

НАПРЯМ 2. ЦИВІЛЬНЕ, ЦИВІЛЬНО-ПРОЦЕСУАЛЬНЕ, СІМЕЙНЕ ТА МІЖНАРОДНЕ ПРИВАТНЕ ПРАВО

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BODIES OF A FAMILY FOUNDATION UNDER POLISH LAW AGAINST THE BACKGROUND OF COMPARATIVE LAW

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On 22 May 2023, the Act of 26 January 2023 on Family Foundations [Journal of Laws of 2023, item 326, hereinafter: FFA] entered into force. So far the Polish legal system has lacked legal tools aimed at ensuring the stability of running a business after the death of the doyen, for many generations. The reason therefor lies in the fact that Polish legal solutions focus primarily on protecting the individual interests of entities (heirs, partners of commercial companies), and not on safeguarding assets against fragmentation. The above-mentioned act is intended to change this situation. Its aim is to comprehensively strengthen the legal tools for carrying out succession processes by introducing into the Polish legal system an institution whose goal is to accumulate family property and allow it to be kept in the country for many generations, thus increasing the potential of domestic investments [1, p. 5–6]. According to Article 2, section 1, sentence 1 of the FFA, a family foundation is a legal entity established to collect property, manage it in the interests of the beneficiaries as well as to meet the needs of the beneficiaries. Therefore, transferring assets to a family foundation is intended to protect them against fragmentation as well as to enable their multiplication, and thus to derive benefits therefrom that can be used to cover the costs of maintenance of the persons designated by the founder [1, p. 6]. Similar legal institutions whose aim is to ensure generational succession of a business have been in place for years in many countries, such as the US, the UK, Germany, Switzerland, Austria, Denmark, the Netherlands, Malta and Liechtenstein [3, p. 8 et seq].

Under Polish law, a family foundation has legal personality. Therefore, it acts through its bodies. According to Article 43 of the FFA, the bodies of a family foundation include the management board, the supervisory board

and the meeting of beneficiaries. The management body of a family foundation is the board. The management board constitutes a mandatory body and consists of one or more members (Article 56 of the FFA). A member of the management board is appointed for a three-year term of office, unless the statute provides otherwise. A member of the management board may be appointed for subsequent terms. Unless the statute provides otherwise, the appointment and dismissal of a member of the management board is made by the founder, and after the founder's death – by the supervisory board, if established. In the event of the founder's death and the absence of a supervisory board, the appointment and dismissal of a management board member shall be made by the meeting of beneficiaries (Article 61, sections 1–3 of the FFA). The main task of the management board is to manage the affairs of the family foundation and represent it (Article 54, section 1, point 1 of the FFA). The second body of a family foundation is the supervisory board. It is a body of controlling nature. Pursuant to Article 64, section 1 of the FFA, the founder may establish a supervisory board in the statute. Thus, as a rule, it is an optional body, unless the number of beneficiaries exceeds twenty-five, in which case the establishment of a supervisory board is mandatory (Article 64, section 2 of the FFA) [2, p. 110; 6]. The supervisory board consists of one or more members (Article 66 of the FFA). A member of the supervisory board is appointed for a five-year term of office, unless the statute provides otherwise. A member of the supervisory board may be appointed for subsequent terms. Unless the statute provides otherwise, members of the supervisory board are appointed and dismissed by the founder, and after the founder's death – by the meeting of beneficiaries (Article 68, sections 1–3 of the FFA). The principal task of the supervisory board is to supervise the management board (Article 65, section 1 of the FFA). In the case of a Polish family foundation, there is also a decision-making body, namely the meeting of beneficiaries. This body is mandatory. In the light of the Act in question, a beneficiary is a natural person and a non-governmental organization that, according to the statute, may receive a benefit from a family foundation or property in connection with the dissolution of a family foundation. This may even be the founder of a family foundation (Article 30 of the FFA). Not all beneficiaries may become members of the meeting of beneficiaries, but solely and exclusively those beneficiaries who are granted the right to participate in the meeting by way of the statute (Article 70, section 2 of the FFA) [4, p. 243]. The meeting of beneficiaries is convened by the management board, unless the statute provides otherwise (Article 71, section 1 of the FFA). Its task is to adopt resolutions on specific matters which are clearly defined in the act or the statute and are aimed mainly at ensuring the continuity of a family foundation's activities, primarily by supplementing

the composition of individual bodies of the family foundation [1, p. 36]. According to Article 72 of the FFA, consideration and approval of the financial statements of a family foundation for the previous financial year; granting discharge to members of the family foundation's bodies for the performance of their duties; distribution or coverage of the net financial result; selection of an audit firm if financial statements are subject to audit as well as any other matters specified in the act or the statute require resolutions of the meeting of beneficiaries.

All things considered, as far as the organizational structure of a Polish family foundation is concerned, the legislator did not adopt foreign models, but based it on a structure that adopts solutions typical for capital companies functioning under Polish commercial company law [1, p. 29; 5]. Taking into account the effects of comparative law analysis, it can be concluded that in other legal systems family foundations generally have one mandatory management body, namely the board, and an optional body of controlling nature, namely the board of protectors (e.g. Liechtenstein, Malta, Austria, the Netherlands) [7, p. 34].

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