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Legal impacts on forced heirs of estate planning through family holding companies

Os impactos jurídicos aos herdeiros necessários no planejamento sucessório por meio de holdings familiares

Impactos jurídicos sobre los herederos forzosos de la planificación sucesoria mediante sociedades holding familiares

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Abstract:
This study analyzes the legal impacts of family holding companies in estate planning from the perspective of forced heir protection. It examines traditional succession instruments, the structure and legal nature of holdings, asset contributions, and gifts of equity interests with reservation of usufruct. Analysis of Brazilian legislation, scholarship, and case law identifies risks involving undervaluation, disguised gifts, simulation, fraud, and restrictive clauses affecting the reserved share. It also discusses private autonomy limits under mandatory succession rules and the control mechanisms available to heirs: collation, reduction of excessive gifts, declarations of nullity or voidability, and piercing the corporate veil. It concludes that family holdings are legitimate instruments for asset organization and business continuity but do not displace mandatory reserved share protection. Their validity depends on proportionate transfers, good faith, and respect for successors' mandatory rights. Multidisciplinary legal advice is recommended to prevent conflict and ensure sound planning.

Keywords:
Estate planning. Family holding company. Forced heirs. Reserved share. Private autonomy.

Resumo:
Este trabalho analisa os impactos jurídicos da utilização de holdings familiares no planejamento sucessório sob a perspectiva da proteção dos herdeiros necessários. Examina os instrumentos tradicionais de organização da sucessão, a estrutura e a natureza jurídica das holdings, a integralização de bens e a doação de quotas com reserva de usufruto. A análise da legislação, da doutrina e da jurisprudência brasileira identifica riscos relacionados à subavaliação de participações, às doações disfarçadas, à simulação, à fraude e à imposição de cláusulas restritivas sobre a legítima. Discute, ainda, os limites da autonomia privada diante da ordem pública sucessória e os mecanismos de controle disponíveis aos herdeiros: colação, redução de liberalidades inoficiosas, declaração de nulidade ou anulabilidade e desconsideração da personalidade jurídica. Conclui que a holding familiar constitui instrumento legítimo de organização patrimonial e continuidade empresarial, mas não afasta as normas imperativas de proteção da legítima. Sua validade depende da proporcionalidade das transferências, da boa-fé e do respeito aos direitos indisponíveis dos sucessores, recomendando-se assessoria jurídica multidisciplinar para prevenir conflitos e assegurar a integridade do planejamento.

Palavras-chave:
Planejamento sucessório. Holding familiar. Herdeiros necessários. Legítima. Autonomia privada.

Resumen:
Este trabajo analiza los impactos jurídicos de las holdings familiares en la planificación sucesoria desde la protección de los herederos forzosos. Examina instrumentos tradicionales de organización sucesoria, estructura y naturaleza jurídica de las holdings, aportación de bienes y donación de participaciones con reserva de usufructo. El análisis de legislación, doctrina y jurisprudencia brasileñas identifica riesgos de subvaloración, donaciones encubiertas, simulación, fraude y cláusulas restrictivas sobre la legítima. También discute los límites de la autonomía privada ante el orden público sucesorio y los mecanismos disponibles: colación, reducción de liberalidades inoficiosas, nulidad o anulabilidad y levantamiento del velo societario. Concluye que la holding familiar es un instrumento legítimo de organización patrimonial y continuidad empresarial, pero no excluye las normas imperativas de protección de la legítima. Su validez depende de proporcionalidad, buena fe y respeto de los derechos indisponibles, recomendándose asesoramiento jurídico multidisciplinario para prevenir conflictos y asegurar la integridad de la planificación.

Palabras clave:
Planificación sucesoria. Holding familiar. Herederos forzosos. Legítima. Autonomía privada.

Introduction

Estate planning, traditionally structured through wills and gifts with reservation of usufruct, has undergone significant transformation in recent decades because of the growing use of family holding companies as an asset organization instrument. By concentrating ownership of a family's assets in a legal entity, this arrangement enables the effects of succession to be anticipated, estate management to be unified, and the costs and delays traditionally associated with judicial probate to be reduced. However, the same corporate engineering, when used inadvertently or deliberately abusively, can compromise mandatory rights guaranteed to forced heirs, particularly the reserved share, the portion of the estate that the law protects from the owner's free disposal in the interest of family protection.

This study therefore addresses the following problem: to what extent can establishing family holding companies for estate planning have legal impacts on forced heirs, and what limits and control mechanisms does Brazilian law provide to prevent violations of the reserved share? The topic's relevance stems both from the significant growth of family holdings in Brazilian asset management practice and from the lack of systematic doctrinal treatment of the legal risks this structure may pose to compulsory successors.

The general research objective is to analyze the legal impacts of family holding companies in estate planning from the perspective of protecting forced heirs. Specifically, it

seeks to: (i) examine traditional and contemporary estate planning instruments in Brazilian law; (ii) understand the structure, legal nature, and operation of family holdings; (iii) identify the main legal impacts that gifts of equity interests may have on the reserved share; and (iv) systematize applicable legal limits and judicial control mechanisms, including collation, reduction of gratuitous dispositions, nullity and voidability of legal transactions, and piercing the corporate veil.

1 Estate planning in Brazilian law

Estate planning may be understood as the set of legal mechanisms used by an asset owner to organize, during life, the future transfer of assets, rights, and obligations to successors. It anticipates the property effects of succession, increasing predictability concerning the destination of the estate and enabling strategies to preserve family wealth, reduce conflicts between successors, and maintain any economic activities undertaken by the family group.

In Brazilian law, estate planning is grounded in private autonomy and property rights, although it must comply with the limits imposed by the mandatory rules governing succession. In this perspective, hereditary succession is no longer analyzed solely as a transfer of property upon death but as a process capable of advance organization through legally permitted instruments compatible with the protective framework established by the Civil Code. As Tartuce (2026, p.1) explains, succession is a legal phenomenon intended to transfer property-related legal relationships upon death, closely connected with family and asset protection.

According to Lôbo (2026, p.46), hereditary succession should be understood as both a property transfer mechanism and an instrument of family protection and realization of constitutionally guaranteed rights. Estate planning is an important asset organization tool, allowing owners to structure the destination of their assets in advance, consistently with legal limits and forced heir protection.

Estate planning goes beyond advance asset distribution: its principal aim is legal stability in family and property relationships, reducing the uncertainty normally accompanying the opening of succession. As Tartuce (2026, p.34) emphasizes, lawful succession instruments increase legal certainty, minimize future litigation, and promote more efficient asset administration.

The subject becomes even more relevant in view of the complexity of contemporary asset structures. Increasingly diverse family arrangements, expanding family businesses, and growing attention to asset protection have driven the search for instruments reconciling

economic and family interests. Estate planning therefore plays a strategic role by enabling owners to establish asset administration and transfer guidelines, reducing the impacts of succession causa mortis.

Alongside conflict prevention, preserving family wealth is another fundamental objective. Lack of planning often leads to excessive asset fragmentation through inheritance division, potentially compromising returns and, in certain cases, preventing continued family business operation. Tartuce (2026, p.34) observes that disorganized succession can generate economic and legal instability, making preventive mechanisms important for estate preservation.

Estate planning is particularly important in business-owning families. Poorly structured succession can cause disputes over family asset management, difficulties maintaining economic activities, and even dissipation of assets accumulated over generations. Advance organization therefore protects both successors and the economic interests associated with the family unit.

Nevertheless, owners' freedom to structure succession is not absolute. The Brazilian succession system adopts a family protection model restricting private autonomy, particularly in favor of forced heirs. Lôbo (2026, p.45) maintains that freedom of asset disposition is limited by reserved share protection and the succession rights guaranteed to forced heirs, important mechanisms balancing private autonomy and family solidarity.

Reserved share protection is therefore central to balancing freedom of disposition and family interests. Although individuals may organize asset destination through different legal instruments, that power is limited by the portion reserved for forced heirs under Civil Code Articles 1,845 and 1,846. Estate planning must therefore reconcile the owner's wishes with the statutory succession guarantees.

Estate planning thus represents an important preventive asset organization mechanism, intended to increase legal certainty in inheritance transfers, preserve the economic unity of family assets, and reduce potential successor conflicts. Its legitimacy, however, depends on compliance with succession law principles and rules, especially forced heir protection and preservation of the reserved share. As Lôbo (2026) and Tartuce (2026) emphasize, private autonomy in succession must always accord with family protection values and Brazilian legal limits.

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1.1 Traditional estate planning instruments

Brazilian law provides several mechanisms for advance succession organization. Traditional instruments include wills, lifetime gifts with reservation of usufruct, and restrictive clauses.

1.1.2 Wills

A will is a unilateral, strictly personal, and revocable legal transaction by which an individual expresses wishes concerning the destination of the estate after death.

Civil Code Article 1,857 provides that any legally capable person may dispose of all or part of their assets by will, provided forced heirs' rights are respected.

According to Tartuce, this is one of the most classical succession tools, allowing testators to organize asset distribution and establish both property and nonproperty provisions.

Its application is nevertheless limited by the reserved share, the unavailable portion set aside for compulsory successors. Thus, where descendants, ascendants, or a surviving spouse exist, the settlor enjoys full freedom of disposition only over the disposable half of their assets.

1.1.3 Lifetime gifts with reservation of usufruct

Another widely used estate planning alternative is an inter vivos gift accompanied by reservation of usufruct for the donor.

This transfers bare ownership to the beneficiaries while the donor retains the rights to use, administer, and enjoy the property's economic benefits throughout life. It anticipates inheritance effects without immediately depriving the settlor of direct enjoyment of their assets.

Tartuce (2026) highlights the relevance of gifts with retained usufruct for asset organization because they advance transfers to successors without removing donors' economic enjoyment. This attracts families seeking to combine protection, financial security, and succession predictability.

Beyond advancing succession, gifts to descendants have significant succession law consequences. Gratuitous transfers to forced heirs are presumed advances on the reserved share and subject to collation under Civil Code Articles 2,002 et seq., unless an express legally permitted exemption applies. Lôbo (2026) explains that collation ensures substantive equality among successors, preventing lifetime advantages from unbalancing future partition.

Owners' freedom of disposition also has explicit statutory boundaries. Because forced heirs are protected, gratuitous dispositions cannot exceed the disposable portion, otherwise constituting excessive gifts under Civil Code Article 549. Gonçalves (2026) emphasizes that prohibiting such gifts safeguards the reserved share and prevents donor generosity from compromising protected succession rights.

Similarly, Lôbo (2026) considers the reserved share one of the principal restrictions on private autonomy in succession, serving family protection. Although gifts with retained usufruct are established contemporary tools, their validity and effectiveness remain conditional on strict compliance with legal parameters.

This instrument is particularly convenient for complex estates because it allows owners to coordinate succession, mitigate family litigation, and increase transfer predictability. Successful planning nevertheless depends on respecting legal limitations, particularly the reserved share, collation, and forced heir protection, which balance asset autonomy and family solidarity.

2 Family holding companies as an estate planning instrument

2.1 Concept and structure of family holding companies

Increasingly complex economic and family relationships, together with the pursuit of legal certainty in intergenerational transfers, have encouraged techniques for advance inheritance organization. Family holdings have become central to succession architecture, particularly for large estates or family businesses, by centralizing management and permitting gradual succession without usually depriving the founder of business control.

Historically, holding companies emerged in the late nineteenth-century United States to concentrate control over operating companies through equity acquisitions. They later expanded globally beyond strictly corporate purposes. In Brazil, although originally conceived for business, they became widely used in family asset structuring because of unified management, business continuity, and prevention of heir disputes (Mamede; Mamede, 2015).

Derived from the English verb “to hold”—to retain, keep, or control—the term designates a company intended to control assets and equity interests in corporate law. When adapted to a single family's interests, however, its function becomes primarily asset-related and preventive in succession (Mamede; Mamede, 2015).

A family holding company is not an autonomous corporate form in Brazilian law. Mamede and Mamede (2015) explain that it is an asset organization technique implemented through a duly established legal entity to concentrate asset ownership and regulate governance. It is therefore a functional designation rather than a new statutory company type.

The structure commonly takes the form of a limited liability company under Civil Code Articles 1,052–1,087, given flexibility in drafting articles of association and the broad autonomy afforded members to regulate administration, equity transfers, and admission of outsiders. As Coelho (2024) observes, limiting members' liability to total paid-in capital makes this the preferred Brazilian model, combining operational simplicity and contractual freedom.

Its distinctive feature is transfer of asset ownership to the legal entity. Individuals' direct ownership of real or movable property is replaced by ownership of equity interests representing company capital. This rationalizes management: unifying decisions, mitigating fragmentation, simplifying income administration, and establishing prior contractual rules for heirs' admission, continued participation, or departure, stabilizing family relationships (Mamede; Mamede, 2015).

From a succession perspective, transfers upon death primarily concern equity interests rather than each individual asset. Consequently, probate or partition proceeds more smoothly, avoiding impasses and asset depreciation commonly found in traditional judicial probate.

Operational efficiency does not displace mandatory succession rules. Lôbo (2026) explains that private autonomy encounters an insurmountable limit in family and forced heir protection, requiring strict observance of the reserved share. Tartuce (2026) likewise regards corporate estate planning as legitimate asset autonomy when consistent with fundamental succession principles: a preventive organizational mechanism, never a shortcut to circumvent statutory inheritance rights.

2.2 Legal nature and corporate classification

Beyond its conceptual definition, the family holding's legal nature must be delimited: it is an essentially instrumental, multilateral corporate legal transaction. It is neither a new nor an autonomous corporate type, but a legal structure designed to concentrate assets and govern the family enterprise (Mamede; Mamede, 2015).

Its statutory basis lies in Article 2, paragraph 3, of Law No. 6,404/1976 (Corporations Act), which expressly permits legal entities whose corporate purpose is participation in other

companies. From this functional perspective, corporate and asset law scholarship identifies two fundamental modalities:

1. Pure holding company: its exclusive purpose is holding and managing interests in other companies; its assets are limited to equity interests in the family business group;

2. Mixed holding company: besides holding equity interests, it directly undertakes operating and real estate activities, including administration, rental, purchase, and sale of the family's own properties.

As regards corporate form, Brazilian law allows founders to choose a limited liability company (Ltda.), regulated by Civil Code Articles 1,052–1,087, or a corporation (S/A), governed by Law No. 6,404/1976.

Although corporations provide greater technical corporate rigor and sophistication in securities issuance, estate planning practice prioritizes limited liability companies because of their predominantly intuitu personae character (personal associative bond). This allows protective contractual clauses—strict preemption rights, exemption from attachment, inalienability, and restrictions on admission of outsiders—to provide stronger asset containment (Mamede; Mamede, 2015).

Moreover, enabling gifts of bare ownership of equity interests to heirs while reserving usufruct and voting rights to parents does not change the essence of the rules applicable to the estate. Lôbo (2026) and Tartuce (2026) stress that tailored articles and any choice of supplementary corporate law governance under Civil Code Article 1,053, sole paragraph, must follow good faith and strict respect for mandatory succession rules, preventing corporate form from frustrating third-party rights or defrauding forced heirs' reserved shares.

2.3 Establishment and operation of the family holding company

Establishing and operating a family holding requires a practical process in which corporate architecture is tailored to the particular family's characteristics and needs (Mamede; Mamede, 2015). Far from a ready-made formula, it requires a detailed assessment of assets and relationships before drafting constitutive instruments and registering with the Commercial Registry, the stage that formalizes corporate legal personality under Civil Code Article 45.

The structure becomes effective through capital contributions, when founders' personal assets are transferred to the newly created entity. This is crucial: real estate transfer, for example, is completed only through appropriate recording of title at the competent Real Estate Registry, as required by Civil Code Article 1,245 and Article 64 of Law No. 8,934/1994.

Once capital is subscribed and paid in, planning generally proceeds through gifts of bare ownership of equity interests to heirs, with lifetime usufruct reserved to parents or family patriarchs. In our experience structuring these arrangements, donor security and family harmony rest on strategic clauses incorporated into the articles:

• Reservation of usufruct and voting rights: ensures that parents continue receiving all company income and dividends while retaining political management and decision-making powers at meetings.

• Inalienability, exemption from attachment, and exclusion from marital community property: provide preventive protection, preventing heirs from selling interests without consent, shielding corporate assets from children's personal debts, and ensuring that interests do not become shared with spouses or partners regardless of the matrimonial or partnership property regime.

• Accrual rights: provide that, when one parent/usufructuary dies, their usufruct share passes automatically to the surviving spouse or partner, retaining concentrated control within the original family unit.

Beyond the articles, I consider a members' or shareholders' agreement indispensable. This ancillary corporate instrument is grounded in Article 118 of Law No. 6,404/1976 and applies fully to limited liability companies under supplementary governance. It regulates sensitive and subjective family matters: admission of relatives by marriage to management, equity valuation procedures upon a member's withdrawal, mechanisms for overcoming decision-making deadlocks, and dividend distribution policy.

Sophisticated corporate tools nevertheless do not immunize the arrangement against mandatory succession law. In assessing gifts advancing the reserved share, Lôbo (2026) and Gonçalves (2026) remind us that private autonomy encounters the insurmountable unavailable portion under Civil Code Article 549, otherwise risking nullity as an excessive gift. Tartuce (2026) similarly warns that holdings cannot veil simulation or harm excluded heirs and creditors.

Thus, establishing a family holding is far more than avoiding bureaucracy: it is a complex exercise in legal harmonization, in which corporate technique and respect for the reserved share must proceed together to ensure asset continuity and peaceful succession.

2.4 Asset contributions and estate organization

Operational effectiveness rests on transferring assets from founders personally to the newly created entity. Through asset contributions to capital, direct ownership of properties, vehicles, financial investments, or interests in other companies is converted into equity interests representing company capital.

In the practice examined in this research, real estate transfer is usually the most delicate stage. Formally, Brazilian law streamlines the transaction: under Article 64 of Law No. 8,934/1994, certification of constitutive instruments registered with the Commercial Registry itself qualifies for ownership transfer at the Real Estate Registry, dispensing with a public deed, as stipulated by Civil Code Article 1,245.

The central tax issue is immunity from the Real Estate Transfer Tax (ITBI), guaranteed by Federal Constitution Article 156, paragraph 2, I, which conditions nonincidence on the company's predominant activity not being real estate purchase, sale, rental, or leasing. The benefit's scope nevertheless generated intense judicial debate, culminating in the Federal Supreme Court's establishment of General Repercussion Topic 1,348.

The Supreme Court controversy concerns cases where contributed property value exceeds the nominal value of subscribed equity interests. The Court consolidated the view that constitutional ITBI immunity covers only property value strictly used to pay in capital. If part of the property's value exceeds subscribed capital and is allocated to a capital reserve, municipal tax applies normally.

This Supreme Court guidance requires particular caution in asset classification and valuation. Choosing a pure or mixed holding and correctly determining contribution value are no longer merely formal options but strategic decisions, otherwise tax assessments may compromise financial viability.

For succession law, replacing tangible assets with equity interests profoundly rationalizes management. Instead of fragmented traditional co-ownership among heirs, prone to disagreements over administration or sale, assets become governed by strict corporate governance rules and the articles of association.

As Lôbo (2026) and Tartuce (2026) warn, contribution valuations must strictly accord with good faith and income tax rules under Article 23 of Law No. 9,249/1995. Unjustified undervaluation or overvaluation intended to disguise disproportionate advances on reserved shares may establish simulation or fraud, undermining the very legal certainty sought.

Asset contributions are therefore the transfer transaction enabling family estate organization and protection, whose validity and efficiency depend on balancing Supreme Court tax boundaries with absolute respect for succession law guarantees.

3 Legal impacts on forced heirs

The decisive change in estate planning through family holdings concerns what is transmitted to heirs. Rather than direct ownership of individually identified movable or immovable assets, heirs receive portions of a legal entity's capital represented by equity interests.

In practice, this transfer principally involves lifetime gifts of bare ownership with usufruct reserved to parents. Its legal basis lies in Civil Code Article 1,057, governing equity transfers in limited liability companies, together with Articles 1,390–1,411 on usufruct.

The arrangement divides ownership of the equity interests:

1. Bare ownership: transferred immediately to heirs, who formally join the company as bare-owner members;

2. Lifetime usufruct: retained by donors, ensuring parents receive all company income, including dividends and profit distributions, and retain political voting and management rights.

This becomes particularly relevant upon succession opening. On the founder's death, only the usufruct is extinguished under Civil Code Article 1,410, I. Full ownership consolidates in heirs' hands without subjecting the estate to lengthy judicial probate for individual partition of each asset.

Equity transfers must strictly comply with state tax law. Gifts of bare ownership trigger the Inheritance and Gift Transfer Tax (ITCMD, gift modality), charged on the value transferred. Upon the founder's later death, usufruct extinction merely consolidates full ownership without a new succession transfer; formal recording of death at the Commercial Registry and cancellation of usufruct with the state tax authority suffice.

3.1 Advances on inheritance and disguised gifts

Once it is accepted that gifts from ascendants to descendants advance the reserved share, analysis within family holdings requires examining practical corporate criteria used to conceal disproportionate lifetime division. The critical defect lies not in the overt gift but in pricing maneuvers and undervaluation disguising genuine gratuitous transfers as corporate reorganization.

The main concealment strategy lies in the contrast between nominal equity values in the articles and the actual net asset value contributed. Issuing or transferring interests at historical or nominal values to favor a particular heir indirectly and disproportionately transfers wealth. Doctrine and case law agree that gift valuation for collation and identifying reserved share excess must consider actual company value through a special determination balance sheet rather than subscribed capital.

Another disguised gift arises through capital increases with unjustified waiver of preemption rights. A parent contributes high-value assets and deliberately refrains from subscribing new interests, allowing one descendant alone to acquire them for a negligible price, diluting other heirs' interests and masking direct transfers without the express consent required under Civil Code Article 496.

3.2 Potential violation of the reserved share: simulation, fraud, and abusive estate planning

Private autonomy and corporate organizational freedom encounter mandatory limits in succession law. Reserved share violations occur when corporate instruments are diverted from their proper purpose to suppress, conceal, or reduce the unavailable portion protected for forced heirs, violating Civil Code Articles 1,789 and 1,846 (Brasil, 2002).

In corporate practice, attacks on the reserved share take distinct legal forms. Simulation under Civil Code Article 167 occurs where parties declare an apparent intention different from their real one, such as fictitious equity sales to third parties for later transfer to a favored heir, or undervalued equity issuance to conceal excessive gifts (Tartuce, 2024). This entails absolute nullity, incapable of confirmation or cure through passage of time under Articles 167 and 169 of Law No. 10,406/2002 (Brasil, 2002).

> Internal appeal in an appeal concerning a special appeal. Declaratory action. Nullity of corporate act. Omission. Limitation period. No occurrence. Simulation. Signature forgery. Handwriting expert report. Reexamination of evidence. Inadmissibility. Defective appeal. Internal appeal dismissed. 1. The lower court recognized nullity because the claimant's signature had been forged, as duly proved by handwriting expertise. Changing that appellate finding would require reexamining the factual and evidentiary record, which is inadmissible in a special appeal under this Court's Precedent 7. 2. According to this Superior Court, simulation causes absolute nullity and is therefore subject to neither prescription nor forfeiture under Civil Code Articles 167 and 169. 3. Internal appeal dismissed. (STJ – AgInt in AREsp: XXXXX SP XXXXX/XXXXX-4, Reporting Justice RAUL ARAÚJO, judgment: 11/12/2023, T4 – Fourth Panel, publication: DJe 15/12/2023)

Unlike simulation, evasion of law under Civil Code Article 166, VI occurs where formal amendment steps meet corporate requirements but the practical result circumvents a mandatory rule, such as collation under Article 2,002 or the ban on succession agreements under Article 426 (Brasil, 2002). Abuse of rights under Article 187 occurs when founders exercise controlling-member or administrator powers—through unjustified profit retention or creation of nonvoting interests for selected heirs—manifestly exceeding economic and social purposes, good faith, or good morals (Mamede; Mamede, 2027).

> Interlocutory appeal. Urgent relief. Asset freezing. Grant maintained. Relevant allegation by respondents indicating fraud in the deceased's gift of company interests to only one child. Relief without risk of irreversibility. Appeal dismissed. Interlocutory appeal. Interim urgent relief granted. Certain appellant properties frozen. Respondents allege fraud in the deceased's gift of company interests to only one child. Relief without risk of irreversibility. Decision maintained. Appeal dismissed. (TJ-SP – Interlocutory Appeal: XXXXX20238260000 São Paulo, Reporting Judge J.B. Paula Lima, judgment: 09/10/2023, First Reserved Business Law Chamber, publication: 09/10/2023)

Identifying these defects requires examining the transaction's cause and the economic substance of corporate operations. Gifts or gratuitous equity transfers are void by operation of law insofar as they exceed what the donor could dispose of by will at the time, under Civil Code Article 549 (Brasil, 2002). Where the sole purpose is to exclude or reduce a forced heir's portion, asset autonomy gives way to succession protection, including veil piercing under Article 50 of Law No. 10,406/2002 in cases of misuse of purpose or asset commingling intended to harm excluded heirs.

Sound planning through family holdings therefore requires strict alignment of governance with reserved share preservation. Functional diversion subjects transactions to absolute nullity and actions reducing excessive gifts, requiring estate restoration and subsequent equalization of reserved shares before the succession court (Pereira, 2023).

3.3 Restrictive equity clauses: inalienability, exclusion from marital community property, and exemption from attachment

Despite apparent freedom to define governance, encumbering equity interests distributed with retained usufruct must align strictly with succession limits. Grounded in general civil law (Brasil, 2002, Art. 1,911), these clauses are often used to prevent transfers to outsiders, inclusion in former spouses' property upon marital dissolution, or attachment by descendants' creditors (Mamede; Mamede, 2027).

Imposing these encumbrances on reserved share assets is expressly restricted. The Civil Code prohibits donors from burdening forced heirs' unavailable portions unless they state a reasoned just cause in the gift instrument (Brasil, 2002, Art. 1,848). This formal and substantive validity requirement means absent or generic reasons render the restriction void as to the compulsory portion (Pereira, 2023).

At company level, effective encumbrances and stated just cause must fit corporate governance. Inalienability does not deprive donee heirs of corporate rights such as voting and profit receipt, nor prevent equity valuation upon partial dissolution; otherwise assets would be unjustifiably immobilized and ownership rendered ineffective (Mamede; Mamede, 2027).

3.4 Property and succession consequences for forced heirs

The reserved share is the unavailable half of the deceased's estate, mandatorily reserved for descendants, ascendants, and spouse under Civil Code Article 1,846. Although lawful and widely recognized in case law as legitimate asset organization and succession governance, family holdings cannot displace this legal reservation. The Superior Court of Justice reiterates that forming a holding is not inherently illegal, but where its purpose is a disguised excessive gift, transfers exceeding the donor's disposable portion are void.

This position was strongly reinforced in REsp 2.107.070/SC, reported by Justice Nancy Andrighi. Manifestly disproportionate corporate contributions among heirs were deemed excessive gifts, void insofar as they exceeded the disposable portion under mandatory reserved share protection in Civil Code/1916 Article 1,776 and Civil Code/2002 Article 2,018. The leading opinion emphasizes that reserved share inviolability is a mandatory public policy principle that cannot be waived even with heirs' express consent at the time of the gift. Thus, releases or waivers signed when establishing a holding cannot validate disproportionate transfers, underscoring the care needed in drafting articles and shareholders' agreements.

When contributions to the holding involve gifts of equity interests from ascendants to descendants, Civil Code Article 544 presumes an advance on the reserved share; Mamede and Mamede (2015) therefore stress close attention to proportionality among heirs. The direct consequence is collation: upon succession opening, donee heirs must bring the value of received interests into probate to equalize coheirs' reserved shares, unless the donor expressly exempted a gift within the disposable portion under Articles 2,002 and 2,003. In REsp 1.298.864-SP, the Superior Court of Justice held that this duty is independent of heirs' birth order or origin in different relationships. An ascendant's gift to a descendant is not invalid, but, unless the

recipient is the sole forced heir, it requires collation upon the donor's death to equalize reserved shares.

4 Legal limits on family holding companies in estate planning

4.1 Private autonomy and mandatory succession rules

Understanding these limits requires confronting the normative tension running throughout the subject: private autonomy, expressing contractual freedom and property rights constitutionally guaranteed by Articles 5, XXII, and 170, II (Brasil, 1988), versus mandatory succession rules restricting asset disposition to protect families and equality among forced heirs. These orders are not isolated: corporate arrangements are valid precisely insofar as they achieve balance between them.

Caio Mário da Silva Pereira (2024) observes that succession rules are predominantly mandatory because the interests governed extend beyond individual owners to family relationship stability and protection of successors who generally did not participate in accumulating the estate. Thus, the reserved share is not simply a quantitative limit on generosity but a public policy rule that parties cannot derogate from, even unanimously when structuring the holding.

This mandatory character distinguishes corporate private autonomy—choosing company type, drafting articles and members' agreements, defining quorums and contribution methods, all previously discussed—from the domain of succession public policy, independent of member-heirs' will and unavailable for their disposal. Freedom to organize a holding is broad; freedom to dispose of the reserved share through it is not.

The Superior Court of Justice has reiterated this increasingly explicitly. In Special Appeal No. 2.107.070/SC, reported by Justice Nancy Andrighi, the Third Panel recognized reserved share inviolability as a mandatory public policy principle, so that even express consent at the time of a gift cannot displace it or validate excess (STJ, REsp No. 2.107.070/SC, Justice Nancy Andrighi, judgment 2025). Particularly relevant here, the decision rejects the common transactional claim that releases, waivers, or full consent in articles or agreements suffice to shield holdings from future challenges by disadvantaged heirs.

This does not deny corporate planning's legitimacy. The Court has recognized in several precedents that family holdings are not inherently unlawful and constitute valid asset and succession governance. Public policy prohibits their functional diversion: indirect depletion,

concealment, or reduction of the legally reserved portion. Succession rules therefore condition rather than suppress private autonomy, preserving freedom of corporate architecture while requiring mandatory protection whenever the arrangement exceeds the settlor's disposable assets.

This combination—corporate structuring freedom and reserved share unavailability—provides the interpretative key for the following specific limits, including gift proportionality, prohibition of succession agreements, and judicial correction, when invoked by forced heirs.

4.2 Application of collation rules

Correctly applying collation to interests gifted to heirs is one of the most sensitive planning limits. Under Civil Code Articles 2,002 and 2,003, descendants sharing succession from a common ascendant must account for lifetime gift values, under penalties for concealed assets, unless donors expressly exempted them within their disposable portion (Brasil, 2002).

In a corporate context, the central issue is not only whether a gift exists but how to measure the value to collate. Gonçalves (2026) explains that collation preserves substantive equality, requiring actual economic value rather than formal or accounting values in the articles. As noted in section 3.1, nominal or historical values cannot govern collation without perpetuating the disparity it is intended to correct; actual company net assets must be determined at succession opening.

4.3 Reduction of gratuitous dispositions

Whereas collation rebalances division among forced heirs, reduction addresses a distinct, more serious case: equity gifts exceeding the disposable portion and invading the reserved share. The transaction then requires more than accounting for values; it becomes subject to judicial reduction under Civil Code Article 549, which renders excessive gifts void insofar as they exceed what donors could have disposed of by will at the gift date (Brasil, 2002).

Caio Mário da Silva Pereira (2024) explains that reduction actions restore the violated reserved share without undoing the entire transaction; they adjust it to legal limits, returning exactly the excess to the estate. This is partial nullity: equity gifts remain valid within the disposable portion, with only the excess compromising other forced heirs' shares eliminated.

Determining excess requires valuing donors' assets at the gift date rather than succession opening, requiring reconstruction of the company's actual accounting value when interests were contributed (Mamede; Mamede, 2015). Only then can the excess over the disposable half be

precisely identified and restored through proportional return of interests or equivalent monetary compensation, preserving the holding's business continuity wherever possible.

4.4 Nullity and voidability of legal transactions and judicial control of estate planning

Having identified defects affecting holding-based planning, their consequences must be systematized through the civil law distinction between absolute nullity and voidability, which directly affects judicial control's scope and timing for forced heirs.

Absolute nullity under Civil Code Articles 166 and 167 affects simulated transactions, evasion of mandatory law, and excessive gifts violating the reserved share. Tartuce (2026) emphasizes its public policy nature: any interested party may invoke it, judges may recognize it ex officio, and neither time nor confirmation cures it under Article 169. This absence of limitation allows forced heirs to challenge arrangements years after establishment, provided the reserved share violation generally becomes enforceable upon succession opening.

Voidability under Article 171 concerns consent defects, including mistake, deceit, or coercion in heirs' assent to articles or agreements. Unlike nullity, judges cannot raise it ex officio; interested parties must invoke it within the four-year forfeiture period calculated under Article 178 (Gonçalves, 2026). This matters because not every corporate defect creates equal instability: excessive gifts and simulation may be challenged at any time, while defective consent must be raised within the statutory period or the transaction becomes validated.

Procedurally, judicial control varies with defect and timing: during the settlor's life, an heir claiming exclusion may bring declaratory nullity or annulment proceedings; after succession opening, control may occur in probate or separate actions for concealed assets, reduction, or compulsory collation, as discussed in sections 4.2 and 4.3. Mamede and Mamede (2015) emphasize accurate defect identification when choosing procedure; confusing nullity and voidability regimes may cause dismissal for forfeiture even while the substantive right persists.

Finally, declaring nullity does not necessarily dissolve the holding as a legal entity but targets the particular challenged disposition. Corporate and business continuity are thus preserved wherever possible, limiting judicial relief to restoring the injured forced heir's portion.

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4.5 Piercing the corporate veil in succession contexts

Where previous sections concerned direct control over gifts through collation, reduction, and nullity, veil piercing is the most drastic mechanism available to forced heirs. It does not affect gift validity itself but exceptionally disregards the holding's separate assets to reach the property and management concealed behind it.

Civil Code Article 50 authorizes veil piercing where there is misuse of purpose or commingling of company and member assets (Brasil, 2002). As noted in section 3.2, family holdings are functional structures rather than autonomous company types, making them particularly vulnerable: their very purpose—concentrating assets for a particular family—may in pathological situations merge with the misuse prohibited by law.

Gonçalves (2026) explains that, unlike transactional nullity, veil piercing neither destroys the equity gift nor terminates legal personality; it exceptionally suspends, for the concrete case, the separation normally distinguishing company and member assets. It is an exceptional instrumental measure when corporate organization ceases to perform its lawful function and instead shields violations of mandatory succession rights.

In succession, commingling commonly appears through objective judicially identified indicators: lack of genuine affectio societatis among member-heirs, absence of effective resolutions, controllers' discretionary use of company assets as personal property, and suspicious incorporation immediately before the founder's death to shield assets for one heir against others. Mamede and Mamede (2015) caution that indicators must be assessed together: merely concentrating assets in a holding is not itself commingling or misuse, otherwise a lawful planning instrument would be distorted into automatic liability.

Conclusion

This research concludes that family holding companies have become legitimate and efficient Brazilian estate planning instruments, increasing transfer predictability, preserving family assets' economic unity, and reducing conflicts and delays associated with traditional judicial probate. Nevertheless, they carry significant legal risks for forced heirs, whose protection remains guaranteed by mandatory rules that even sophisticated corporate architecture cannot displace.

The first section established that planning rests on private autonomy and property rights but has always been limited by reserved share protection under Articles 1,845 and 1,846. The

second showed that holdings do not overcome this limit: although replacing direct ownership with equity rationalizes management and simplifies succession, contributions and distributions must comply with civil and tax law proportionality and good faith, otherwise risking nullity.

The third section demonstrated concrete impacts: presumed reserved share advances in ascendant-to-descendant equity gifts, concealment through undervaluation and waiver of preemption rights, and limits on inalienability, marital property exclusion, and attachment immunity over the unavailable portion. In each case, using corporate structures to conceal, reduce, or suppress statutory compulsory shares lacks support in Brazilian law.

The fourth section systematized protective limits and controls: reserved share inviolability as mandatory public policy even with heirs' consent; collation to equalize partition; reduction of excessive dispositions to restore the estate; nullity versus voidability determining judicial scope and timing; and, in serious cases, exceptional veil piercing. Superior Court of Justice case law, particularly Special Appeal No. 2.107.070/SC, confirms courts' vigilant position: recognizing holdings as valid planning techniques while increasingly expressly rejecting their use to defraud reserved shares.

The answer therefore lies in balancing private autonomy and mandatory succession rules. Family holdings are valid and advisable organizational instruments, but legitimacy requires strict observance of forced heirs' mandatory rights. Planning should always be preceded by multidisciplinary legal advice reconciling family management and business continuity with constitutionally and civilly guaranteed succession rights, preventing future litigation and ensuring the arrangement's legal soundness.

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