



Family foundations

On December 14, 2022, the Sejm passed a law on family foundations, thus taking into account the demands made by family businesses for the introduction into the Polish legal order of a solution to facilitate succession that would allow reconciling business needs with the private interests of the owners.

The Act has now been referred to the Senate.

Present state

In the current state of the law, family business owners have limited options for transferring the ownership of their business. In practice, succession comes down to the use of the institution of donation or transfer as an inheritance of the enterprise to selected persons. Thus, succession planning is essentially limited to a single generation. Family business owners, on the other hand, have no say in the future of the business and the wealth accumulated from it. A slightly less frequent solution to ensure succession is the use of a holding. However, creating such complex structures entails considerable costs. Moreover, it does not guarantee that the family nature of the business will be fully preserved.

Why were family foundations introduced?

The idea of a family foundation is based on the premise that business and family are formally separated from each other, as family assets become the property of the family foundation. It acts as a family treasury. It is meant to provide financial resources for the family, while at the same time pursuing the founder's vision and nurturing the values adopted by the founder in the business. The family foundation is thus a means to an end – for the business to operate for generations and for the financial needs of the beneficiaries to be secured.

The use of a family foundation allows for minimising the risk of unsuccessful succession and guarantees the continuation of the business. The transfer of assets to the family foundation is intended to protect them from being divided and to enable them to be multiplied, thus allowing them to be used to the benefit of persons designated by the founder to cover their living expenses.

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How to set up a family foundation?

A family foundation would be established during the founder's lifetime (through an appropriate declaration in the articles of association) or in a will (after the founder's demise).

The foundation will obtain legal identity when it is entered into the Polish National Court Register (KRS). Once a family foundation is established, the registration with the KRS is to be done by the founder, and in the case of setting up a family foundation in a will, by the board. A foundation will be able to provide gratuitous services to the beneficiaries specified by the founder. However, a foundation will only be able to conduct business to a limited extent, becoming a "passive investor".

Only an individual with full legal capacity can be the founder of a family foundation.

Setting up a family foundation in five steps

The process of setting up a family foundation can be described in five steps:

1. Submission by the founder of a declaration on the establishment of a family foundation before a notary public in either the articles of association or the will.
2. Drawing up the Articles of Association containing the rules of operation of the family foundation.
3. Transferring assets to the founding capital.
4. Establishing family foundation bodies.
5. Registering the family foundation in KRS.

The role of the founder

A family foundation is to be established by more than one founder, as long as it is established during their lifetime. If a family foundation is established in a will, there can be only one founder.

The rights and obligations of the founder will be non-transferable. However, the founder's role and influence on the family foundation will depend on his individual decisions and will. If there are more than one founder, the founder's rights and obligations will be exercised jointly. However, it will be possible to stipulate in the Foundation's Articles of Association a different way of exercising rights and obligations, such as entrusting their exercise to one or some of the founders.

Minimum capital of a family foundation

The founder will be obliged to provide the foundation with assets, the value of which should not be less than PLN 100,000 (founding capital). If, in the course of the family foundation's operation, the value of its assets falls below this amount, profits made in the future should first replenish the capital up to PLN 100,000.

Family foundation bodies

A family foundation, like other legal entities, will operate through its board and may be subject to internal oversight by a supervisory board.

On the other hand, the beneficiaries designated by the founder will form the assembly of beneficiaries, which will meet on certain occasions (e.g. when replenishing a particular body, or approving financial statements). This will ensure that the family has the necessary influence on the most important issues related to the family foundation's operations for many years to come.

Who can become a beneficiary?

Only the following can be the beneficiaries of a family foundation:

1. natural persons
2. public benefit organizations within the meaning of the law on public benefit activity and volunteerism.

Determining the type of benefits to which the beneficiaries are entitled will be the sole and free decision of the founder, included within the foundation's Articles of Association. It can be assumed that, in principle, these will be either monetary payments or other benefits of a material nature, such as the right to use property. The founder will be able to make changes regarding the list of beneficiaries and the benefits they are entitled to, without restrictions, including time restrictions.

Control of family foundation by beneficiaries

A beneficiary will have the right to obtain information about the activities of the family foundation in person or through a person authorized by them. The beneficiary will be able to review documents, financial statements and accounting books, make copies of them and request explanations from the management board. An exemption from this power will apply only to documents and information whose openness has been reserved by the founder.

Taxation of a family foundation

In principle, the taxation of a family foundation and beneficiaries takes into account the family relationship with the founder and is tax neutral. Establishing a family foundation and transferring assets to it will not be taxed (no tax on civil law transactions (PCC) or CIT in this regard).

The family foundation will pay a CIT of 15% levied only at the time the funds are transferred to the beneficiaries (no possibility of deducting tax-deductible expenses and depreciation).

Beneficiaries who are natural persons, as PIT taxpayers, will be exempt from tax if they are one of the following: the founder and his or her spouse, ascendant, descendant, sibling, stepchild, stepfather or stepmother (immediate family). Others will pay 15% PIT rate.

The beneficiaries that are NGOs will pay CIT according to the existing rules, including being able to take advantage of an existing objective exemption.

CONTACT

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