

НАПРЯМ 5. ПРИВАТНЕ ПРАВО В УМОВАХ ВІЙНИ

DOI <https://doi.org/10.36059/978-966-397-377-7-100>

NEW LEGAL INSTITUTIONS OF BUSINESS SUCCESSION IN POLAND – A FEW COMMENTS IN CONNECTION WITH THE 5TH ANNIVERSARY OF THE ENTRY INTO FORCE OF THE ACT OF JULY 5, 2018 ON SUCCESSION MANAGEMENT OF A NATURAL PERSON’S ENTERPRISE AND OTHER FACILITATIONS RELATED TO THE SUCCESSION OF ENTERPRISES

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On November 25, 2023, five years have passed since the entry into force of the Act on succession management of a natural person’s enterprise and other facilitations related to the succession of enterprises in Poland¹. This is a great opportunity to show what has been happening during this time regarding business succession in Polish law. The above-mentioned act has symbolic character because it introduced into the Polish legal system the first institution whose main task is to carry out the generational succession of enterprises run by natural persons. The primary purpose of this act is to provide entrepreneurs who are natural persons with the conditions enabling maintenance of the continuity of the enterprise after their death, taking into account that the enterprise should be perceived as a legal good possessing not only property and economic value, but also social value². First of all, it regulates the principles of temporary management of an enterprise after the death of an entrepreneur who in his own name performed business activity on the basis of an entry in the Polish register on economic activity and continuation of business activity performed with the use of this enterprise (Article 1, point 1 of SuccA). Upon the death of an entrepreneur, enterprise in the inheritance is formed³. Succession management includes the obligation to run the enterprise in the inheritance as well as the authorization for judicial and

¹ Consolidated text: Journal of Laws of 2021, item 170, hereinafter: SuccA.

² Draft of the government bill on the succession management of a natural person’s enterprise, Print no. 2293, Sejm of the 8th term of office, P. 8; <https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=2293>.

³ Widerski P. (2021). *The succession management – a new institution of polish inheritance law (selected issues): «Модернізація інститутів держави і права під впливом глобалізації» (присвячена 30-річчю незалежності України)*. Збірник матеріалів Міжнародної юридичної науково-практичної конференції. Тези наукових доповідей (25 листопада 2021 року), Київ, P. 85.

extrajudicial actions related to running such enterprise in the inheritance (Article 18 of SuccA). Running the enterprise in the inheritance does not constitute performance of business activity within the meaning of the provisions of the Polish law⁴. However, pursuant to Article 5 of SuccA, to the extent not regulated in this act, the provisions on the performance of business activity by the entrepreneur apply accordingly to running the enterprise in the inheritance by the succession manager. The legal relationship of succession management is established as a result of the appointment of a succession manager. The succession manager may be appointed during the life of the entrepreneur, but also after his death. If the succession manager is not appointed at the time of entrepreneur's death, it is possible to appoint the succession manager using the mode of appointment after the death of the entrepreneur⁵. As of January 1, 2022, 2 579 684 entrepreneurs running sole proprietorships were registered in the Polish register of business activity, and 31 529 of them appointed the succession manager. The number of succession managers appointed by authorised persons after the death of an entrepreneur running a sole proprietorship was 1 718⁶. Therefore succession management is quite popular among entrepreneurs and has become a permanent element of Polish inheritance law. In the matter of business succession, Polish law has recently undergone further changes that are very important. On 22 May 2023, the Act of 26 January 2023 on Family Foundations entered into force⁷. 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 (Article 2, section 1, sentence 1 of FFA). The aim of this act 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. 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 situation⁸. Family foundation is something new in the Polish legal system, but similar institutions have been in place for years in other countries, such as the US, the UK, Liechtenstein, Germany, Austria, Malta, Sweden, Denmark, Switzerland or

⁴ Sieradzka M. (2018). *Zarząd sukcesyjny przedsiębiorstwem osoby fizycznej – analiza i ocena nowych rozwiązań prawnych (cz. I)*, Monitor Prawniczy, no 22, P. 1198.

⁵ Widerski P. (2022). *Legal status of the succession manager. Comments against the background of the succession management – a new institution in the Polish inheritance law*, w: *Матеріалу XIV Міжнародної науково-практичної конференції «Закарпатські правові читання. Трансформація національних правових систем країн Центральної та Східної Європи в умовах сучасних викликів» 28–29 квітня 2022 р.*, Odessa, P. 213.

⁶ Bieluk J., Doliwa A. (2022). *Umowy dotyczące spadków. Komentarz praktyczny. Wzory przykładowych umów. Klauzule umowne. Orzecznictwo*, Warsaw, P. 359.

⁷ Journal of Laws of 2023, item 326, hereinafter: FFA.

⁸ Draft of the government bill on the Act of 26 January 2023 on Family Foundations, Print no. 2798, Sejm of the 9th term of office, P. 4 et seq.; <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2798>.

the Netherlands⁹. Under Polish law, family foundation has legal personality. It acquires legal personality upon entry in the register kept by the District Court in Piotrkow Trybunalski (Article 4, section 1 and 2 of FFA). The bodies of a family foundation include the management board, the supervisory board and the meeting of beneficiaries (Article 43 of FFA). The management body of a family foundation is the board. The second body of a family foundation is the supervisory board. It is a body of controlling nature. There is also a decision-making body, namely the meeting of beneficiaries in Polish law¹⁰. Family foundation was equipped with a founding fund. The Polish legislator, following the example of other countries, decided to introduce a minimum level of capital to cover this fund. In Polish law, the minimum amount that the founder must contribute is 100 000 PLN (Article 17 of FFA). Undoubtedly, introduction of a family foundation, which is to be a vehicle for generational succession of assets¹¹, was reasoned. However, it is too early to assess the popularity of this institution among Polish entrepreneurs.

⁹ (2019). *Fundacja rodzinna*. Zielona Księga, Warsaw, P. 8 et seq.

¹⁰ Widerski P. (2023). *Bodies of a family foundation under Polish law against the background of comparative law: Матеріали ІХ Міжнародної науково-практичної конференції «Теоретичні та практичні проблеми реалізації норм права» 22–23 грудня 2023*, Kremenchuk, P. 62 et seq.

¹¹ Widerski P. (2023). *Family foundation under Polish law against the background of comparative law*, w: *International scientific conference «European potential for the development of legal science, legislation and law enforcement practice» (August 2–3, 2023, Wloclawek, the Republic of Poland)*, Riga, P. 35.