

A partner in a single member limited liability company can be included in the system of social security according the legal status he/she chooses:

- Manager under the contract of employment: Under the second paragraph of article 73 of Employment Relationship act (2012), legislator explicitly allowed contract of employment between a manager and a sole owner, regardless the fact that in the case of such a contractual relationship there are no elements of employment relationship under article 4 of this act. This enabled managers and members of single-member companies to be included in social insurance on the basis of employment (Senčur Peček, 2013, p. 921). Employers pay social security contributions from gross wages in accordance with the employment regulations that burden employers, unless otherwise provided by law. It is important to remember that contributions represent a cost to the company and, as a result, reduce profits, which is particularly advantageous from a tax point of view. Contributions are calculated according to gross wage. Base for calculation is since 1.3.2020 set at 58% of monthly gross wage (FURS, 2020c). We use Table 4 above to calculate the amount of contributions.
- Manager under the contract of civil law relationship: A management contract is often used, when the manager is already insured on another basis, mostly on the basis of employment, but of course this is not necessary. The management contract is a contract of civil law, which means that there is an established relationship between the parties and more freedom in determining mutual rights and obligations. The manager commits to carry out certain work and he/she will receive a compensation in return. In principle, a management contract is more favourable in terms of the relationship between the compensation and the amount it represents to the company, but of course it should be noted here that, unlike an employment relationship where employees' contributions are partly paid by the company (employer), in the management contract, the insured person pays for both part (Table 4) of contributions. This means that the company cannot reduce the tax base by paying contributions (Antič, 2017). A partner who is also a manager can be insured on the basis of the first paragraph of article 16 of ZPIZ-2. If the profit of the insured person does not exceed 90% of the average annual salary of employees in the Republic of Slovenia, the base for paying contributions shall be 90% of the average annual salary of employees in the Republic of Slovenia calculated per month. Minimum contributions for managers under a civil law contract is (Article 145 ZPIZ-2):

Table 7: Minimum and maximum contributions for social security insurance in 2020, for partners in single member limited liability company.

Average Gross Wage (AGW) in 2019			**1.753,84 EUR**
	Rate	**Minimum basis for contributions (90% AGW)**	**Maximum basis for contributions (350% AGW)**
		1.578,46 EUR	6.138,44 EUR
Pension and disability insurance contribution			
Insured	15,50%	244,66 EUR	951,46 EUR
Employer	8,85%	139,69 EUR	543,25 EUR
Health insurance contribution			
Insured	6,36%	100,39 EUR	390,40 EUR
Employer	6,56%	103,55 EUR	402,68 EUR
Unemployment insurance contribution			
Insured	0,10%	1,58 EUR	6,14 EUR
Employer	0,10%	1,58 EUR	6,14 EUR
Parental protection insurance contribution			
Insured	0,14%	2,21 EUR	8,59 EUR
Employer	0,06%	0,95 EUR	3,68 EUR
Work-related injuries and occupational diseases insurance contribution			

(Table continious)

Table 7: Minimum and maximum contributions for social security insurance in 2020, for partners in single member limited liability company (cont.).

Employer	0,53%	8,37 EUR	32,53 EUR
Together		**602,98 EUR**	**2.344,87 EUR**

Source: FURS, (2018a); Article 145, ZPIZ-2.

2.4.6 Taxation of a company and partners of a company

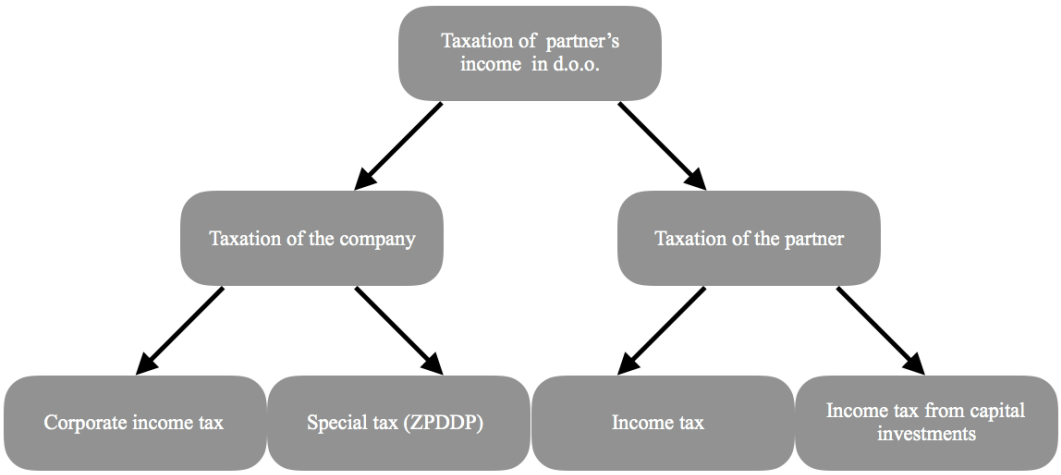
The system of taxation of income generated by a partner in a limited liability company is somewhat more complex than the system of taxation of an entrepreneur. It consists of three different tax burdens. In accordance with the Corporate Income Tax Act (ZDDPO-2, Offical Gazette of the RS, No. 117/06 and amendments), a company must pay corporate income tax of 19%. Partner in a limited liability company may be active in the company as a manager under the employment contract or under a civil law contract (management contract). In both cases, on a contractual basis, he/she earns a certain income from which he/she must pay income tax in accordance with ZDoh-2, as a direct tax on the income earned (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 190). If a partner is a manager under a civil law contract, the company must pay a special tax in accordance with Contractual work tax act. The basis for the calculation and payment of tax is each individual gross payment to a natural person for the service provided on the basis of a civil law contract under the ZDR-1 and the Obligations Code (OZ, Official Gazette of the RS, No. 83/01 and amendments). Tax is calculated as 25% of the amount paid (ZPDDP, 1993). If the company in a financial year also made a profit and partner decides to pay out the profits, he/she is according to ZDoh-2 obligated to pay an income tax on the income generated from capital. The tax rate is 25%.

The direct tax burden on the income that a partner can derive from economic activity when he /she performs it as a limited liability company, we must bear in mind that the "final taxation"[10] of partner's income consists of three different direct taxes (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 190-191):

- The company is obliged to pay corporate income tax, 19%, according to article 60 of ZDDPO-2.
- Partner is obliged to pay income tax from the contract of employment according to article 9 of ZDoh-2.
- Income tax from capital investments, 25%, according to article 13 of ZDoh-2.

[10] "Final taxation" refers only to the economic aspect of taxation and not the legal aspect of taxation.

Figure 3:Representation of "final taxation".



Source: Cepec, Ivanc, Kežmah & Rašković, (2010, p. 205).

Taxation under points 2 and 3 is quite straight forward. In the following paragraphs the thesis will focus on a corporate income tax, which is more complex and influenced by several factors. The thesis will also cover and explain basic accounting standards, just enough to be able to understand the changes and differences that these can make and the influence they have on a calculation.

Corporate income tax, which is systematically regulated by the ZDDPO-2, is a basic tax in the field of direct corporate taxation. Taxpayers under article 3 of ZDDPO-2 are all legal entities, both domestic and foreign. A resident taxpayer based in Slovenia or management operates in Slovenia, is obliged to pay corporate income tax on all profits generated in Slovenia and abroad. A non-resident taxpayer, who is not based in Slovenia, but has a business unit or a branch in Slovenia in obliged to pay corporate income tax on all profits generated in Slovenia. The general corporate income tax rate in 19% (FURS, 2020a). Single member limited liability company is a company incorporated under Slovenian law, which also necessarily means that it has its registered office in Slovenia, and thus also has a status of a resident taxpayer and an obligation to pay corporate income tax on all income it generates during the financial year, regardless of the source of the income received (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 210).

The initial tax base is based on the operating result that the legal entity determines in the income statement, which is prepared for business purposes. The tax base is thus initially determined by the operating result that legal entities present in the annual report for business purposes, which is then adjusted accordingly for tax purposes, in accordance with the law. Therefore, the profit from the tax statement is not equal to the profit from the income statement. Since the ZDDPO-2 refers to accounting standards in tax revenues and tax expenditures, the width of the tax base and the correctness of its determination depend on the correct

application of accounting standards. We calculate the tax base as the difference between revenue and tax deductible expenses in the income statement. Tax base = Revenues - tax deductible expenses - tax deductible reliefs (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 210-211).
Revenue is the value a business generates over a period of time. We divide revenues into: 1. operating revenues, 2. financing revenues and 3. extraordinary revenues. Operating revenues are revenues from the sale of goods, materials and services. Revenues from financing the company also includes interest and revenues from other types of financial investments. Extraordinary revenues include unusual items from previous financial year, which in the current financial year increase the total operating result over that from ordinary activities (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 211).

Tax deductible are those expenses that are stipulated by law. Article 29 of ZDDPO-2 dictates that for profit determination includes expenses required for revenue generation. Therefor any expenditure that is necessary by nature, type, scale, etc. to obtain taxable income. It is not enough that some expenditure is necessary to achieve any revenue, but it must be necessary to achieve the revenue taxed under the article 30 of ZDDPO-2.

In this section we have to pay particular attention to the issue of depreciation. Depreciation is defined in the Slovenian Accounting Standards as an expense arising from the transfer of the cost of a depreciable asset to its business effects. Depreciation expense is the value expressed in the use of an asset over a period of time, which is calculated on the basis of the assumption of the length of time in which the asset will be used and the purchase price of an asset. Items whose lifetime is longer than 1 year, but its purchasing price does not exceed 500,00 EUR can be written off of the entire purchasing price (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 213)

Table 8: The maximum annual depreciation rate.

Item	**Rate**
Construction works, including investment property	3%
Parts of construction works, including parts of investment property	6%
Equipment, vehicles and machinery	20%
Computer, hardware and software equipment	50%

(Table continious)

Table 8: The maximum annual depreciation rate (cont.).

Item	Rate
R&D equipment	33,3%
Other investments	10%

Source: Article 33, ZDDPO-2.

Simple example of depreciation. A company purchased a computer. They paid 1.000,00 EUR. Depreciation rate for computers is 50% per year, meaning 500,00 EUR will deducted from tax base in this financial year and 500,00 EUR in the next financial year.

Non-deductible expenses are those that are recorded in the income statement and reduce the operating profit of the current period, but cannot be claimed for the purpose of reducing the tax base. The law dictates that tax-not deductible expenses are those expenses that are not necessary for the generation of revenue or for which according to the facts and circumstances the following applies (ZDDPO, 2006):

- They are not a direct condition for performing activities and are not a result of performing an activity,
- have a character of privacy,
- not in accordance with normal business practise.

2.4.7 Tax reliefs

ZDDPO-2 in chapter VIII deals with tax reliefs that allow taxpayers to lower their tax base. It recognises tax relief for investment in research and development, investment relief, relief for the employment of a person with disabilities, relief for practical work in vocational education, relief for voluntary supplementary pension insurance and relief for donations. Due to the provisions of ZDoh-2, the rules on corporate tax reliefs apply to entrepreneurs as well.

- Investment in research and development relief[11]: Company may reduce its tax base for 100% of the amount, invested in research and development. The amount cannot be higher than the tax base. If the amount is higher than the tax base, the company can unused part of tax relief use in the next five periods. The company cannot reduce its tax base, if an investment was financed from the budget of Slovenia or EU.
- Investment relief[12]**:** Company may reduce its tax base for 40% of the amount, invested in equipment and intangible assets. The amount cannot be higher than the tax base. If the company sells the equipment or intangible assets before 3 years have passed, it has to

[11] Article 55 of ZDDPO-2
[12] Article 55a of ZDDPO-2

increase the tax base for the amount of tax relief. The company cannot reduce its tax base, if an investment was financed from the budget of Slovenia or EU.

- Relief for the employment[13]: Company who employs a person under the age of 26 or a person over 55, who has been registered with the Employment Service of the Republic of Slovenia for at least 6 months prior to employment and has not been employed at very same company for the past 24 months, may claim a tax base reduction of 45% of that person's salary. The amount cannot be higher than the tax base
- Relief for employment of disabled persons[14]: A company who employs a disabled person may, under the law governing vocational rehabilitation and employment of disabled persons, claim a tax relief of 50% of that person's salary, but not more than the tax base. Company, who employs a disabled person with 100% physical disability person, may claim the tax relief in the amount of 70% of that person's salary, but not more than the tax base.
- Tax relief for carrying out practical training within professional education[15]: A company who accepts an apprentice, high school student or faculty student under a teaching contract for practical work in vocational education may claim a reduction of the tax base in the amount of wage to that person, but up to a maximum of 20% of the average monthly salary of employees in Slovenia for each month of practical work of an individual person in vocational training.
- Voluntary supplementary pension insurance relief[16]: A company's tax base may be reduced by the amount of the voluntary supplementary pension premium paid by the company for employees to a pension scheme provider established in Slovenia or in another EU Member State, but not more than 24% of the pension and disability insurance contributions for the insured person and not more than 2.390,00 EUR per year.
- Donations relief[17]: The taxpayer may claim a reduction of the tax base for the amount of cash payments for humanitarian, disability, social security, charitable, scientific, educational, health, sports, cultural, ecological, religious and generally beneficial purposes, up to an amount equivalent to 0.3% of the company's taxable income, but up to the amount of the tax base. A company my claim an additional reduction of the taxable amount up to an amount equivalent to 0.2% of company's taxable income for the amount of cash for cultural purposes and for such payments to voluntary associations, established to protect against natural and other disasters and acting in the public interest for these purposes.

All of the mentioned reliefs in total shall not exceed 63% of the tax base.

[13] Article 55b of ZDDPO-2
[14] Article 56 of ZDDPO-2
[15] Article 57 of ZDDPO-2
[16] Article 58 of ZDDPO-2
[17] Article 59 of ZDDPO-2

2.5 An unlimited liability company

2.5.1 Basis for incorporation of an unlimited liability company

An unlimited liability company (d.n.o.) is a personal company of two or more partners, who are liable for the obligations of the company with all their assets. An unlimited liability company is characterised by a small number of partners, their personal involvement and mutual trust (Abrahamsberg, 2004).

The company is formed by means of a contract of partnership between the partners and application for entry in the court register. The contract of partnership has to be concluded in the form of a notarial record or a private document, bearing the notarised signatures of all the partners (Cepec & Kovač, 2019, p. 178)

There is no initial capital required, but this does not mean that there is no need for members to invest. Because of the nature of the social relationship, the partners have to provide suitable conditions for the company to start business, which is not possible if the company does not have any assets (Ivanjko, Kocbek & Prelič, 2009, p. 341). Unless otherwise stated, all partners have to pay the same initial investments, which may be a investment in money, rights, things or services. The value of the non-monetary investments has to be mutually assessed in cash (Korže, 2014, p. 124).

2.5.2 Process of incorporation of an unlimited liability company

As mentioned, an unlimited liability company is incorporated at public notary, who is to be provided with the information stated in ZGD-1. On the basis of the above information, the notary shall draw up all the documents required for entry in the court register. The documents may also be drawn up by the partners themselves, while the signatures must in any case be certified by a public notary. The drafting and signing of documents require the personal presence of the founders (natural persons or legal representatives of legal entities). An individual founder may also be represented by a proxy. On the basis of decision of the Registry court on registration of the entity in court registry of AJPES, the entity is assigned the main activity code and the registration number (Mercina, 2017a).

2.5.3 Fundamental characteristics of an unlimited liability company

All shareholders are entitled and obliged to run the business of the company at the same time. If the management of the contractual business is delegated to one or more partners, it may not be run by other partners. Each partner is entitled to represent the company. A social contract may stipulate that the company is represented jointly by all or some of the partners (SPOT, 2020a).

Main characteristic of the unlimited liability company is that all the partners of that company are liable for all the debts of the company. The company is primarily liable for its own debts with its assets and, in the alternative, the members are. The members are liable for the debts of the company individually, which means that each member is responsible for the entire debt of the company until the debt is fully repaid. It is precisely because of the sole responsibility of all partners for the company's debts that the company is suitable for activities in which all partners are actively involved in the business or operation of the company and for activities where the risks of excessive debt or unforeseen debts are manageable. It also requires a great deal of mutual trust between the partners (Cepec & Kovač, 2019, p. 178-179).

The basic act of a company is a contract of partnership. The partners regulate the mutual relations with the contract of partnership. The internal relations between the partners are otherwise regulated by the ZGD-1, but they may be regulated differently by the partners under contract of partnership. The regulation of internal relations is therefore completely free, since in the drafting of a contract of partnership, fundamental principle of OZ applies, principle being contractual freedom (Cepec & Kovač, 2019, p. 179).

Internal relations, which are regulated by social contract, are in particular (Cepec & Kovač, 2019, p. 179):

- Who will be a partner in the company.
- The name and the seat of the company and the activity the company will perform.
- An agreement on the type and amount of initial investments partners will make.
- An agreement on leadership and decision making between partners.
- Agreement on sharing profit and loss.
- An agreement on the right to transfer a share in the company.

2.5.4 Profit taxation and profit sharing in an unlimited liability company

Since an unlimited liability company is a company under ZGD-1, it is liable to pay corporate income tax under the article 3 of ZDDPO-2. The basis for taxation is the same as it is at a limited liability company. Difference between revenues, tax deductible expenses and tax reliefs. They are in detail described in the chapter above (2.4.6. Taxation of a company and a partners of a company). Corporate income tax is 19% (SPOT, 2020a).

The partners are entitled to a profit, which is determined at the end of each financial year on the basis of the annual financial statements. The resulting profit is added to the partners business share, and the loss and money raised by the shareholder during the financial year are written off from the business share. First, each partner is entitled to profit in amount of 5% of his business share, or a proportionate decrease in amount, if the profit does not allow it. If the profit is higher, it is split between partners in equal parts. Each partner may at his/her own expense withdraw cash from cashier of the company, up to 5% of his business share in

the previous financial year. Partner can also claim the payment of his/her share of the profit above 5% of his business share in the previous financial year, but only if it is not in obvious damage of the company (Korže, 2014, p. 125). If a company in a financial year also made a profit and partner decides to pay out the profits, he/she is according to article 13 of ZDoh-2 obligated to pay an income tax on the income generated from capital. The tax rate is 25%. Personal companies are characterized by the fact that the partners do not have permanently large business shares, as they increase in the case of profit and decrease in the case of a business loss and if the partner has paid out a portion of the business share during the year (Cepec & Kovač, 2019, p. 180).

2.5.5 Contributions for social security insurance

Since an unlimited liability company is a legal entity and cannot express its business will itself, it needs to have a legal representative. Unless otherwise agreed in the social contract, each partner is entitled to represent the company. According to article 85 of ZGD-1, each of the partners is a legal representative of the company and can independently conclude deals and transactions on behalf of the company. Partners may by contract of partners agree that only certain partners or only some jointly are entitled to represent the company (Cepec & Kovač, 2019, p. 182). Since every partner is liable for company's debts with all his assets, it is common all of the partners are legal representatives.

All partners that are not in any other way included in social security insurance and are listed as legal representatives of the company, can be included in the system in the same way as discussed in the chapter 2.4.5 Contributions for social security insurance (Article 145 ZPIZ-2).

2.6 A Limited partnership

2.6.1 Basis for incorporation of a limited partnership

A limited partnership is a company of two or more persons in which at least one partner is responsible for the obligations of the company with all its assets (a general partner), while at least one partner is not responsible for the obligations of the company (a limited partner) (Korže, 2014, p. 126).

Typical characteristic of a limited partnership is bond between two different groups of entrepreneurial people. The first group (general partners) work closely together, willing to invest their work and assets, and share company's destiny, therefor being liable for company's obligations with all their assets. The second group of people (limited partners) are focused solely on cash investments in the first group's entrepreneurial project and do not want to

influence the company's operations, and in particular do not want to take personal responsibility for the company's debts. Their goal is merely to achieve a return on their cash investments (Ivanjko, Kocbek & Prelič, 2009, p. 391).

2.6.2 Process of incorporation of a limited partnership

The company is formed by concluding a social contract between the partners and entering the court register. The social contract must be concluded in the form of a notarial record or in the form of a private document, bearing the notarised signatures of all partners. Founders or partners of a limited partnership can be both natural and legal persons and there should be at least two partners. At least one of them has to be a general partner and at least one has to be a limited partner (Cepec & Kovač, 2019, p. 186).

There is not initial capital required. A limited partner can invest money, things, as well as property rights and services that can be valued. The contribution of the limited partnership has to be expressed in monetary amount, since it is entered in the court register and thus represents the amount with which the limited partner is responsible for the obligations of the company. On the basis of decision of the Registry court on registration of the entity in court registry of AJPES, the entity is assigned the main activity code and the registration number (Mercina, 2017b).

2.6.3 Fundamental characteristics of a limited partnership

A limited partnership is characterised by a sharp division of partner’s functions. A general partner manages the business of the company and a limited partner contributes its capital and in return requires certain corporate rights, among which is the right to be included in the company’s profits sharing. A limited partner is not entitled to conduct business and in the ordinary course of business, may not oppose the decisions of the general partner. He/she has the right to control the operations of the company and may request access to business and accounting documents and a copy of the annual report (Cepec & Kovač, 2019, p. 187)

2.6.4 Profit taxation and profit sharing in a limited partnership

Since a limited partnership is a company under ZGD-1, it is liable to pay corporate income tax under the article 3 of ZDDPO-2. The basis for taxation is the same as it is at limited liability company. Difference between revenues, tax deductible expenses and tax reliefs. They are in detail described in the chapter 2.4.6 Taxation of a company and partners of a company. Corporate income tax is 19% (SPOT, 2020a).

Profit sharing can be agreed by the partners with contract of partnership. In the absence of such an agreement, the legal rules shall apply. ZGD-1 in article 95 dictates that each partner is entitled to a profit in amount of 5% of his business share. If the profit exceeds the stated

percentage, the remaining profit is distributed in a proportion corresponding to the ratio of the business shares. The profit shall be added to limited partner's business share until his/her capital share does not reach the amount agreed in the contract of partnership. Once the amount agreed is met, profit is paid out as dividends. A limited partner cannot pay out the profit until his capital share is equal to his initial investment.

A general partner manages business and is a legal representative of the company. It participates in the profit sharing as explained above. In contrast to the limited partner, general partner's share of profit adds to his/her capital share regardless of the amount of the business share achieved. Capital share of a general partner may increase with unpaid profits. A limited partner's capital share can only increase, if the increase has been registered in the contract of partnership and court register (Cepec & Kovač, 2019, p. 187-188).

2.6.5 Contributions for social security insurance

In accordance with legislation, the legal representative of a limited partnership is a general partner. A limited partner shall not be entitled to represent the company unless a general partner grants him/her the power of procuration or special authorisation. However, in this case, a limited partner does not act as a limited partner, but as a procurator or proxy. A limited partner, as a partner, therefore, cannot validly conclude transactions on behalf of the company without special authorisation or procurement. No other agreement in possible in the contract of partnership (Cepec & Kovač, 2019, p. 188).

All general partners that are not in any other way included in social security insurance and are listed as legal representatives of the company, can be included in the system in the same way as discussed in the chapter 2.4.5 Contributions for social security insurance (Article 145 ZPIZ-2).

3 TRANSFORMATION OF A COMPANY'S LEGAL STATUS

The decision on choosing the appropriate legal-organisational form often lies on basis of short term planning and short term calculations, leading to need to change the legal organisational form or to close a specific form and start a new one. The principle of the free choice of legal-organizations form does not apply only to the stage of establishment of a particular business entity and is therefore not exhausted by the fact that a specific legal-organisational form is selected and established (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 319).

Family is a living organism, and its needs and requirements change during the years. It is important that the law enables easy transition and is flexible to try and accommodate the

needs of the environment. Economic development and the growth of the company are also important drivers of change. In the circumstances of expansion, an entrepreneur himself is no longer able to cope with all the requirements related to leadership and management, which leads to the independence of the company that slowly begins to express its own interests and requirements, which indirectly expose the need to engage managerial staff, with specific skills and an experience of running the business. A reversed path is also possible: a public limited company (d.d.) becomes an integral part of the Group and therefore the need arises to transform into a limited liability company. One can also imagine a situation where all the business interests in a larger limited liability company (d.o.o.) are acquired by members of a family who transform into one of the personal companies (d.n.o./k.d.) (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 320).

ZGD-1 in part VI talks about different ways how to change company's legal status. Status transformation is divided into 2 groups: material and formal status transformations. This division depends on whether the legal consequences of the status transformation arise in the assets or in the organisational structure of the company and entrepreneur being transformed (Ivanjko, Kocbek & Prelič, 2009, p. 879).

A key feature of material status transformations is the restructuring of the assets of the owner of the transformed company by transferring all or part of its assets to another company, which either already exists or is newly incorporated with the transferred assets as a part of initial capital. Material status transformation includes: mergers and acquisitions, divisions and transfers of assets **(**Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 322)

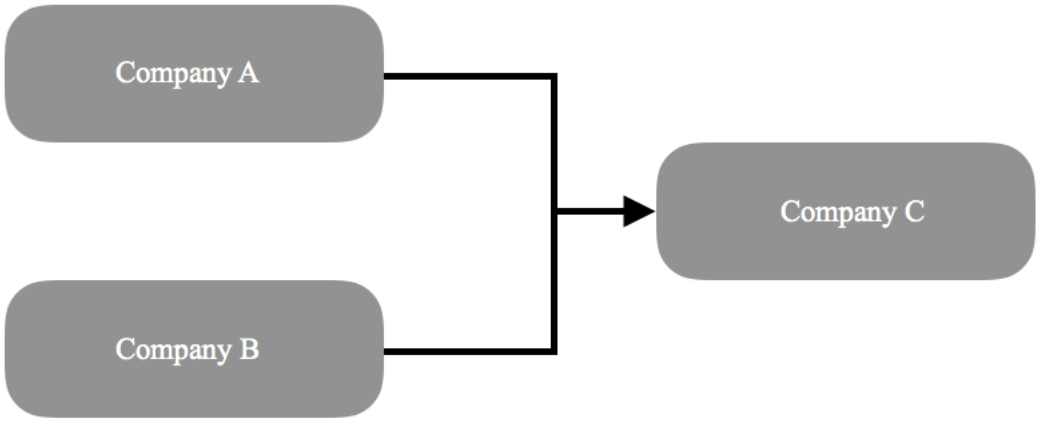
In the case of formal status transformations, the property structure of the company being transformed does not change, so the assets remain the same and the legal effects of the status transformation are reflected in the change of the legal relations between the company and the partners or between the partners. A change of the legal-organisational form is part of the formal status transformation **(**Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 322).

3.1 Mergers and acquisitions

Mergers and acquisitions are mutually desirable connections of companies when two or more companies form a single entity. In both cases it is a transfer of assets and liabilities (Bertoncelj, 2008, p. 16).

A merger is a creation of a new company to which the assets of the merging companies pass, in exchange for the provision of shares or business interests of the new company. In a case of mergers, two or more companies merge into a completely new company, the other companies transfer their assets and liabilities to them and cease to exist (Bertoncelj, 2008, p. 18).

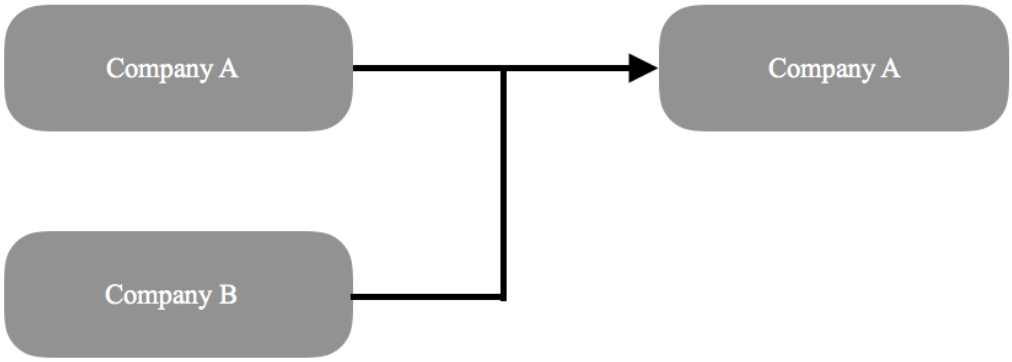
Figure 4: Merger of two companies.



Source: Bertoncelj, (2008, p.19).

Acquisition is a transfer of one or more companies in exchange for securing the shares or business interests of the acquiring company. In acquisitions, only one is left of the connecting companies, while the other transfers its assets and liabilities to that company and cease to exist. (Bertoncelj 2008, p. 17)

Figure 5: Acquisitions of two companies.



Source: Bertoncelj, (2008, p.18).

3.2 Divisions

Division is a a form of material status transformation, where portions of the assets of transferring company are transferred to other acquiring companies. Business shares owners of transferring company in return acquire business shares in acquiring companies (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 328). There are 3 different ways of divisions (Article 623 ZGD-1):

- Split up shall be carried out by the simultaneous transfer of all parts of the assets of the transferring company which, by virtue of the split up, shall cease without liquidation, to new companies, which are incorporated because of split up, or acquiring companies.
- Spin off shall be carried out by the transfer of all or individual portions of the assets of the transferring company which does not cease with the spin off to, to new companies, which are incorporated because of spin off, or acquiring companies.
- Split off shall be carried out by the transfer of individual parts of the assets of the company, which does not cease with the split off, to new companies, which are incorporated because of split off, or acquiring companies.

3.3 Transfer of assets

Transfer of property is a form of material status transformation whereby the entire property of the company is transferred to the state - the Republic of Slovenia - or to the local community in the Republic of Slovenia (Ivanjko, Kocbek & Prelič, 2009, p. 902). The law allows this special form of status transformation only to capital companies (Article 640 ZGD-1)

3.4 Change of the legal-organisational form

The change of legal-organisational form represents a formal status transformation, characterised by the fact that the enterprise after the transformation process continue to exist in a legal-organisational form, which is not the same as before (Ivanjko, Kocbek & Prelič, 2009, p. 902). It does not involve the transfer of assets, meaning the change of legal-organisational status is in principle not relevant from the creditors' point of view. The exception is only the transformation from personal to capital companies. In the case of private companies, creditors are protected by the partner's personal liability for the company's obligations, while in the case of capital companies they enjoy the privilege of not being held liable for the company's liabilities. Article 665 of ZGD-1 resolves this in such a way that in the case of transformation of a personal into a capital company, the personally responsible partners continue to be held liable for the obligations of the company that arose before the change of legal-organisational form (Bratina, Jovanovič, Drnovšek, Radolič & Bratina, 2009, p. 331).

ZGD-1 regulates the change of legal-organisational form in articles 642 to 666. The following formal status transformations are regulated: transformation of a public limited company into a partnership limited by shares, transformation of a partnership limited by shares into a public limited company, transformation of a public limited company into a limited liability company, transformation a limited liability company into a public limited company, transformation of a partnership limited by shares into a limited liability company, transformation of a limited liability company into a partnership limited by shares, transformation of a cooperative into a company, transformation of a company into a cooperative, transformation of

personal companies into capital companies, transformation of capital companies into personal companies and transformation of institutes.

It is pointless to discuss all of the transformation with our focus being on a family business, the thesis will discuss only transformation from capital to personal and personal to capital companies, and also transformation of a public limited company into a limited liability company, since the same rules apply also for the transformation from capital to personal and personal to capital companies.

3.4.1 Transformation from a public limited company into a limited liability company

A public limited company with fewer than 50 shareholders may be transformed into a limited liability company by a resolution of the general meeting if it fulfils all the conditions for establishing a limited liability company. The resolution on the transformation must be adopted by a majority involving at least nine tenths of the share capital. After the decision company name and other characteristics important for the transformation are identified (Article 648 ZGD-1). In a limited liability company transformed public limited company exists from the moment the transformation is entered in the court register; shares become business shares (Article 650 ZGD-1). It is important that any shareholder, who has objected to the general meeting against the resolution on the transformation, may require the company to take over his business share and to pay a reasonable severance payment. The resolution of the general meeting on the transformation cannot be challenged because the severance pay was either inadequate or not offered at all. In this case, dissatisfied shareholders can only request a judicial test of the amount of the severance pay (Article 651 ZGD-1).

3.4.2 Transformation of capital companies to personal companies and personal companies to capital companies.

Article 665 of ZGD-1, on the transformation of a public limited company, into a limited liability company [18]shall apply (mutatis mutandis) to the transformation of capital companies into private companies. The resolution on the transformation requires the consent of the partner who will be liable for obligations of the company will all his/her assets.

The previous paragraph shall apply to the transformation of a personal into a capital company. Personally liable partner remains responsible for the obligations of the company that arose prior to the entry of the transformation into the register. Upon termination of the company, the provisions of articles 133 and 134 of this Act shall apply to the statute of limitations (Article 665 ZGD-1).

[18] Look at 3.4.1 Transformation from a public limited company into a limited liability company.

3.5 Transformation of the legal status of entrepreneur

Entrepreneurs are often urged to change their legal-organisational form. Most often entrepreneurs transform into limited liability company (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 285). Theory and practise emphasise various reasons why entrepreneur chooses to transform. The most common are (Valič, 2003, p.42; Šaloven, 2005, p.10):

- reliving personal liability for the obligations of the enterprise,
- the need of business process and,
- the need to separate personal assets from the assets of the enterprise.

Status transformation of an entrepreneur is a type of material status transformation. An entrepreneur can be transformed by status (Kocbek & Prelič 2009, p. 511):

- By the transfer of the enterprise to a new capital company which is formed as a result of the transfer of the enterprise.

The transfer of an enterprise to a new capital company means that a new capital company is created as a result of the transfer of the enterprise. In this case, the transfer is made on the basis of a unilateral legal transaction or the decision of the entrepreneur on its transformation. The procedure is then continued with the public notary who certifies the documents and then submits them to the court register. It is important to understand the that before the transformation, the capital company does not yet exist and is therefore set up with the intention of transferring all its activities of the entrepreneur (Mercina, 2019).
The process of transferring a company to a new capital company is done in three steps (Mercina ,2019, Cepec, Ivanc, Kežmah & Rašković, 2010, p. 286):

- Informing about transformation: at least three months before the transformation, the entrepreneur must announce in an appropriate manner (by letters to the creditors, in the media, business premises) that he will continue his activity in another organizational form, stating the day of transformation from an entrepreneur in a limited liability company (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 286)
- Resolution on transferring: to enter a new company in the register, the entrepreneur must prepare in writing the resolution on transferring. It must state the name and the registered office of the entrepreneur, a statement of the transfer of the entrepreneur and the value of the enterprise on the day of the transfer, with a detailed description of the enterprise. The assets are identified in the balance sheet annexed to the transfer decision, but may also be specified in the interim balance sheet or in other financial statements. The day of the transfer is the balance sheet cut-off day according to which the entrepreneur prepares the financial statements of the enterprise. Documentation submitted on the day of the application for the entry of the transfer in the register must not be older than three months. The resolution on transferring must also be accompanied by an act of incorporation, stating that the company is incorporated by transformation of the entrepreneur. The incorporation

of a new company is carried out in accordance with the procedure applicable to the establishment of a single-member limited liability company. If the value of the enterprise is more than € 100,000, the incorporation of the new company must be reviewed by the auditor (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 286).

- Entering the court register: An application for registration of a transformation must be filed with the registry. After all the procedures, the registration authority then registers the transfer of the enterprise and the formation of a new company. When registering the company, it must be entered in the register that the company was created by the transfer of the entrepreneur's enterprise, meaning entrepreneur's enterprise ceases to exist and is transformed into a capital company (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 286).

- By transferring the enterprise to an acquiring capital company.

Articles 668 to 672 of the ZGD-1 applicable to the transformation by the transfer of an enterprise to a new capital company also apply to this procedure[19]. Instead of resolution on transferring, the contract between entrepreneur and the management of acquiring company has to be concluded. The contract and documentation needed to incorporate a new company, has to be concluded at public notary. In this case, entrepreneur becomes the holder of a business share in the company. There is also the possibility that the acquiring company may increase its share capital as a result of the transfer of the company, but this should be reviewed by one or more auditors. The transfer of the company must also be entered in the register (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 288).

- By transferring part of an enterprise.

Articles 667 to 673 of the ZGD-1 applicable to the transformation by the transfer of an enterprise to a new capital company also apply to this procedure. However, the provisions of the second and third paragraphs of Article 671 of ZGD-1 do not apply. Transferring a part of the company does not mean that the entrepreneur ceases to perform his/her business, therefore, the entrepreneur is not deleted from the PRS (Cepec, Ivanc, Kežmah & Rašković, 2010, p. 288-289).

3.6 Discussion

The goal of every company and entrepreneur is to generate as much profit as possible. An important factor in choosing the status form is the type of activity with which the company or entrepreneur wants to appear on the market. Choosing the right status form can also contribute to a more successful business. The issue of status transformations seems interesting to me mainly because it is becoming more and more topical, as in recent years companies are increasingly focusing on entrepreneurial restructuring and thus adapting their capital or organisational structure to changing entrepreneurial interests. The worsening economic situation in period from 2008-2012 has increased the number of mergers and divisions. Also,

[19] Use the steps A, B and C under point 1.

more and more entrepreneurs are deciding to continue their business in a new legal organisational form. Thus, they are transformed into a capital company, mostly mainly due to the tax aspect.

Transformation of the legal status enables business share owners and entrepreneurs, to easily restructure their business activity without having to carry out liquidation proceedings, which would also account in higher costs. Restructuring would thus become time consuming and would not benefit the company's financial health. The rules of status transformations also protect the interests of creditors and minority shareholders of companies that are being transformed. Special rules also enable entrepreneurs to transfer their assets to a capital company more easily.

4 PROBLEM OF SUCCESSION AND INHERITANCE

When the research was conducted, I came across two critical phases in an entrepreneur's life, where problems usually occur. The first phase is the choice upon legal-organisational form and the second phase is the transition of the company to the next generation. The most problematic phase for the operation of the company is the transition of the business to a new owner. We are talking about a difficult process for which we do not yet have enough experience about in our country. The transfer is not an easy process, since the transfer itself is also influenced by the feelings and emotions of the founder, so it is necessary to approach the matter from different perspectives (Kelbl, 2002). At the beginning of the master's thesis, I have already emphasised the importance of succession planning and now we will present the solutions than can help along the with process.

4.1 Succession

One of the main goals of family businesses is to create long-term material security. However, to achieve this, successful business transfer to the next generation is required. Succession is a web of different issues in the fields of ownership, finance, organization, law and also taxes (Gospodarska zbornica Dolenjske in Bele krajine, 2018).

A change at the top of a business always causes some stress for employees, customers, suppliers and other related parties. In professionally lead companies with a well-established management hierarchy, replacement is less painful. In any case, the appointment of a new person causes excitement and usually resistance. Those who have been ignored are offended, at the same time, they are afraid of the expected changes in leadership. In family businesses, in addition to business problems, emotion-related complications occur in exchange. Choosing a successor may be the most difficult decision of founder's career. He is forced to choose one of his descendants, despite the constant emphasis on the equality of all his children. The

dilemma of deciding is especially great if more children with all the necessary skills and qualifications are pursuing the ambition to take over the business (Kelbl, 2002).

Family businesses are typically run by the first (66%) or second generation (28%), with only 6% running by the third or younger generation. Since privately owned companies have only been possible on a large scale since the introduction of the market economy in the early 1990s, this means that third or younger generations of owners are much less frequent (SPIRIT, 2016; Kociper, 2018). Interestingly, this is in line with the average in Western Europe and North America, where typically less than 10% of family businesses survive in the third generation (Leach, 1993, p.130)

At EU level, 480 000 business transfers are made annually. It is estimated that up to 150,000 businesses (600,000 jobs) cease operations due to the many problems associated with ownership transfers. These companies are largely represented by family businesses, for which Member States should be able to move seamlessly to the next generation and maintain intra-family activities as a family business (Evropska komisija, 2013).

Transfer of the ownership of a company may mean the transfer of activities of entrepreneur or the transfer of ownership or business shares in a limited liability company (d.o.o.). These two forms are most common among small and medium-sized enterprises, which most of family businesses are. Even corporate transfers in other capital and private companies should not be neglected, but from a legal point of view these transfers require separate treatment (Pirc, 2017).

When leaving a family business, the founder faces a number of different options (Kociper, 2018):

- transfer to the next generation within the family,
- intra-family transfer or sell to Employees,
- hire an external manager,
- sell the company,
- strategic partnerships, franchising,
- liquidation of the company.

The founder is usually the most attractive option for the enterprise to take over a family member, thus continuing the family tradition. The decision of the founder to transfer the management completely is rarely purely sincere and takeover of the enterprise by his family members gives him a quiet hope that he will not be cut off completely and will still have some influence (Wimmer, Domayer, Oswald & Vater, 1996, pp. 263–271).

Most entrepreneurs are reluctant to think about forming a professional management that would run the business successfully and also lead it through the dangerous transitions. The

main reason for this is the desire to maintain complete independence, which they think can only be maintained in a narrow family circle. Entrepreneurs also oppose the professionalization of the management in order to protect business secrets, confidentiality of technical and financial data and also because of fears of excessive bureaucratisation of the enterprise. Complete closure from outside influences, which occurs in many family businesses, is almost always harmful. New people coming from elsewhere bring new ideas, new experiences, more dynamism and flexibility, which is even more important in entrepreneurship. New people at the company look at things with their eyes open, notice mistakes that employees no longer see, and strictly separate management and ownership from leadership. In any case, the planned involvement and employment of people outside the family after the initial phase of development is only a useful decision for the company (Wasserman, 2008)

An enterprise can also be sold, which can be a very good solution, if we consider all the costs that will occur and the tax consequences of the decision in preparation for the sale. This option is considered optimal only if the majority of the assets in the form of purchase money are retained for the founder or his family. The worst and most expensive option is that the founder does nothing and leaves everything to "fate." Unfortunately, in the companies, too often the mind-set of the founder that there is still time to transfer leadership, prevails (Vadnjal, 2008, p. 32).

4.1.1 Reasons for succession

Like all living things, companies go through life cycle stages. The company is conceived, born, survived, matured, and if the entrepreneur had not taken care of the succession, the company would have ceased after a certain period of time. Succession is thus understood as one of the stages in the life cycle of a business that every business will encounter. These stages have their characteristics and most of the entrepreneurs know how to act at a certain stage, but when it comes to the succession phase, they usually have no idea. This can happen at any time in the life cycle of a business, as it depends on when the entrepreneur wants or has to hand over the business. The succession phase requires, as well as other stages, good strategic planning, the entrepreneur must pay attention to it and not delay it, such as we cannot delay the decision to grow or launch new products when the need arises (Kociper, 2018)

The reasons for succession are divided into two groups, namely personal and business reasons. In most cases, personal attachment to age and retirement or illness. A founder may also decide to change his profession or force him to sell the business and start a new business that will allow him more free time. There may also be emergencies such as family illness, divorce and others (Evropska komisija, 2013).

Business reasons may include unprofitable business operations or aggravated market conditions that require the entrepreneur to have additional knowledge and fresh capital that the

entrepreneur cannot provide and must either sell or at least need management assistance. Some founders sell the company in a phase of intense growth, when they may not be able to secure financing and growth themselves and the company then achieves high market value, or sell the company at a mature stage, when the company has reached the optimum size, the business is relatively stable, and they no longer feel needed in the company (Kociper, 2018).

4.1.2 Transition of management function

Succession has to be well planned, but the owners often delay the process, because they face the thought of transience and retirement, as business transfer goes hand in hand with ageing. In addition, they will lose their entrepreneurial lifestyle, ability to make decisions, control and power after the transfer. They also delay planning because they are unaware of the seriousness of the problem and hope that things will work out on their own. Also, deciding who to leave to lead is not the easiest if they have more than one possible successor or have no successor at all. An additional problem after retirement will be insufficient income, as many entrepreneurs do not pay adequate wages and, consequently, pension contributions (Kociper, 2018).

Longnecker and Schoen describe the succession process in seven stages (Duh, 2003, p. 70):

- Entrepreneurial phase. The successor is only passively aware of certain facts about the company
- Introductory phase. Family members can get to know the successor through communication with the employees of the company without the successor already working in the company or working only occasionally.
- Introductory functional phase. The successor works as a part-time employee. In the meantime, he usually completes his formal education, may find full-time employment at other company.
- Functional phase. The successor is employed full-time by a company.
- Advanced functional phase. The successor assumes managerial responsibilities. Before assuming top management position, he can change multiple managerial roles.
- The early phase of succession. The successor assumes the highest management position.
- Mature Succession Phase. The successor becomes the head of the company.

4.1.3 Transfer of business share

Just as important as planning a management transfer is planning the transfer of business shares in the company. Every succession plan should start with a number of personal decisions, the first question is, until when will the founder remain in the company and what impact he or she wants to have. Business shares are critical to controlling a business. One who has or will have a majority share will also have an influence over management. Usually, the founder imagines the distribution of property on principle “to all children in the same”,

despite the fact that for those children who take over the business, this is often an insurmountable blockade. Quite often, many owners and founders think even more simply. They want to leave all their property to their spouses (Benson, Crego & Drucker, 1990, p. 222).

4.2 Inheritance procedures and inheritance of business shares

Inheritance denotes the term for the entry of the descendants into the legal relations of the decedent and the property that passes from decedent to the descendants. Inheritance can only include things and rights belonging to decedent. A decedent is a person whose property passes on after their death, to other persons we call heirs. The death of a person also terminates his legal life, so it is necessary to liquidate and regulate the legal relationships that he created. Inheritance enables the property relations and the resulting rights and obligations of the deceased to be transferred to other persons (legal or natural). As a rule, personal rights and obligations cannot be inherited (Zupančič & Žnidaršič Skubic, 2009, p. 25).

The socio-economic functions of inheritance law should not be overlooked. One of the essential tasks of inheritance law is to ensure the regulation of legal relationships after the death of the natural persons involved in those relationships. Also important is the social function of inheritance law that is providing the material basis or existence of the decedent's immediate or extended family. Some believe that inheritance law should encourage individuals to work productively and rationally manage acquired assets (Zupančič & Žnidaršič Skubic, 2009, p. 26).

Inheritance assumes 3 elements (Šinkovec & Tratar, 2005, p.30):

- The death of a decedent.
- The existence of property.
- Heirs, capable of inheritance.

When inheriting the enterprise, heirs are often granted participation in the enterprise by adopting decedent business share. In cases, when decedent does not think someone is capable of running their business, the decedent determines the amount in cash the heir has to inherit (Šinkovec & Tratar, 2005, p. 39).

4.2.1 Testamentary inheritance

Testamentary inheritance occurs when a testator writes a testament. A testament is a unilateral and revocable legal act by which the decedent disposes of property in the event of death. It is a statement of will, which must take one of the statutory forms and depends solely on the will of the decedent. The decedent does not need the consent of the heir for a valid testament. According to the judicial practise, the decedent’s testamentary capacity is presumed and in the case of the contrary, assessed less critical than general legal capacity (Šinkovec

& Tratar, 2005, p. 243). An entrepreneur can leave a business to one or more heirs. Testamentary inheritance is subject to general rules of inheritance, including those concerning the necessary share. The heirs can waive their right to inheritance (Kocbek et al, 2014, p. 507).

The decedent may name the executor of the testament in the testament. The executor of the testament is authorised to manage the legacy, but is not helpful to the business by the purpose and manner of functioning. The heirs cannot revoke the authority of the executor of the testament, which can only be dismissed by the court (Zupančič & Žnidaršič Skubic, 2009, p. 349). The executor of the will must not be equated with the representative of the company appointed by the decedent entrepreneur in the event of death. The representative in case of death is a relatively new institute, regulated in Article 72 of ZGD-1. He/she is named by the decedent as a sole proprietor so that the business would continue to operate normally after his death. The representative can also be appointed in case of inheritance by the law, where executor of the testament is necessarily linked to the testament (Kocbek et al, 2014, p. 512). When there are more heirs after the decedent, it is advisable for the fate of the enterprise and the continuation of the activity that the decedent entrepreneur decides on an heir. Failure to do so may endanger the continuity of the business and leaves the decision depending on the agreement between the heirs, which may not necessarily be in the enterprise's favour, since the heirs may be uninterested in continuing the business or it takes a long time to reach the agreement, which inevitably means loss of business (Zupančič & Žnidaršič Skubic 2009, p. 352).

4.2.2 Inheritance by law

Where the decedent entrepreneur fails to make a testament or a testament is not valid, inheritance by law occurs. In case of inheritance by law, the law determines the circle of persons who inherit from the decedent on the basis of the relationship with him/her. The most important relationships are kinship and marriage (Zupančič & Žnidaršič Skubic, 2009, p. 79). According to Inheritance act (ZD, Official Gazette of the RS, No. 15/76 and amendments), legal heirs are considered to be: decedent's descendants and adoptees and their descendants, decedent's parents and spouse or extra-marital partner. They are put in 3 hereditary orders:

- 1. hereditary order: decedent's descendants and adoptees, their decedents and decedent's spouse or extra-marital partner.
- 2. hereditary order: decedent's parents or adoptive parents and their decedents, decedent's spouse or extra-marital partner.
- 3. hereditary order: decedent's grandparents and their descendants.

In the case of inheritance by law, we usually have many more heirs, who form the heritage community. The fragmentation of the legacy represented by the business entity may jeopardise its existence. Our legal system, like the German one, does not prevent the fragmentation of such a legacy. Today, the economy and the advancement of economic operators are

gaining in importance, so development could dictate legislation that would prevent the fragmentation of business entities, much like our ZD already introduced to prevent the fragmentation of protected farms (Zupančič & Žnidaršič Skubic, 2009, p. 340). ZD already partially enables the preservation of business entities in the hands of the heir, who wishes to continue the business. In article 147, ZD dictates that heir who lived and acquired together with the decedent is allowed to the belonging of certain things that would otherwise belong to other heirs, if a justified need is proven. Such an heir has to pay out the value of things in cash to other heirs, within the time limit set by the court. Until an heir does not pay out the others, they still have a legal lien on the things. Justified need to obtain things is determined as such a thing that is strictly necessary for the heir to survive and is thus tied to heir's earning capacity (Šinkovec & Tratar, 2005, p. 415).

4.2.3 Inheritance of a business share

4.2.3.1 *Inheritance after an entrepreneur*

ZGD-1 does not predict the termination of the business of an entrepreneur upon his death and states that the entrepreneur's heir enters into all legal relations in connection with the enterprise as a universal legal heir. The heir is entered in the register as an entrepreneur in accordance with the law. The descendent can inherit an enterprise based on a testament or law. According to inheritance rules, the enterprise and the rights and obligations relating to it are transferred from decedent to their heir at the moment of the decedent's death as a legacy or part of a legacy. The transfer of the legacy to the heir occurs ipso iure, while the continuation of the business requires the will of the heir (Zupančič & Žnidaršič Skubic, 2009, p. 346). If the heir accepts the inheritance and decides to continue the business after the decedent, he/she shall be entered in the PRS as an entrepreneur by submitting the finality of the procedural decision on inheritance and statements of continuation of the business (Kocbek et al, 2014, p. 507). ZGD-1 in fourth paragraph of article 72 states, that in the event of the death of the entrepreneur, his/her company may be continued by the entrepreneur's heir, who may use the name of the decedent in the firm.

When there are several heirs to the decedent's enterprise, the continuation of the enterprise in a more complex issue. The legal form of sole proprietorship is intended for the enterprise of a single person. In the event that several heirs inherit after the entrepreneur, the inheritance community is created at the moment of the decedent's death and in principle lasts until the inheritance is decided upon. Although the enterprise is a single subject of inheritance, the rights and obligations arising from it belong to all the heirs (Zupančič & Žnidaršič Skubic, 2009, p. 348).

The inheritance community jointly and unanimously manages, represents and executes the business up to the division of inheritance. Slovenian judicial practise clearly states that the inheritance community is not the suited to run a business. Regular management deals require

the consent of all the heirs, which is usually difficult to reach. Because rapid decision-making and the effectiveness of managerial decisions are crucial in the market, an enterprise in the management of the inheritance community finds it difficult to maintain its position on the market and it is virtually impossible to increase its market share. As this is usually of no benefit to anyone, it should be noted that the inheritance community is merely a transient form of corporate governance and by sharing the inheritance, it is necessary to provide a legal-organisational form in which the business will continue to operate (Višje sodišče v Ljubljani, 2016).

4.2.3.2 Inheritance of business share in an unlimited liability company

Unless agreed otherwise, an unlimited liability company will terminate after the death of the partner. The heirs must immediately notify the other partners of the death and continue the business, until other partners take care of the business in agreement with the heirs. Where there is no agreement on the continuation of the company with the heirs or with the other partners, the law imposes on the heirs of the deceased partner to take care of business as good masters until they are taken over by the other partners. This duty shall apply to heirs when the deceased partner has been authorised to manage the business. The other partners must continue to carry on the business entrusted to them until the liquidation process, following the termination of the company (Kocbek et al, 2014, p. 569-570). Business share of deceased partner in an unlimited liability company is subject of undividable inheritance. When there are more heirs, they do not enter the company as partners, but form inheritance community, who becomes a partner in an unlimited liability company in company in liquidation, inheritance community adopts the rights of the liquidator, as do other partners of the company. ZGD-1 stipulates that in the event of the death of one of the partners, his/her heirs act as liquidators. Where there are more heirs, the heirs must appoint a representative in the liquidation process. The inherited business share gives an heir or inheritance community the right to liquidation share upon the termination of the company (Zupančič & Žnidaršič Skubic, 2009, p. 363).

After the death of the partner, the company can continue to exist only if so specified in contract of partnership. It may be specified that the company will continue with the remaining partners or that the heirs of the deceased partner may enter the company and the company will continue with them as new partners. Article 105 of ZGD-1 states that the contract of partnership may stipulate that the company will continue to exist among the remaining partners if any of the partners terminates the contract or dies. The position of the partner ceases at the moment when the act which would otherwise cause the company to cease occurs (Article 105 ZGD-1). The continuation of the company with the remaining partners creates a conflict between ZGD-1 and ZD. When a deceased entered a contract of partnership, he/she had contractually disposed of the property which he/she would have at the time of his/her death, thereby depriving his heirs of the inheritance of a legal position in the company. The

purpose of ZGD-1 is to preserve the business of prospective private companies, so we consider such a law as *lex specialis* in relation to the ZD, which otherwise prohibits the transfer of the share of the deceased partner to other partners, and is thus permissible (Zupančič & Žnidaršič Skubic, 2009, p. 364). Kocbek (2014, p. 570-571) states that in practise, a company under this provision could continue even, if remaining partners would reach an agreement to proceed as annex to the contract of partnership after the start of liquidation process. He argues that the partner who dies is treated as an excluded partner. The excluded partner acquires the right to receive the cash equivalent of his or her business share that would belong to him if the company were liquidated.

Since the heirs adopt legal status of the deceased, we can conclude that they also have the right to financial compensation for a share in the company, which will continue to do business without them with other partners. In this case, the inheritance has to be paid out in cash, in amount that the deceased partner would have received in the liquidation process, if the company ceased to exit at the time of his death (Zupančič & Žnidaršič Skubic, 2009, p. 366-367).

4.2.3.3 *Inheritance of business share in a limited partnership*

If a general partner dies in a limited partnership, the same rule applies as with an unlimited liability company, the company is terminated. The heirs of the deceased partner must take care of the business and liquidation of the company. The social contract may agree on the continuation of the company with the heirs or with the other partners. If the only general partner in a limited partnership dies, limited partners could agree upon the transformation of the company into an unlimited liability company or a limited liability company (Ivanjko, Kocbek & Prelič, 2009, p. 407).

Following the death of the limited partner, the company does business with or without the limited partner's heirs if they declare that they do not wish to assume the role of limited partners (Ivanjko, Kocbek & Prelič, 2009, p. 407). If nothing is stipulated in the contract of partnership, after the death of the limited partner, his/her heirs, whose legal status is the same as the limited partners, enter the company. New members are liable for the company's obligations as a decedent, up to the amount of their initial contribution (Kocbek et al, 2014, p. 507).

4.2.3.4 *Inheritance of business share in a limited liability company*

The death of a partner in a limited liability company it has no direct consequences for the existence of the company. The decedent's business interest is inherited, and the heir who accepts the inheritance becomes the holder of the business share (Tratnik, 1999, p. 159-160). Judicial practise clearly defined the subject of inheritance after a deceased partner in a limited liability company. The object of inheritance is not the company. A limited liability

company is an independent legal entity and as a rule, the death of the partner does not affect its legal subjectivity. The subject of inheritance under article 481 of the ZGD-1 is the decedent's business share, together with all the corporate rights arising from that share (Vrhovno sodišče Republike Slovenije, 1998). Remaining partners cannot prevent the inheritance of a business share, but they can limit it to some extent. The heir is liable for the company's debts in accordance with the rules of inheritance law, up to the value of the inheritance (Tratnik, 1999, p. 159).

An heir can renounce the inheritance of a business share, but he/she can only renounce the inheritance entirely. An heir cannot only renounce the inheritance of a business share and retain the rest of inheritance (Kocbek et al, 2014, p. 852). If an heir wishes to inherit, but at the same time has no ambition to become a partner, he/she may dispose of his/her business share or withdraw from the company (Tratnik, 1999, p. 161). It is also worth mentioning the legal pre-emptive right of partners to purchase a business share in a limited liability company. The pre-emptive right constitutes an advantage for the partners in the acquisition of the company's business share. ZGD-1 introduces a pre-emptive right as a dispositive right that can be excluded by the partners of the company through a social contract. The issue of inheritance may be relevant if the heir does not choose to continue as a partner, but decides to sell the business share and is obliged to consider the pre-emptive right of the other partners, unless otherwise provided in the social contract.

Article 481 of ZGD-1 dictates that business shares can be inherited. According to our legal system as well as foreign, these provisions cannot be excluded by social contracts. When a business share is inherited by more than one heir, the social contract may stipulate that the heirs are obliged to transfer the business interest to only one of them. In the absence of such an agreement, the heirs become partners. It is also permissible that the heirs are obliged to transfer the business share to a third party, to the remaining partners or to a company. The social contract may also specify personal qualifications as conditions for a person to whom a business share may be transferred. In these cases, the heirs are obliged to comply with the terms of the social contract and are obliged to transfer the business share to the designated or appropriate transferee without undue delay. It is also permissible to determine the withdrawal of an inherited business share and thus elimination of the heirs from the company. The heirs in these cases are clearly entitled to adequate compensation for the business share. In principle the value may be determined in the social contract, but otherwise it has to be based on the market value of the business share (Prelič, 2004).

These situations may occur when the partners are seeking to protect themselves by a social contract against the entry of other persons or if the business share is inherited by a person who does not meet certain conditions specified in the social contract (Tratnik, 1999, p. 160).

If there are more heirs after the deceased partner, the heirs are co-heirs of the business share. The heritage community will inherit the business share after the deceased. Until the inheritance is divided, the heirs manage and dispose of the business share jointly. Heirs cannot dispose of their share in the business share. All the heirs together manage their entire business share (Tratnik, 1999, p. 160).

Two situations may arise, when sharing the inheritance. A business share may remain in the hands of the heritage community, or business share is mutually divided amongst heirs (Zupančič & Žnidaršič Skubic, 2009, p. 386-387). A business share may remain in the hands of heritage community, since article 480 of the ZGD-1 states that a business share in a limited liability company belongs to one or more persons. If it belongs to several persons, in our case, the heirs, they exercise their rights and are responsible for the obligations arising from the business share jointly (Kocbek et al, 2014, p. 847). Heirs may divide a business share by mutual agreement unless differently specified in the social contract. When a business share is divided, several new business shares arise from one share (Zupančič & Žnidaršič Skubic, 2009, p. 387).

A more complicated situation arises when the social contract states that the holder of a business share may only be one person, but it is inherited by several persons. As the social contract must not interfere with the constitutional provision on the right to inheritance, we understand that all heirs who have inherited a business share have become partners of the company. As partners, however, they are bound by the social contract, to restore the state that does not contravene the provisions of the contract. Until such a state is established, the heirs shall exercise the rights and obligations of the business share commonly (Tratnik, 1999, p. 160).

The division of a business share may be prohibited in by the social contract. If so, despite the prohibition stated, the business share cannot permanently belong to the heritage community. We begin to resolve the situation as if we had a thing that could not be physically divided. The heirs may agree among themselves that one of them takes a business share in d.o.o. and pays out the rest of them, or they agree on selling the business share and split the purchase price proportionally (Zupančič & Žnidaršič Skubic, 2009, p. 389).

4.2.3.5 *Inheritance of a single member limited liability company*

Article 523 of the ZGD-1 stipulates that the rules on a limited liability company shall apply to a single member limited liability company, unless otherwise provided by law. Given that the inheritance of a business share after a single member limited liability company is governed by the law, we apply the provisions applicable to a regular limited liability company. The business interest is inherited, and the heirs enter the position of deceased partner. Judicial practise also upheld this view, according to the court's findings, the death of the partner in a single member d.o.o. does not affect the legal subjectivity and his/her business share is

included inheritance. As the deceased's inheritance passes to the heirs at the moment of the decedent's death, with the death of the partner, his/her business share in the company passes to the heirs, who thereby become partners in the company (Višje sodišče v Ljubljani, 2007). Where there are more heirs, who wish to remain partners in a single member d.o.o., such a company no longer qualifies for this legal form and need to be transformed into another form, which will usually be regular limited liability company (Prelič, 1996).

4.3 Contracts of Inheritance law

The legal system offers us the possibility of resolving any disagreements between the heirs that might arise from inheritance during our lifetime (Cigoj, 2015). Contracts of inheritance law are contracts whereby the decedent in any way decides to dispose of the property which he/she will have upon his death (Zupančič & Žnidaršič Skubic, 2009, p. 177). Metelko (2002, p. 1210) divides the concept of contracts of inheritance law into "contracts of inheritance law in the narrow sense" and "contracts of inheritance law in the broad sense". The first group is supposed to represent those contracts that have dominant characteristics of an inheritance nature, while the second group are contracts that are of an obligation nature but have more or less emphasised individual, non-essential features of the inheritance law.

The first group includes the inheritance contract (together with the contract on the expected inheritance or testament and the contract on the contents of the testament), the common testament, the contract on the cancellation of the unintended inheritance and the fiduciary substitution (Metelko, 2002, p. 1210). In the second group there are the contract of delivery, contract of lifelong maintenance, contract of subsistence and the gift in case of death (Articles 533 to 568 OZ). All contracts listed in the first group, except for the contract on cancellation of unintended inheritance, are invalid by the law. This, however, does not apply to contracts of inheritance law in the broad sense, since by their legal nature they are actually obligational relationships and are classified under the broader concept of contracts of inheritance law only in terms of the non-essential characteristics of the inheritance law (Cigoj, 1978, p. 3).

- Contract of delivery: The deliverer may conclude a contract of delivery only with his/her descants, adopted children, adopted children's children and spouse or extra-marital partner (Article546 OZ). The contract of delivery is not a legal transaction in the event of death, but a unilateral obligation contract for the disposal of property among the living (Zupančič & Žnidaršič Skubic, 2009, p. 191-195). Two obligations have to be met in order for contract of delivery to be valid. The contract of delivery has to be concluded in the form of notarial record and all the heirs have to agree with the contract. If any of them has not agreed to the contract at the time of its conclusion, but wishes to give its consent at a later date, it may do so in the same form as the contract was concluded, that is, by giving a consent in the form of a notarial record (Cigoj, 2015). The deliverer may, by this contract, divide the property which he/she holds at a given moment and not the property

which he would have it at his/her death. According to article 549 of OZ, the delivered property is considered as having already been inherited. If the descendants do not agree with the contract of delivery, according to the first paragraph of article 550 of the OZ, the transferred real estate or movable property shall be considered as a gift. The deliverer may claim any benefit or right in return for the property delivered. According to the existing judicial law, the deliverer usually claims the following rights: a lifetime annuity, a lifelong maintenance, a lifetime stay in a property without their own obligations, … These rights can also be reserved by the deliverer for his/her spouse, for him/her self and for his/her spouse or for someone else. The fact that the deliverer reserves certain rights does not mean that it is a contract of subsistence. The contract may also state that the recipient of the property shall not be entitled to dispose of the property until the death of the deliverer. Such a provision prohibits the recipient from disposing or encumbering the property, but such a provision does not impede the compulsory execution of that property. In the event that the real estate is taken over by execution by someone else, the deliverer is still protected by agreed lifelong easement right of the apartment, which is also transferred to the new owner. In the event that the recipient who has received the property is severely ungrateful, or if the recipient commits an unlawful act against the deliverer, the deliverer may terminate the contract. The deliverer may also terminate the contract if the recipient does not give him or her an alimony agreed upon with the contract of delivery or if the recipient fails to pay the deliverer's debts, the settlement of which has been imposed on him by the contract of delivery (Cigoj, 2015).

- Contract of lifelong maintenance: With the adoption of the OZ on October 3, 2001, the contract on lifelong maintenance was transferred from ZD to OZ and is now regulated in its chapter IV of OZ. The purpose of a contract of lifelong maintenance is to provide a lifelong maintenance for a maintained party in exchange for his or her pre-determined property (Ruhitel & Černec, 2015). The binding part of a contract of lifelong maintenance is a commitment by the maintaining party to support the maintained party or someone else, who commits to the maintaining party to leave him/her all or part of the assets, comprising real estate and movable property intended for the use and enjoyment of real estate, but their delivery is delayed until maintained party's death. The maintenance obligation includes the provision of necessities such as food, clothing, housing, health maintenance, but additional obligations may be agreed, such as care of the maintained´s property and care in case of the disease (Ruhitel & Černec, 2015). Since the law does not explicitly specify who are the subjects of the contract of lifelong maintenance or who cannot be a contractual party to a contract of lifelong maintenance, it can be considered that anyone can be a contractual party (Article 557 OZ). The contract can therefore be concluded by all natural persons and on the surviving party's side, legal entities may also appear (Plavšak et al, 2004, p. 542). Given the contractual nature, the maintaining party does not inherit the property decided in the contract, consequently does not inherit the debts after the death of a maintained party. Nevertheless, the law allows the parties to agree upon taking on certain or determinable debts already existing at the time of the conclusion of

the contract (Article 560 OZ). These debts can be taken on by a maintaining part at the time of concluding the contract, or after the death of the maintained party (Plavšak et al, 2004, p. 553). The parties may terminate the contract at any time by mutual agreement. If the contract has already begun to be enforced, the agreement may specify the mutual rights and obligations after the termination. In accordance with article 561 of OZ, on unjust enrichment, the maintained party must return everything received. The court may, at the request of either party, terminate a contract of lifelong maintenance with an agreed life together, if that becomes unbearable (Ruhitel & Černec, 2015). Pursuant to the third paragraph of article 561 of the OZ, each party may request that the contract be terminated if the other party fails to fulfil its obligations.

- Contract of subsistence: The parties to the contract are the subsistee and the recipient. The subsistee shall transfer to the recipient part, or all of his property for immediate possession and use. This is a significant difference compared to a contract of lifelong maintenance, where property rights only pass after the survivor's death. The recipient commits to certain obligations until the death of the subsistee (Turk & Čop, 2017, p. 22). The parties may agree on a lifelong housing right or an easement right on a house. According to Law of Property Code (2002), personal easement is the right of the subsistee to use a foreign thing or to exercise the right that lasts until the subsistee's death. The circle of persons who can conclude the contract of subsistence is open, anyone can conclude it. The subsistee may only be a natural person and the recipient may be a natural or legal person. The contract of subsistence may be concluded for the benefit of several subsistees. It is possible to conclude a contract in favour of a third party, meaning that the recipient must support a person who has not actually surrendered the property. The conclusion of the contract does not require the consent of the descendants, or the spouse (Turk & Čop, 2017, p. 22). The object of the contract of subsistence is a real estate which is transferred immediately after the conclusion of the contract of subsistence by the subsistee to the recipient. The subject of the contract may also be movable property intended for the use and enjoyment of real estate, which the subsistee transferred to the recipient. Article 565 of OZ does not specify the specific obligations of the recipient, it only talks about the provision of benefits and services. In the case of open-ended questions, the contract of subsistence is analogously subject to the rules of a contract of lifelong maintenance. The same rules as in a contract lifelong maintenance apply to liability for debts. The recipient is not liable for the subsistee's debts. The parties may agree otherwise in the contract of subsistence (Plavšak et al, 2004, p. 568). The parties may terminate the contract at any time by mutual agreement. If the contract has already begun to be enforced, the agreement may specify the mutual rights and obligations after the termination. In accordance with article 568 of OZ, on unjust enrichment, each party must return everything they have received. The court may, at the request of either party, terminate a contract of subsistence, if either side fails to fulfil its obligations, or circumstances have changed.

- Gift in event of death: A deed of gift, to be performed after the donor's death, is valid only if it is concluded in the form of a notarial record and if the document on the concluded contract is delivered to the donee. Through a deed of gift one person (the donor) undertakes to transfer title or any other right free of charge to another person (the donee) or in any other manner enrich the donee at the expense of the donor's assets, and the donee declares to consent to such. A donor may terminate a deed of gift in case of gross ingratitude upon its conclusion, the donor behaves in a manner that is, according to basic moral principles, unfair to the recipient to retain the gift received from the donor. The donor may also terminate the deed of gift if, after the conclusion of the contract, he/she is in a position that his livelihood is at risk (Article 545 OZ). In the event that there is insufficient property in the inheritance mass for the necessary heirs to be paid, they may require the cancellation of the gift contracts and the return of the gifts to the inheritance mass, so that the necessary shares may be paid. Necessary heirs may request a return of the gifts given to the rightful heir. A return of the gift given to other persons may only be requested, if it was given in the last year of the donor's life (Šinkovec & Tratar, 2005, p. 161).

4.4 Discussing succession and inheritance procedures

The inheritance of a business share is modestly regulated in Slovenian legislation, but with the help of expert opinions, judicial practise and foreign legal sources, we can find answers to many questions. ZD represents the basis for the rules of corporate law in ZGD-1, which otherwise contains some important provisions regarding the issue of the transfer of a business share. We are talking about a burning issue that requires lawyers to see it from different angles. In recent years, many amendments to the ZGD-1 have touched the issue of inheritance from the entrepreneur. Each amendment has brought new, more practical institutes that facilitate the transfer of business share to the decedent's heirs and ensure that the enterprise can continue to operate relatively smoothly (Prelič, 2015).

Nevertheless, we would like to avoid the inheritance process, when inheritance of a business shares is in question. That is the reason the thesis presented 4 contracts of inheritance law. These contracts enable funders of an enterprise to decide upon their successors in their lifetime. Not only do they avoid uncertainty surrounding transition, but give them self's a unique opportunity to see how the future will look like and be able to change it, if they are not satisfied. In the light of the research, I would like to urge the funders of enterprises to use this option, since it is by far the best option they have, to secure the legacy.

5 RESEARCH METHODOLOGY

This master thesis is based on primary and secondary data sources, namely relevant scientific contributions, as well as articles from foreign and domestic literature. The topics discussed in the theoretical part were addressed by deductive method - from more general and broader

concepts to more concrete examples. I used a descriptive method to explain the theoretical concepts. In the empirical part of the thesis, I was following the guidelines of qualitative research. In depth interviews were conducted with seven of the owners of family businesses. In the first part of the interview, I was looking to establish the procedures undertaken back in 1990. The aim is to understand the combination of factors that they found important when choosing a legal-organisational form of their business entities. The second part of the interview aimed to establish the owners´/founders´ point of view regarding the succession plans, their actual plans and problems they will have to tackle in the future and their techniques used, to smoothen the process of succession. The purpose of the interview was to become familiar with entrepreneurs' personal experiences. In the thesis, qualitative research methods were used. Qualitative methods are characterized by the fact that procedures and methods lead in the direction of clarifying concepts and categories and creating general theoretical frameworks (Hafner Fink, 2012). It is characteristic of them that they are consciously biased in terms of value attitudes. I was consciously trying to avoid this, as I am also directly involved in the environment I am researching. Siedman (2006) draws attention to the importance of choosing the method that is most appropriate for the field we are researching, the purpose of the research, and the questions we have asked ourselves. A combination of different methods and approach is the most effective and reliable way of research (Siedman, 2006). The three most common qualitative methods are participant observation, in-depth interviews, and focus groups (Baxter & Jack, 2008). Each method is specifically suitable for obtaining a certain type of data. Qualitative methods are usually more flexible, allowing for greater spontaneity and adjustment of the interaction between the researcher and the study participant, and the relationship between them is often less formal (Golden-Biddle & Locke, 2007). In-depth semi-structured interviews are a qualitative method in social science research that serves us to study personal attitudes, in-depth interpretations, and experimental situations (Siedman, 2006; Golden-Biddle & Locke, 2007). Characteristics of semi-structured interviews are that the researcher and respondent develop a formal interview, with the researcher having predetermined framework topics and issues to be discussed during the interview, usually in a specific sequence (Cohen & Crabtree, 2006). The interviews can deviate from pre-determined guidelines, as long as they lead to findings that would contribute to a better understanding of the situation. The inclusion of open-ended questions in the interview offers opportunities to identify new perspectives on the topic (Cohen & Crabtree, 2006). Often, semi-structured interviews are followed by participatory observation to allow the researcher a deeper understanding of the topic of interest (Cohen & Crabtree, 2006).

5.1 In depth interviews

The interviews were done with the current managers of family businesses that are in the age group between 50-60 years, the years where people would normally think about retiring. The interviews were in light of current situation done by phone. The interview had 6 questions. The focus of the first two questions was on getting information about the incorporation of the enterprise and to reflect about the decision made. The next four questions were focused

on succession planning and formal transition on both manager function and ownership. The interviews gave us an ability to adapt to each manager and his answers and with the help of sub-questions get some more explanations. The enterprises were chosen based on the industry they are in. The goal here was to cover as many industries as possible and to choose leading enterprises on the Slovenian market.

6 ANALYSIS OF INTERVIEWS AND COMPARISON

6.1 Technical shop, limited liability company

The company is the one of biggest reseller of stonemasonry equipment in Slovenia and have been diversifying into other construction sectors in the recent years. There are 9 employees, who are all somehow personally connected with each other. The company have always tried to employ people that are from local environment.

The company was funded is 1992, just after the Slovenia has fought her way out of Yugoslavia by a husband and wife. The situation is the same as in many other family businesses in Slovenia, the wife takes care of accounting and the husband is in charge of day to day activities. The legal organisational form chosen was a limited liability company. They did not think about it very long, since he described it as a hard time where the only goal was to survive. They did not visit any experts or lawyers, but decided on a basis of simple math. They never imagined they will grow as much as they did and also did not consider it when funding the company. This very well supports the theory, where I mentioned the decision is often made on a basis of short time planning. They both agree, the decision upon the legal-organisational form was the right one, since there is a lot of risk when dealing with multinational trade.

The decision of the successor was not really a decision. They have one daughter and since this is considered as a men business, the successor is the daughter's partner. They did not plan it, they describe it as a spontaneous decision. The successor was previously working at another company, but when they offer him a position in their company, he switched jobs. His title is assistant manager. He has been in the company for the past seven years. There were no special procedures in place. He had to learn the business and get to know the customers. The founder admits he has some ideals about his successor, but also point out the reality is not ideal. However, he sees his successor as very responsible, self-initiative and very capable overall. They all described the communication between them as very successful. They do not always agree, but even so, they let each other defend their opinion. They admit separating work and leisure is not easy, but they try to leave work problems at work. All important decisions are still in the hands of the husband. They have been thinking about hiring outside manager, before the successor was discovered. The reason is that employees

and family have some unresolved issues and arguments are quite often. The outside person would not be emotionally involved in those arguments and would be able to be as objective as possible, meaning also making unpopular decisions for the good of the company.

The successor is not included in the ownership of the company, but they are planning to include him as a fourth partner. With this decision they want to show the trust and confidence they have in him and give him a bit more authority amongst employees. However, the husband is not thinking about giving up control just yet. The company is as a child to him and giving it up is not something he would like to do. His believe is that working every day helps him be sharp and healthy.

6.2 Restaurant, limited liability company

The restaurant has been established back in 1849. The current owner has come in to the company back in 1978 and soon become a manager. In 1996 the company registered as a public limited company and every employee got business shares in a company. One of them saw the potential and started to buy stares and in 2005 became 100% owner of the company, which he is controlling through another company. He transformed a public limited company into a limited liability company and the company still remains in same legal-organisational form. As he explained, with more than 100 employees, limited liability company was his only option. The company is not "classical" family business, where all or some family members are working in the company, but the company already has a chosen successor, who is a family member.

The owner/manager inspires respect with his presence. You can see he is in charge by only walking around the premises. His entrepreneurial skills have already been proven and with his visionary way of thinking is strategic advantage now and in the future. The owner has two sons, about the same age. The decision who will continue the business came by itself. The younger son was working elsewhere in financial consulting, when he decided it is enough and terminated his employment. After two years, he started to work in father's company. The plan is to get to know all the departments and parts of the company. There is no written plan in place, but the father says he does not need one. The will and self-initiative of the successor and the organisational skills he adopted in his previous employment should be enough. Will he have the same visionary skills and connection with the employees is hard to tell, but that is why he treats him the same as all the others. He has to be there on time with his shirt tuck in and shoes polished. In father's opinion, only that way he will get the respect of the employees.

The father does not think about retiring just yet. As he sees it, he is at the halfway and big things are still to happen. He also never thought about selling, with the amount of work he puts in every day 7 days a week, year after year, he thinks of it as giving away his child.

6.3 Event planning, entrepreneur

Company has been established in 1990 for purpose of renting, selling and evaluating properties. It was established as a two partner d.o.o. One of the owners is also a manager, but is not employed by his company. After the death of one of the partners, the second partner continued alone, as a single member d.o.o. In 2016 company started to plan events and rent a wedding venue. The business has grown fast and in 2019 company reached the peak. The new business is still lead by a manager and his son, but they decided to establish a new enterprise for purpose of event planning and tourism. At the end of 2019 they decided to establish complementary activity, which is covered by decree on subsidiary activities on farms. A lot of consideration was put into the decision on which legal-organisation form to choose. From contributions and taxes to risk and complexity of managing it. There were 2 or 3 options, but since both of them are employed elsewhere, this was a perfect match. It enables them to minimise costs for social security and income tax and also to perform a wide spectre of activities connected with tourism.

Since legally, the son is the owner now, the successor already took over. As they both agree, communication is the key to be able to operate as efficient as possible. Since there is a 30 year difference, opinions on how to do things are often different, but they are both ready to listen each other opinions and be able to accept them in order to achieve the goal. The father expects the son to be responsible and to put business first. Every day activities have to perform at the appropriate time. Event planning involves a lot of people and organisation, therefor son is expected to be well organised for things to run smoothly.

6.4 Steel construction, entrepreneur

Current owner has begun doing business back in 1972 in his garage as an afternoon activity. The company has been not been established until 1994. The same year, they employed the first employee. In 1996 the company moved from owner's garage in to the industrial zone, where they still operate. The owner decided upon entrepreneur as a legal-organisational form. The form was the most common among service providers at that time as has some key advantages that influenced the decision. The advantages were mainly quick and easy usage and distribution of money, easy way to incorporate and no initial capital required. They did not consult anyone, since their minds were set to an entrepreneur. The same legal-organisational form is still appropriate, but in 2004 they also established a limited liability company. The plan is to transfer all fixed assets from an entrepreneur to a limited liability company. The legal-organisational form an entrepreneur offers a limited amount of safety, as they realised. With the growth of the firm there are also bigger risks associated with production, sales and management. The current "crisis" has shown how fragile SME in Slovenia are.

The owner has already decided upon his successor. The son has been involved in the company from the beginning, thus there are not expected any troubles when the shift of power

will happen. The owner described his son as flexible, responsive, excellent under pressure, born leader and well organised. The owner stands behind his decision upon the successor and that is why he already passed the managing role to his son as a procurator. His son was also the first employee back in 1994, so his loyalty cannot be questioned. When the time will come to pass on the company completely, both managing, and ownership functions will be passed together as one.

The owner has two children. The daughter has never worked at his company and pursued a different career. To avoid any misunderstandings and conflicts, the owner has already decided upon the division of assets. The daughter agreed her brother should get the company and she received money compensation. The situation was resolved quickly and without any damages to the family or the business.

6.5 Sports clothing, limited liability company

The owner started by herself back in 1989, when she was still a student of textile technology. She started as an entrepreneur, but in 1999 transformed into a limited liability company, the form she still does the business. She still beliefs it is the right one. She admits, she is not yet thinking about passing the company on. The work is her passion and a profession she chose. She has a daughter and a son, both have already finished university. She tried to support them both on choosing their own profession and never pressured them to come and work in her company. They are now both working in the company and are both very thorough and responsible, which makes her very satisfied and happy about the future. They have never had the official successor talk, since she thinks it is to early and she still has at least 10 years until retirement. To prepare for the future, she has already started to pass on some of the experiences and knowledge about the industry to her children. She beliefs the time will show who is more committed and hard working.

6.6 Alternative medicine equipment supplier, limited liability company

The company started as an unlimited liability company back in 1990. It was established by a husband and wife. The initial goal was to sell clothes and an unlimited liability company without any required initial capital was a great way to start. They were both employed elsewhere, and it was just another way to earn a bit extra. They quickly figured out that reselling cloths was not as profitable as they thought, so they by coincidence came across alternative medicine. The company gained representation rights to sell alternative medicine equipment to all Balkan states. In 2005, they decided to change legal-organisational form into a limited liability company, as they felt an unlimited liability company does not offer enough security, since the business was booming, and they were involved in international trade. They also established another company in Belgrade to control non-European market. They feel a limited liability company offers them enough security and is also easy to manage.

Since they are not employed by their company, they plan to work at least 10 more years or even more, if the health allows them to. They have two daughters, who are both highly capable. Their plan is to split the ownership between them, putting the older in charge, since she is already in the medical business. The ownership is already split, and they do not believe leaving the company to both daughters will cause any fractions between them. Nevertheless, they do not believe that whoever will take over, will engage to the extent they are. They are taking care of each and every of their customer, wherever and wherever they want. They are afraid of the reaction of their customers to the change, since they are used of nonstop care.

They have never thought about selling the company. They have been building it up since 1990 and they feel personal connection to it. Also, the representation rights are conditioned with the current ownership. They are allowed to bring in a professional manager, if the situation would so dictate, but cannot sell it and keep the representation rights. Passing the company on to their daughters would be OK and they have already received a green light to do so, if they want.

They feel very positive about the future. With their hard work, all the processes are already established and the methods in place. The future generation would of course, have to invest a lot of working hours, but they would not have to do the hard work of convincing people that the method works. The technology is changing fast and it is hard to follow for both of them, but the next generation can do it without a problem.

6.7 Steel construction, limited liability company

The company was founded in 1994 by husband and wife as equal partners in a limited liability company. The company is one of the leading providers of metal products and services in the field of metallurgical products in Slovenia. They were one of the few who sought help when they decided upon legal-organisational form. They looked in to the future are predicted the growth and that is why the decided to establish a limited liability company. After revenues exceed a certain amount, tax wise, a limited liability company has an important advantage over an entrepreneur. After 26 years they still think it has been a right decision and do not think about changing it.

They are still quite young, in late fifties, but they have already started to involve their oldest son into the company. Giving him the responsibilities and shift him through the entire department. They both believe, he needs to earn the respect of their employees and the best way to do it, is to include him in everyday activities. The process has started about 7 years ago and it is still in progress. Qualities that they are looking for are hardworking, dependence and professionalism.

The goal is to keep the ownership and management function in hand of the oldest son. They communicated their decision to other two children and they already agree to accept a pay

out. They believe it will help to reduce any tensions after they decide to retire and leave completely.

6.8 Key findings of the SPIRIT Slovenia research

Research conducted by SPIRIT Slovenia (2016) confirms that the succession process is the biggest challenge for family businesses. Family ownership and operation in a company is driven by the desire to one day hand over the enterprise to the next generation, which is what two-thirds of entrepreneurs who run small businesses and half of those who run medium-sized businesses want. 34% of respondents plan to transfer the enterprise in the near future, 43% answered that they are already actively involved in planning the transfer, 16% are not yet actively involved in it, as it is more than 10 years until the transfer and only 7% answer that they recently completed the succession process. In the entrepreneurial families, the roles of family members in the enterprise and succession are rarely discussed. Only 24% of families talk about it regularly, 47% have talked about it a few times, and almost 40% only once or never. Unfortunately, entrepreneurs are not aware of the importance of planning. The research showed that 43% of entrepreneurs answered that they were already planning to transfer the company. It is worrying that as many as 38% of them think that it is soon enough, if they start planning the transfer a few months before the transfer. The remaining 19% believe that there is no need to plan a succession and will look for solutions when necessary (SPIRIT Slovenia, 2016; Kociper, T., 2018).

6.9 Key findings of the interviews

The first thing these enterprises have in common is that they began their entrepreneurial path as soon as Slovenia became independent. They were eager to start on their own and mostly lean on basic math. They had some basic knowledge and they mostly decided based on initial investment required and taxes that they would have to pay. They also looked into other's experiences on particular legal-organisational form. None of them, expect one, were consulting any authorities, accountant or lawyers. This may also be a reason why 6 out of 7 changed their legal-organisational form in the following years. They quickly realised that personal responsibility outweighs the ease of managing enterprise and the ability to use enterprise's cash. They are also involved in international trade and employ people, which make risks even greater.

Succession planning is a delicate theme in family businesses. Managers are quite often not completely honest about the situation, since they are avoiding the problem or want to give out a sense of control of the situation. Six out of seven of the above enterprises have already started with the succession planning in some way. All of the managers pointed out the urgency of a good communication between family members. In all of the cases, they did not have to choose between many successors, since they only have one or two children or someone else who would be capable of running the business in the future. The worrying fact is

that none of the funders have yet leave the enterprise completely, meaning they are still actively involved in everyday activities, even if they have legally already stepped down. With their involvement, they are prolonging the transition effect that hits a high percentage of enterprises and is in many cases negative.

While doing the interviews, I noticed that all of the managers were in their successors looking for the qualities they possess themselves. Selling skills, flexibility and hard work are those they look for in their successors. These are quite often the strong points of the funders in their sixties, charismatic men that have built up the enterprise from the scratch. I was not surprised, to find out that all funders except one, are delaying their retirements. They all think of their companies as their children. They fund them, expanded them and they want so see them grow as long as possible. The question of leaving all executive decisions to their successors is very delicate one. According to the interviews they all have successors they believe in, and think they are the right person to do the job. Everybody also confirmed that their decision was communicated to other children or heirs. I fear those are more wishes and they do not want to admit the difficulty of the situation that transition definitely is.

What I noticed is that they are afraid how customers will react to the changes. Often funders have personal relationships with their biggest or most important clients. Since these are all companies with yearly revenue from 50.000 - 7.000.000, meaning they most often do business with bigger companies who have a financial leverage and do not actually need them, but they trust them and value their personal relationship. Many businesses work on trust and change in ownership structure may affect the trust between them and these may even cause bankruptcy. We should not neglect the importance of interpersonal relationships.

6.10 Critical findings assessment and answers to the research questions

Cognitive interview is a special type of in-depth interview that focuses on the respondents thought processes while answering a question (Hlebec & Mohorko, 2013). Miller, Cannell, and Oksenberg, among others, pioneered the study of thought processes. They were among the first to try to show the thought processes with the model and show the flow of human consciousness in it step by step (Mohorko, 2015). An online cognitive interview has certain limitations compared to a personal cognitive interview. A general limitation, regardless of the technique used, is the absence of a cognitive interviewer and, consequently, the inability to encourage thinking and responding (Behr, Braun, Kaczmirek & Bandilla, 2014). Doing phone interviews showed there are some disadvantages compared to cognitive interview. I was not able to control the place they are in, distractions and time limit of the interview.

1. What is the combination of factors that influence decision when choosing legal-organisational form of family business?

The results were not surprising, but they were still a bit disappointing. The key combinations of factors were focused on money and not on future growth and security. Initial capital, corporate income tax and personal income tax. The combination seems a bit as a survival package and not as future oriented enterprise. As someone who was in the situation like this in the past, I have to show sympathy and understanding. However, the main goal of every single enterprise is to be profitable.

2. What are important factors that should influence the decision highlighted by literature?

The most often factor mentioned by literature is security and personal responsibility. Not a single one mentioned this during the part of interview that was discussing incorporation. It is widely forgotten factor that could have major consequences. Since most of my interviewees transformed their legal-organisational form during their lifetime in order to avoid any personal responsibility, the thesis can agree with the literature.

3. What legal (e.g. contracts) and non-legal (e.g. parents' wishes) precautions can entrepreneur use to smoothen the process of succession and therefor avoid negative impact on business?

There are phases each of the entrepreneurs should follow, when bringing a successor in to the business. Based on our interviews they do follow certain steps, each of them in a unique sequence, according to the industry. "The talk" is an important step, many seem to forget. Not talking to all of the involved and explaining their wishes may cause a future disobedience. From legal point of view, entrepreneur should always back their non-legal decisions with official, legal actions. Including descendants in the ownership scheme and taking the official position in the enterprise. This would especially be advised, when enterprise employs non-family members. This way descendants can gain respect and authority they would need to take over successfully.

4. How to avoid long and costly inheritance processes?

Based on literature review, the thesis can conclude that every single business owner should have some kind of document that would distribute his assets, especially his business share. There are different ways of doing that. What is worrying in my opinion is that almost none of interviewees have such a plan in mind. They are all confident their descendants are capable of agreeing on the division of property.

Slovenia's tendency to quarrel is legendary and unquestionably above average on a global scale, which is associated not only with the conflicting and difficult character of the Slovenian nation, but also with stupidity and short-sightedness. By arguing for ten square meters of land, for example, one of the brothers may end up gaining it, but on the other hand, he

will lose family happiness, unity, and probably health. The end result will therefore be negative (Turk J., 2018; Cah, 2018).

6.11 Normative suggestions for law and policy makers

This master thesis first suggestion is based on German legislation. In the past our policy and law makers have often looked up to their German colleagues. In my opinion, this is not a bad thing, as long as we adapt to the size and abilities of Slovenian nation. Germany legislation introduced a specific form of a limited liability company in 2008, called Entrepreneurial company at limited liability. It is a simple version of a limited liability company, where an initial capital has to be at least 1 EUR and incorporation are both easier and cheaper, than of a regular limited liability company. In order to achieve the capital of a limited liability company, Entrepreneurial company at limited liability is legally bound to set a side, 25% of yearly profits. Once the required capital is reached, company can apply for a change in name and legal form.
Based on the findings, our interviewees based their decision upon legal-organisational form primarily on initial capital required. Results show most of them have then change the legal-organisational form in order to avoid any personal risk and because the volume of business has outgrown the current legal-organisational form. This specific legal-organisational form would enable future business owners to incorporate a company that could be operational even when business expands and grows, without investing 7,500 EUR right away.

Succession procedures seem so simple and straightforward, but they are still skipped and neglected. It is in family best interest to prepare a capable successor that would continue to develop the business. The legislation cannot and should not dictate how this should be done, but there are many things about inheritance procedures that should be necessary by law. The law allows business shares to be divided among more than one heir. In this case heritage community is formed, until heirs can figure out, who will inherit the business share. This could mean a long lasting procedure that could affect the business negatively. The law should clearly state that in case of more heirs, the one with the highest official rank in the enterprise is one who inherits the business share. It should also take into consideration the inheritance after entrepreneur, when only one can continue with the business. If the decedent wishes that more than one heir inherit the business share, he/she should clearly state that in the testament.

The law should not only encourage, but also require that every business share owner has to have a written testament, whom they leave their business share to. This should be done parallel with the incorporation and updated at least once every 10 years, to avoid obsolesce of the data. Another solution would be that business shares would be excluded from the testament and would be regulated in partnership agreement. It should be then updated at least every 10 years, as the thesis suggested before.

CONCLUSION

The purpose of the thesis was to create clear and transparent way of choosing legal-organisational form for family owned business entities, by finding and understanding the factors that motivate entrepreneurs in selecting specific legal-organisational form. Furthermore, problems with succession planning and implementing will be described and guidelines to tackle the problem better created.

This master thesis reached the basic purpose, to create a broad overview on what each of the legal-organisational form has to offer, describing its advantages and disadvantages and describe the procedures to incorporate. With every legal-organisational form the thesis explained the taxation behind and their obligations as an owner. The thesis concludes that most of the future entrepreneurs rely only on financial factors and neglect the risk factors. The first two of the thesis's four research questions are seeking to find out what factors influence the future entrepreneurs to choose a specific legal-organisational form and which factors are highlighted by the literature. The thesis suggests that entrepreneurs most often decide upon 4 main factors: initial investment, corporate income tax, personal income taxation and social security contributions. As mentioned before, those factors are all focused on a short term operation and not a long one, creating a need to transform in the future. The literature is mostly concentrated on the security and personal responsibility, which is the direct opposite of the interview findings. Perhaps not surprising, but definitely a bit worrying.

The thesis created a transparent list of important procedures, from deciding to incorporation of enterprise. Since those factors above are the ones who heavily influence on a decision making process, I decided to explain them in depth and with use of real life examples to make them easier to understand. At this point, the thesis suggests a formulation of a new kind of legal-organisational form, following the example of the German legislator.
In the second part of my thesis, I focused on the problem of succession, which is slowly erupting in Slovenia and will even more so in the future and on inheritance that also causes many healthy companies to get in trouble. Slovenia has been an independent country for the past 29 years and most of family owned businesses were funded around that years by middle aged man and women, who are now getting to the point, where they think about retirement.

Experiences from other EU countries show us that transition from one generation to another could be a challenge. The third research question is focused on how to resolve these problems with legal and non-legal procedures. The problem most often is that the goals of the children and parents are not aligned. This could very easily be resolved by an honest conversation between the family members. It is also proposed that every non-formal move is backed with legal actions, providing legitimacy. This would especially be advised, when enterprise employs non-family members. This way descendants can gain respect and authority they would need to take over successfully.

The thesis was looking to explain how to avoid long and costly inheritance procedures. With this is mind, the thesis explained inheritance procedure and created guidelines to help entrepreneurs avoid those timely and possibly costly procedures that may even harm an enterprise. The thesis also purposed steps, on how to avoid inheritance procedures and divide assets for a time of life. Thesis suggests every business share owner has to have a document on who will receive his/her business share in event of his/her death. This could be achieved in two ways, either the business share owner includes the name of his/her successor in the social contract and updates it at least every 10 years, or the testament is created in parallel with the incorporation of the enterprise.

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APPENDICES

Appendix 1: POVZETEK (summary in Slovene language)

Glede na podatke SURS-a, je bilo v letu 2018 kar 83% vseh podjetij v Sloveniji v družinski lasti. Ta podjetja so odgovorna za 40% slovenskega bruto domačega proizvoda in zaposlujejo kar 70% delovno aktivnega slovenskega prebivalstva. Namen naloge je olajšati izbiro pravnooragnizacijske oblike bodočim podjetnikom, z enostavno in transparentno predstavitvijo možnosti, prednostmi, slabostmi in postopkom ustanovitve. Prav tako želimo predstaviti problem nasledstva v podjetih in rešitve za dolgotrajne dedne postopke.

Ker je izbira pravnoorganizacijske oblike prva in ena najpomembnejših odločitev, so v magistrski nalogi predstavljene tiste, ki jih družinska podjetja najpogosteje uporabljajo. S pomočjo poglobljenih intrvjujev, že opravljenih raziskav in napisane teorije smo analizirali faktorje, ki so jih podjetnik upoštevali pri izbiri pravnoorganizacijske oblike. Mnogo podjetnikov ob ustanovitvi ni gledalo v prihodnost in se je odločalo na podlagi kratkoročnih dejavnikov. To je privedlo do mnogo sprememb pravnoorganizacijskih oblih, zato smo predstavili tudi možne spremembe obstoječih pravnoorganizacijskih oblik in na kakšen način se le te lahko preoblikujejo.

Ker smo hkrati vstopili tudi v leta, ko bo veliko slovenskih družinskih podjetij prehajalo v naslednjo generacijo, smo predstavili tudi problematiko prehajanja podjetja v naslednjo generacijo. Podatki iz tujine kažejo na to, da prenos v 3 generacijo preživi zgolj 10% družinskih podjetij. Prenos podjetja pa ne pomeni samo prenos direktorske funkcije, ampak tudi prenos lastniške funkcije. Vsak družinski član je upravičen do dela v podjetju, kljub temu da v njem nikoli ni delal ali kakor koli pripomogel. Mnoga podjetja, kot posledica dedovanja tudi propadejo, saj se novi lastniki niso zmožni dogovoriti glede upravljanja ali prenosa na eno samo osebo. Z namenom, da se podjetniki izognejo dragim, predvsem pa dolgotrajnim dednim postopkom, smo tekom magistrskega dela predlagali rešitve za predhodno reševanje tega problema.

Appendix 2: Interview questionnaire

Na kratko opišite kako je potekala ustanovitev podjetja. Kateri faktorji so vplivali na izbor pravno-organizacijske oblike (d.o.o., s.p., d.d., …)? Ste se pred odločitvijo o pravno-organizacijski obliki posvetovali s svetovalcem, računovodjem, pravnikom?

Menite, da je pravno-organizacijska oblika v kateri delujete še vedno primerna? Bi se sedaj odločili za kakšno drugo pravno-organizacijsko obliko?

Faza izbire naslednika naj bi po mnenju strokovnjakov potekala vsaj 5-10 let. Že razmišljate o vašem nasledniku? Ste ga že našli?

Kakšne kvalitete iščete/ste iskali v vašem nasledniku? Kako je potekalo/poteka usposabljanje? Je izbrani naslednik po uradnem nastopu na funkciji zadovoljil vaša pričakovanja? Bi se sedaj odločili drugače?

Uradni prevzem funkcije direktorja še ne pomeni tudi prenos lastništva. Imate namen skupaj s funkcijo prenesti tudi lastništvo in s tem zagotoviti popoln nadzor vašemu nasledniku?

Kako nameravate v primeru več dedičev zagotoviti ″miren prevzem″ oblasti in nemoteno delovanja podjetja v prihodnosti?