

## Polish Draft Law on “Family Foundations”

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**Abstract:** *This study concerns on the Draft Act on Family Foundations. This draft law is still in the course of legislative works, but it constitutes the basis for a lively discussion in Poland on its final structure. This paper presents the general concept of regulating family foundations in Poland with the most important aspects of the private-legal structure. The model relating to tax solutions remains beyond the scope of this text. The Bill on Family Foundations has a symbolic dimension, because if the legislator intends to implement it, it means that the development of economic relations in Poland has reached an appropriate high level.*

**Key Words:** *Civil Law; Family Foundation; Beneficiary; Founder; Estate; Poland.*

### Preliminary issues

A draft law on “family foundations” (in Polish “fundacje rodzinne”, in German *Privatstiftung*, *Familienstiftung*, in Swedish *Stiftelse*) has been just prepared in Poland.<sup>1</sup> Similar regulation has been in force in many European countries: in Austria, the Netherlands, Switzerland, Liechtenstein, Sweden, etc.<sup>2</sup>

The Polish Bill on Family Foundations regulates the creation, organization, operation, dissolution and liquidation of a family foundation as well as the rights and obligations of the founder and the beneficiary. The Act on Family Foundations, in line with the legislative assumption, is a way to accumulate and to preserve family heritage over many genera-

<sup>1</sup> See *Raport z konsultacji Zielonej księgi fundacji rodzinnej* [online]. 1. wyd. Warszawa: Ministerstwo Rozwoju, 2019. 30 p. [cit. 2022-02-18]. Available at: <https://www.gov.pl/attachment/f3aea4fb-f835-44f1-a00c-db50f243163d>.

<sup>2</sup> See MARIJAŃSKI, A. Sukcesja przedsiębiorstw prowadzonych przez osoby fizyczne na gruncie ustawodawstw wybranych jurysdykcji. *Monitor Prawniczy*. 2019, nr 23, pp. 1263-1268. ISSN 1230-6509; and TIM, A. Fundacje prywatne jako element liberalizacji polskich przepisów o spadkach. Refleksje na gruncie stanu prawnego Republiki Austrii i Księstwa Liechtenstein. *Studia Prawno-Ekonomiczne* [online]. 2018, vol. 109, pp. 145-157 [cit. 2022-02-18]. ISSN 2450-8179. Available at: <https://doi.org/10.26485/spe/2018/109/9>.

tions. Unfortunately, the difficult history of the Republic of Poland, conditioned by geopolitical circumstances, has not yet provided a basis for the development and preservation of multi-generational family fortunes. Former large magnate estates of the First Republic of Poland (finally liquidated in year 1795 by Russia, Prussia and Austria) significantly lost their economic importance during the lack of the Polish statehood. The years of independence 1918 – 1939 were too short to build a large number of multi-generational enterprises. After year 1945, Poland was a non-sovereign country, dependent on the USSR, dominated by “socialized property”. The war damage, changes in the State borders, confiscations and nationalization of private property prevented the building of stable estates. It seems that year 1989, or even the Act of December 28, 1988 (known as the “Wilczek Act”), which introduced the principle of economic freedom, opened the fundamental change. Later, the direction of these changes was sealed by the Poland’s membership in an elite club – the European Union. Thus, only the first generation of the Polish business, which started in the 90’s of the Twentieth Century, is now successive to the hands of the second generation.

In many European countries, special legislation has been introduced to facilitate the collection and administration of family assets. Nevertheless, it should be assessed that stable multi-generational properties are still rare in the Polish economic landscape.

### **Functions of family foundations**

In the long period of time, family foundation may become an instrument of capital accumulation in the Republic of Poland. Preventing the outflow of capital abroad is undoubtedly a favourable phenomenon for the domestic economy. It may compete with other foreign institutions, in particular through tax facilitations – provided that such facilities are introduced and maintained by the legislator, or through the accessibility (flexibility) of normative regulation.

The family foundation can prevent the fragmentation of accumulated property among numerous heirs. A large estate can be managed more efficiently than an estate divided into multiple portions.

Natural persons running a business can use the family foundation instrument as a method of “parking” their own property, in order to protect their life achievements against future economic risks.

The Act on Family Foundations introduces a very easy way for a living founder to dissolve a family foundation. The founder may dissolve the family foundation without giving any reason. As a rule, the living founder has priority to take over the assets of a liquidated family foundation (unless the statute provides otherwise). On the other hand, the introduction of the property of a natural person to a family foundation makes it impossible to seize it in the enforcement proceedings against the founder or to cover this property with the founder's bankruptcy estate. The trustee in bankruptcy of the founder's bankruptcy may not submit a declaration on dissolution of the family foundation. Moreover, the enforcement body cannot submit a declaration on dissolution of the family foundation. However, it is possible to investigate – within the statutory deadlines – the ineffectiveness of contributing assets to the foundation or donations made for it.

A family foundation may, for the same reasons, be used as a kind of pension fund. Importantly, the founder does not have to hand over the power to the family foundation into “foreign hands”. He/she can become a board member himself/herself. The statute of a family foundation does not have to indicate a specific beneficiary; the founder may at any time make changes to the beneficiaries to which he/she is entitled or the property after the liquidation of the family foundation. A family foundation may be an instrument constructed in a specific case for the needs of the founder himself/herself.

Thanks to the instrument of a family foundation, a natural person running a business may separate his/her consumption assets (for the needs of his/her own family members) from commercial assets used for running a business.

The family foundation has been subjected to a number of restrictions as to the possibility of running a business and thus the economic risk to the property deposited in this legal entity is limited.

A family foundation can serve various economic purposes. It is possible to use the property of a family foundation to exhaust it. It is also possible to multiply the assets of a family foundation.

### **The scope of the law on family foundations**

A family foundation is a legal person separate from the founder and the beneficiary, having its own property and being responsible for its obligations. The Act on Family Foundations is, therefore, to specify: (1) estab-

lishing a family foundation, including entities authorized to establish a family foundation, the method of its creation, property requirements, entry of the foundation in the register; (2) organization of a family foundation, including the structure and competences of the foundation's bodies; (3) the functioning of a family foundation, including the permissible scope of activity (limitation in the scope of running a business), representing the foundation *pro foro externo*, managing the foundation's affairs *pro foro interno*, rules of managing the foundation's assets, rules of liability for obligations, changes in the foundation's statute; (4) dissolving the family foundation, including the grounds for dissolving the foundation; (5) liquidation of the family foundation, including the rules for dealing with the property of the family foundation; (6) the founder's rights and obligations; (7) the rights and obligations of the beneficiary.

Due to the fact that (1) assets are contributed to the family foundation, (2) the family foundation generates revenues, (3) payments of benefits are paid to the beneficiaries, and (4) the liquidating dividend is shared, the legal and tax regulation is of key importance from the point of view of the popularity of this institution. It will surely determine the attractiveness of this legal structure for legal transactions in practice.<sup>3</sup>

When creating the structure of a family foundation, the legislator repeatedly referred to the previous legislative solutions that had been functioning for years in the Polish civil law and the Polish company law. As a consequence, the draft legal regulation of family foundations is very similar to many well-known institutions of civil law and commercial law (which is a specialized branch of civil law in Poland). The regulation of family foundations is deeply embedded in the existing legal tradition.

A family foundation is a legal person, subject to civil law. Of course, this is not a new type of company, although it shows some similarity to the structure of commercial companies. The Bill on Family Foundations

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<sup>3</sup> See MARIĄSKI, A. Polska fundacja rodzinna – postulaty legislacyjne. *Monitor Prawniczy*. 2022, nr 3, pp. 129-134. ISSN 1230-6509; MARIĄSKI, A. and A. ŻĄDŁO. Opodatkowanie fundacji prywatnych. *Przegląd Podatkowy*. 2018, nr 8, pp. 21-29. ISSN 0867-7514; MARIĄSKI, A. Opodatkowanie fundacji rodzinnych, czyli dokąd zmierza tzw. uszczelnianie systemu podatkowego. *Przegląd Podatkowy*. 2020, nr 4, pp. 32-39. ISSN 0867-7514; RUSEK, J. Wykorzystanie fundacji prywatnej (rodzinnej) w procesie planowania podatkowego. *Monitor Podatkowy*. 2011, vol. 18, nr 11, pp. 25-30. ISSN 1231-1855; BETIUK, M. Fundacje rodzinne a podatki. *Doradztwo Podatkowe*. 2021, nr 7, pp. 67-69. ISSN 1427-2008; and HILL, D. L. and T. KARDACH. Trust i prywatna fundacja jako narzędzia planowania podatkowego – wybrane zagadnienia: Część II. *Przegląd Podatkowy*. 2007, nr 7, pp. 14-20. ISSN 0867-7514.

does not regulate all issues relating to a family foundation. The reference to the application of the Polish Civil Code<sup>4</sup> is a copy of the provisions of the Article 2 of the Polish Commercial Companies Code.<sup>5</sup> Therefore, to a family foundation in the scope not regulated in the Act on Family Foundations (1) the provisions of the Civil Code are directly applicable; (2) the provisions of the Civil Code shall apply accordingly if required by the nature of the legal relationship of the family foundation; appropriate application of a legal provision means the possibility of its modification, omission of certain elements, or even omission in its entirety; (3) the provisions of the existing Act on Foundations<sup>6</sup> do not apply.

The provisions of the Polish Commercial Companies Code do not apply to a family foundation. Nevertheless, the use of analogy method in specific cases is possible. It is possible to refer to the “business judgment rule” in relation to decisions made by the management board of a family foundation when investing assets belonging to a family foundation.

### **The statute of a family foundation as a source of the legal relationship**

In the case of a family foundation, significant importance – in terms of shaping the content of the legal relationship of a family foundation – should be assigned to the statute of the family foundation. The statute is subject to the freedom of contract pursuant to the Article 353(1) of the Polish Civil Code. The legislator strived to create a flexible framework to fill it with any content accepted by the founder within the framework of the general competence model. The obligatory matter of the statute is to define: name, seat, goals, duration (if limited) of the family foundation. The statute specifies the method of designating the beneficiary and the scope of the beneficiary’s rights (including the beneficiary’s renunciation of rights). The statute determines the amount of the founding fund and the property contributed to cover it, and, finally, the method of allocating the property in connection with the liquidation of the family foundation. The statute defines the rules for the appointment of bodies and their competences. The statute should contain rules for its amendment. How-

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<sup>4</sup> See *Act of April 23, 1964 – Civil Code, consolidated text* [1964]. *Journal of Laws of Poland*, 2020, item 1740, 2320; 2021, item 1509, 2459.

<sup>5</sup> See *Act of September 15, 2000 – Code of Commercial Companies, consolidated text* [2000]. *Journal of Laws of Poland*, 2020, item 1526, 2320; 2021, item 2052.

<sup>6</sup> See *Act of April 6, 1984, on Foundations, consolidated text* [1984]. *Journal of Laws of Poland*, 2020, item 2167.

ever, if the founder is the creator of the statute, the power to amend the statute may be granted to someone else, for example to an assembly of beneficiaries. Optional provisions of the statute may include, *inter alia*, defining the rules for liquidating a family foundation, directions and guidelines for additional investment in the assets of a family foundation.

The founder and the beneficiary may address a letter of intent to the governing bodies of the family foundation, in which there are recommendations as to the specific actions. A letter of intent may indicate a paradigm of conduct in managing the assets of a family foundation, creating benefits for beneficiaries, etc. The letter of intent is not binding on the bodies of a family foundation.

The Bill on Family Foundations allows for a relatively flexible shaping of the internal structure of the family foundation. Many legal norms are of a supplementary nature, e.g. with regard to the possibility of transferring the rights and obligations of the founder, the manner of exercising the rights and obligations by the founders. The mandatory provisions are the legal norms regarding the principles of representation and relationship to the third parties, including the civil liability for obligations.

### **Aims of a family foundation**

Pursuant to the proposed regulation, the family foundation manages its property and ensures its protection and provides benefits to the beneficiary, in particular, it covers the costs of its maintenance or education, or, in the case of the beneficiary being a non-governmental organization conducting public benefit activities, supports the implementation of socially or economically useful goals.

A family foundation has two basic tasks: managing the assets into which it was contributed as well as paying out benefits to the beneficiaries. The legislator adopted a very broad formula of a family foundation. A family foundation may have an entirely “private” purpose. In such a case, the beneficiaries of the family foundation may be people close to the founder, his/her spouse and relatives. A family foundation may also have a general social purpose. In this case, the beneficiaries will be non-governmental organizations. The beneficiary of a family foundation may be an “ordinary” foundation. Finally, it can be a diversified goal: private and general.

## Legal personality of a family foundation

A family foundation is a legal person. It acquires legal personality upon entry in the register of family foundations. Entry in the register is of a constitutive nature. Like any legal entity, a family foundation may have several stage forms. The legislator decided to create a special register of family foundations which fulfils both creative and informative function.

A family foundation should be reported to the registry court within 6 months from the date of drawing up the founding act of the foundation or from the date of opening the will establishing the family foundation. Failure to comply with this obligation results in the termination of the family foundation in the organization by virtue of the law itself.

Until the entry into the register of family foundations, and from the moment of the notarial deed being the founding act of the family foundation or the opening of the will establishing the family foundation, there is a family foundation “in the organization”. A family foundation in the organization has the status of the so-called “statutory person” (an organizational unit that does not have legal personality, but has the legal capacity provided for by the law – Article 33 of the Civil Code). A family foundation in the organization may manage property on its own behalf as well as acquire property rights, incur liabilities, etc.

A family foundation may be established for a specified or indefinite period of time. Noteworthy is the very wide possibility of dissolving the family foundation. A family foundation can be structured in such a way that all its assets are to be used for the payment of benefits to the beneficiaries. Thus, once this property is exhausted economically, the further legal existence of the family foundation will be of no great importance.

A family foundation as a legal person operates through its bodies (Article 38 of the Civil Code). The structure of the governing bodies of a family foundation can be two- or threefold: (1) an obligatory management board that runs the family foundation’s affairs and represents it outside; (2) a board of protectors, which is a non-obligatory body (except in the case where the number of beneficiaries exceeds 25), exercising supervisory functions over the management board; (3) an obligatory meeting of beneficiaries, the tasks of which include, *inter alia*, determining the composition of the management board (if it is not the competence of other bodies), adopting a resolution to dissolve the family foundation.

The legislator provides for the possibility of minutes of paid function in the bodies of a family foundation, besides, the administrative costs of a family foundation may be much minimized in some cases. Family foundations are not subject to the processes of merger, division or transformation. However, the draft clearly lacks the mode of merging family foundations and the mode of dividing family foundations.

### **Name of the family foundation**

The name of the family foundation can be chosen freely and contains the additional designation “Fundacja Rodzinna” (in Polish “Family Foundation”). For additional designation, it is permissible to use the abbreviation “F.R.” in the trade.

The semantic form of the legal form of this institution has met with serious criticism. It has been argued that the use of the term “foundation” for a legal person that may pursue very selfish family interests may lead to damage to the image of the foundation pursuing only public goals.

A family foundation should not take a false name, in particular suggesting assistance in the public interest, when it aims to satisfy mainly the private (family) interests of the beneficiaries.

The legislator assumed that the name of the foundation may be chosen freely. The name of the family foundation does not have to include the founder’s name or his/her recognizable nickname. The name of the family foundation can be completely fancy. The name of the family foundation may be the same as the company of the entrepreneur related to the founder. The obligatory addition of the name of a family foundation is the designation of its legal form. The name of the family foundation is subject to legal protection.

### **Family foundation’s assets**

The property of a family foundation is separate from the property of the founder and the beneficiaries. A family foundation is entitled to ownership of the property it has been equipped with or developed in the course of its operation. Limited property rights may be established for the foundation, for example easement, usufruct.

The property of a family foundation may be ownership and other property rights. The property of a family foundation may be any items



admitted to legal trading (*res in commercio*). The family foundation's assets may include possession and, therefore, a certain factual state.

The property of a family foundation may include intellectual property rights, industrial property rights and debts. In terms of the subject matter (Article 55(1) of the Civil Code), an enterprise may also constitute the property of a foundation, without colliding with restrictions as to running a business. First, it is possible to rent or to lease the enterprise. Second, the enterprise may be of such a type that, in order to exploit it, an economic activity authorized for the family foundation may be carried out.

A family foundation may accumulate property from several sources: through property contributed to the family foundation by the founder or founders; through donations made by donors; as a result of own activity leading to the generation of revenues. A family foundation may take over the property of a natural person on a trust basis. The statute of a family foundation should provide for the allocation of the property of the family foundation after its liquidation.

The founder contributes to the family foundation a founding fund which includes property intended for the implementation of its goals, worth at least 100,000 PLN. If, as a result of the loss suffered by the family foundation, the value of the founding fund amounts to less than 100,000 PLN, the profit shall first be allocated to supplementing the founding fund. The founding fund is an entry on the liabilities side of the balance sheet of the family foundation. The minimum founding fund is 100,000 PLN. To cover the founding fund, the founders contribute property: in cash and in kind; only in cash; only in a non-monetary form. The value of the contributed property should be estimated according to the market valuation criteria. The legislator does not prohibit the payments from the family foundation's assets necessary to cover the founding fund. The family foundation's assets may be exhausted during its operation. If, as a result of the loss suffered by the family foundation, the value of the founding fund is less than 100,000 PLN, the profit is allocated in the first place to supplementing the founding fund.

The family foundation's assets change over time. Its value may change. It can be multiplied. It may be reduced as a result of the benefits provided to the beneficiaries. The Bill on Family Foundations stipulates that the family foundation is jointly and severally liable with the founder for his/her obligations arising before the family foundation was estab-

lished. This liability is limited to the value of the property contributed by the founder at the time of purchase and at prices as at the time the creditor is satisfied. The intention of this provision is to protect the founder's creditors if the founder wanted to use the institution of a family foundation as an escape from creditors.

The Draft Act on Family Foundations lays down the rules for the performance of obligations financed from the property of a family foundation. In the first instance, the claims of persons against whom the founders had a maintenance obligation are to be satisfied. Fulfilment of the benefit to the beneficiary, despite the fact that it threatens the solvency of the family foundation towards creditors who are not beneficiaries of the family foundation. A similar rule applies during the liquidation of a family foundation. If all the beneficiaries cannot be satisfied, the benefits are reduced.

### **Family foundation as a hybrid entrepreneur**

The legislator assumes that a family foundation, as a rule, cannot perform economic activity within the meaning of the Polish Entrepreneurs' Law,<sup>7</sup> except for the areas of activity clearly indicated in the Bill on Family Foundations. The economic activity that can be performed by a family foundation is covered by the so-called *numerus clausus* (closed list) of business activities. According to the legislator's intention, a family foundation may not directly conduct industrial, production, construction, service and commercial activities. A family foundation should act as a rentier, an investor. A family foundation may, therefore, acquire shares and stocks in commercial companies engaged in industrial, manufacturing, construction and commercial activities. In this way, the legislator limits the economic risk incurred by the family foundation. As a consequence, a separation of the family foundation from business activity subject to market risk theoretically allows for the safety of the family property. However, this does not mean complete economic security. Investing activities also involve economic risk. In addition, a family foundation may run a farm, which may also be associated with serious economic risk. The statutory catalogue of permissible economic activities of a family foundation means that undertaking any of them corresponds to the entrepreneur's activity within the meaning of the Article 43(1) of the Civil Code.

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<sup>7</sup> See *Act of March 6, 2018 – Entrepreneurs' Law, consolidated text* [2018]. *Journal of Laws of Poland*, 2021, item 162, 2105; 2022, item 24.

A family foundation may perform the following economic activities: (1) dispose of property, unless such property was acquired solely for the purpose of further disposal; (2) rent, lease or otherwise make available property in which it is the owner; (3) join and participate in commercial companies, investment funds, cooperatives and similar entities with their registered offices in the home country or abroad; (4) buy and sell securities, derivatives and similar rights; (5) grant loans to: a) capital companies in which the family foundation has shares or stocks, b) partnerships in which the family foundation participates as a partner, c) beneficiaries; (6) deal with foreign means of payment belonging to the family foundation, in order to make payments related to the activities of the family foundation; (7) run a farm.

In the event that the family foundation has performed a legal act in the scope of illegal economic activity, this act will be valid. The legislator does not introduce the construction of special legal capacity for legal actions of legal persons. The aim of this legal regulation is to limit the activity of the family foundation to the activity with the lowest possible economic risk. In the event of a legal transaction performed as part of unacceptable business activity, this will be the basis for liability of the members of the family foundation's governing bodies. This may be the reason for the dissolution of the family foundation.

### **Civil liability of a family foundation**

The family foundation, as a legal entity, is responsible for its own obligations. The founder is not liable under the law for the obligations of the family foundation.

According to the draft, the family foundation is jointly and severally liable with the founder for its obligations arising before its creation. This liability may not be excluded or limited without the consent of the creditor. By the law, a family foundation is liable under the law for the founder's obligations that arose prior to the establishment of the family foundation, that is, for obligations that arose prior to its entry in the register of family foundations. If the founder contributes his/her property to the family foundation, then the donor's creditors may have a reduced prospect of satisfying. Establishing a family foundation should not be the founder's escape from obligations. For this reason, the legislator maintained the statutory guarantee liability of the family foundation for the obligations of the founder. The liability of the family foundation is limited to the value of the property contributed to the family foundation by the

founder. It is about the property actually brought in. In order to determine the limit of civil liability of a family foundation, the decisive factor is the condition of the property at the time of its transfer to the family foundation. However, when it comes to the specific value of the property, it is determined according to the prices at the time the creditor is satisfied. It is not an isolated legal structure in the Polish civil law. The Civil Code introduces a similar legal regulation as regards the liability of the acquirer of the enterprise for the obligations of the seller of the enterprise (Article 55(4) of the Civil Code), liability towards the creditors of the seller of the enterprise (founder), according to the general rules concerning the liability of the buyer of the enterprise.

A family foundation bears civil liability also if there were more than one founder. In such a case, the family foundation is responsible for the obligations of each of the founders up to the amount of property contributed individually by each of the founders.

Establishing a family foundation should not diminish the rights of the maintenance creditor towards the founder. The family foundation is responsible under the law for the performance of the maintenance obligation by the founder established after the creation of the family foundation. This responsibility is joint and subsidiary. This regulation resembles the structure of the Articles 22 and 31 of the Commercial Companies Code (liability of a partner in a general partnership for the obligations of a general partnership). The subsidiarity of the liability of a family foundation is expressed in the fact that enforcement against the assets of the family foundation may be carried out as long as enforcement against the property of the founder proves ineffective. This does not constitute an obstacle to bringing an action against the family foundation before the execution of the founder's property proves ineffective. Nevertheless, the creditor may obtain an enforcement clause for the previously obtained enforcement title, provided that the enforcement against the founder's property proves ineffective due to lack of property.

It seems that the principle of joint and several guarantee and civil liability of a family foundation for the founder's obligations does not exclude the family foundation's liability pursuant to the Article 527 of the Civil Code or the Article 127 et seq. of the Polish Bankruptcy Law.<sup>8</sup> In

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<sup>8</sup> See *Act of February 28, 2003 – Bankruptcy Law, consolidated text* [2003]. *Journal of Laws of Poland*, 2020, item 1228, 2320; 2021, item 1080, 1177, 1598, 2140.

other words, an alternative to the creditor of the family foundation may be to institute *actio pauliana*.

### **Founder of the family foundation**

As a rule, the founder is the founder of the family foundation. Establishing a family foundation mainly includes submitting a declaration of establishing the family foundation and establishing its statute as well as contributing a founding fund. Based on the provisions of the Act on Family Foundations, the following entity structure can be indicated on the founder's side: the founder, founders, the so-called co-founders, donors who do not become founders.

Only a natural person may be the founder of a family foundation. A necessary requirement is to have the attribute of full legal capacity. The nationality or citizenship of the founder does not matter. A family foundation can be created by many founders. Nevertheless, each of them should have full legal capacity. The exception is a family foundation established in a will. The founders may be strangers to each other; there is no requirement of marriage, kinship, affinity, etc.

In the case of a family foundation established in a will, if the statute so provides, the founder of the family foundation may become the spouse of the founder, the founder's initial or descendant, who at the time of opening the inheritance was a co-owner of the property contributed to the family foundation under the will.

The family foundation may be supported by donors. A person who makes a donation to the family foundation does not become its founder.

The founder is necessary at the stage of creating a family foundation. The founder is not necessary for the further, assuming a multi-generational existence of a family foundation. The statute granted by the founder may be amended in a different manner by other persons, in the manner specified in the statute.

The family foundation may be created in a will. Only the opening of the will would result in the establishment of a family foundation in the organization. Then the family foundation should be entered into the court register of family foundations. Establishing a family foundation in a will requires the form of a notarial deed. Establishing a family foundation by means of a holographic will would be invalid.

It is possible to adopt various models of a family foundation. The source of regulation should be the statute of a family foundation. First, the founder's rights and obligations may not be transferable. If the founder's rights and obligations are inalienable, they shall expire upon his/her death. It is a model established by the legislator. However, it is possible to adopt a model in which rights and obligations may be negotiable. The transfer of the rights and obligations of the founder may take place within the framework of singular succession as well as by way of universal succession.

The question is whether it is possible to split the rights and obligations of the founder. In general, the Polish company law adopts the theory of non-separation of rights in a commercial company. In fact, it should be recreated on the basis of the regulations of the family foundation.

The question arises whether the founder's legal successor (if such a change is permissible) may be a legal entity other than a natural person? We are closer to the view that only the original founder must be a natural person. A legal person may acquire the rights and obligations of the founder. Nevertheless, the *ratio legis* of the Bill on Family Foundations is the syntax for the formulation of a different view.

If there are many founders, they exercise the rights and obligations of the founder jointly. The statute may provide otherwise, indicating that the rights held jointly should be exercised by a joint representative.

The founder is not responsible for the obligations of the family foundation which is a legal person. A similar regulation applies to other legal persons, e.g. capital companies. In the internal relationship, the founder is liable to the family foundation in the scope of the assumed obligation to contribute assets.

### **Beneficiaries of the family foundation**

The Bill on Family Foundations indicates two categories of entities that may be beneficiaries of a family foundation. These are natural persons and non-governmental organizations conducting public benefit activities. As it seems, one can defend the view that *nasciturus* may also be a beneficiary of a family foundation. During the prenatal life, for example, there may be a need to finance fetal surgery, etc.

The beneficiaries of the family foundation may be people unknown to the founder, for example his/her future descendants and the descend-

ants' spouses. The beneficiaries do not need to have equal rights within the family foundation. They may be entitled to various benefits. Benefits may include: (1) receiving benefits from a family foundation, in money or in nature (for example in plots of land, easily convertible into money in gold bars or gold bullion coins); (2) a share in the liquidation assets of a family foundation. At the same time, it is not a closed list of benefits. Benefits for beneficiaries may also include granting loans, lending real estate belonging to a family foundation, lending for use movable items (luxury cars, yachts, airplanes). The possibility of a partial division of the property of a family foundation should be allowed. It is possible to grant benefits depending on a condition or a term.

## Conclusions

The Polish Bill on Family Foundations is expected to be on the legislative path very soon. Nevertheless, it is already the subject of keen interest on the part of the legal science.<sup>9</sup> Thanks to this legislation, Poland will symbolically join the ranks of rich European countries.

As mentioned above, a family foundation is not a company, but it has its own legal entity. The institution of the family foundation will be a specific and original legal institution in the Polish legal system. There is a need for the introduction of this institution. A special feature of a family foundation is the group of its beneficiaries. The beneficiaries are to receive certain benefits from the family foundation's assets. The beneficiaries are counterbalanced by the founders or the founder. The family foundation is established as a part of *inter vivos* work, but it can also be covered by an inheritance disposition.

The Act on Family Foundations limits the possibilities of the family foundation in carrying out economic activities. This is due to the endowment of the family with assets that should not be used for any purpose other than that provided for by the law.

Tax considerations will largely determine the popularity of this legal structure in Poland.

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<sup>9</sup> See DURBAS, M. Zapis na sąd polubowny w statucie fundacji rodzinnej – uwagi de lege ferenda. *ADR. Arbitraż i Mediacja*. 2021, nr 2, pp. 5-15. ISSN 1898-942X; and WIDZ, M. Fundacja rodzinna i trust rodzinny jako instrumenty kontynuacji niepodzielnego majątku. In: A. LEWANDOWSKA, P. ANDRZEJCZAK and M. STRADOMSKI, red. *Narodziny firmy rodzinnej: Jak mądrze zaplanować sukcesję i przekazać biznes następcom*. 1. wyd. Poznań: Instytut Biznesu Rodzinnego, 2017, pp. 371-378. ISBN 978-83-937759-3-4.

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