

Arbitration of Family Foundation-Related Disputes in Poland

Introduction of the family foundation and the arbitration of family foundation-related disputes under Polish law, explained by Rafał Kos, PhD, LL.M and Maciej Durbas, PhD, LL.M.

On 26 January 2023, the Polish Parliament adopted an act on the family foundation. This act introduces a new vehicle for estate planning (family foundation) into the Polish legal system and simultaneously allows for resolving family foundation-related disputes in arbitration.

This article provides a brief overview of the law, in particular:

- a concise summary of the family foundation under Polish law; and
- arbitration of family foundation-related disputes.

Purpose and Benefits of a Family Foundation Under Polish Law

"The idea of a family foundation... is based on the notion that business and family are formally separated..."

Succession was one of the challenges facing entrepreneurs and businesspersons in Poland, as, until the adoption of the aforementioned law, there was no convenient solution for estate planning to ensure the continuation of a business and the protection of assets for more than one generation.

Under the new law, founders can create a family foundation based on their assets – eg, real estate, movables, stocks and shares. The minimum value of the assets is PLN100,000 (approximately EUR 22,000).

The idea of a family foundation introduced in the aforementioned act is based on the notion that business and family are formally separated, as the family assets would become the foundation's property. It is meant to provide financial resources for the family while carrying out the founder's vision and nurturing the values adopted by the founder in their business.

The main aim of the family foundation is, firstly, to protect the assets of the family business and, secondly, to manage them following the intention specified by the founder in the statute. The foundation will be able to manage and dispose of its property, and the beneficiaries of the foundation designated by the founder will participate in the foundation's profits.

The family foundation may also conduct business activities to the extent indicated by the law – eg, participate in commercial companies and investment funds and acquire and dispose of shares, stocks and securities.

The primary benefits of family foundations are:

- the real possibility of preserving the integrity of the family estate;
- strong influence over the family assets (also after the founder's passing);
- very flexible rules for granting benefits (profits) to beneficiaries;
- preventing the division and fragmentation of assets among successors;
- ensuring that the company continues to operate after the founder's passing in line with their specified will (purpose); and
- ensuring that persons with the appropriate qualifications and skills manage the assets.

The incorporation and functioning of a family foundation can also serve the purpose of tax optimisation, since lawmakers have introduced preferential terms in this respect. Proper preparation of the corporate structure of a given family foundation may allow for a significant reduction of taxation.

Resolving Family Foundation-Related Disputes in Arbitration

Transfer of private (often significant) assets and their management may give rise to various types of disputes both internally and with third parties, including disputes between the foundation, its bodies, the founder and the beneficiaries. These conflicts may be all the more intense and complicated due to their familial nature.

Under the act on the family foundation, it is possible to incorporate an arbitration clause into the statute of the family foundation. This would allow for the resolution of family foundation-related disputes in arbitration. One of this article's authors made this proposal, which, as it turns out, was accepted by lawmakers.

Until the act's introduction, Polish law did not provide similar solutions or allow such disputes to be resolved in arbitration. This is because, in principle, an arbitration agreement is precisely an agreement. On the other hand, the deed of incorporation of a family foundation is a so-called unilateral legal act. Polish law did not allow for the incorporation of an arbitration clause into a unilateral legal act such as a last will.

The act allows for the resolution of family foundation-related disputes in arbitration. Interested parties are thus allowed to choose whether they prefer for their cases to be heard by a state court or an arbitral tribunal. Arbitration, with its confidentiality, professionalism, speed and flexibility, should be a preferred way to resolve such disputes.

In this respect, Polish lawmakers relied on similar solutions as seen in other countries – eg, Switzerland, Austria and Germany. These countries have also adopted specific mechanisms to resolve such disputes in arbitration.

Importantly, Polish lawmakers structured the applicable provision which allows for the arbitration of family foundation-related disputes by referring to existing provisions of Polish arbitration law regulating the arbitrability of corporate disputes. This has enabled reliance on already available and established solutions, including the notion of an extension of the arbitration agreement's binding effect on third parties. This way, implementing an arbitration agreement into the statute of a family foundation would also bind stakeholders, allowing for efficient dispute resolution.