



Succession Planning For Sole Director-Shareholders

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Introduction

This article considers the issues that can arise when a sole director-shareholder of a private limited company dies, and the steps such an individual can take in terms of succession planning for his/her business.

The Issue

When a sole director-shareholder dies, title to his/her shares vests in his/her personal representatives ("**PRs**") by operation of law via a process known as transmission. However, PRs will not in fact become shareholders of the company until they are registered in the company's register of members. For both private limited companies registered under the Companies Act 2006 with model articles ("**Model Articles**"), and private limited companies registered under the Companies Act 1985, with Table A articles ("**Table A**"), such registration may only occur once the PRs have produced evidence of their entitlement to the deceased's shares to the Company.

Satisfactory evidence of entitlement consists of any document evidencing grant of probate or letters of administration. PRs must therefore wait until grant of probate (which may take a number of months) before they can be registered as the new shareholders in the company. During the interim period, under both the Model Articles and Table A, the PRs are unable to attend general meetings or exercise the voting rights attached to the deceased's shares (although the PRs do have all other rights which attach to the deceased's shares).

Even once the PRs have evidence of entitlement, further difficulties can arise where the deceased shareholder was also the sole director as there is no director (or any other individual) with authority to register the PRs as the new shareholders.

Consequently, in the absence of any succession planning, problems can arise on the death of a sole director-shareholder with no one capable of taking decisions on behalf of the company: wages may be left unpaid, contracts unfulfilled, opportunities missed and the company's reputation may suffer.

The Model Articles overcome this by permitting the PRs to appoint a new director who can register them as members. However, Table A does not grant PRs this automatic right, and also requires that the evidence of entitlement to the deceased's shares (allowing PRs to be registered) is produced to the directors - which is obviously difficult to achieve where there are no living directors. A company with Table A articles can find itself facing a power vacuum on the death of its sole director-shareholder, with no director to accept the PRs' entitlement to the deceased's shares and register the PRs as the new

shareholders and with no living shareholder to appoint a new director to do the same.

Case Law

In exceptional circumstances, the courts may be willing to order rectification of the company's register of members under section 125 CA 2006 allowing registration of the PRs as shareholders prior to the grant of probate.

In *Kings Court Trust Limited & Ors v Lancashire Cleaning Services Limited [2017] EWHC 1096 (Ch)*, the company's bank account had been frozen leaving the executors of the deceased sole director-shareholder unable to draw funds to pay wages to its employees and outstanding VAT to HMRC. In the circumstances, it was held that the risk to the company's reputation meant that it was inappropriate to wait until after the grant of probate had been obtained to enter the executors in the register of members. The court ordered the executors to amend the company's register by removing the name of the deceased and entering themselves as the holders of the deceased's shares, so enabling the executors to appoint a new director to take up the reins of the company. However, it was made clear that this judgement would not set a precedent and that the court would only exercise its discretion in this way in "exceptional cases".

Succession Planning

A sole director-shareholder may wish to consider taking the following steps:

- 1 Make a will appointing two or more trusted individuals as his/her executors, and a (non-binding) letter of wishes addressed to those executors, setting out his/her wishes about how the company is run after his/her death and any individuals he/she would like the executors to appoint as director(s).
- 2 Add a provision to the company's articles of association confirming the executors' entitlement to his/her shares on death by way of transmission.
- 3 Amend the company's articles of association to permit the executors to exercise the rights attaching to those shares (including attending general meetings and exercising the voting rights) while they remain registered in the deceased's name.
- 4 Amend the company's articles of association to permit the executors to appoint a new director who can update the register of members once grant of probate has been obtained and take control of running the company.

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