

# EMPOWERING TOMORROW: INTRODUCTION OF NEW VEHICLE OF ESTATE PLANNING IN POLAND (FAMILY FOUNDATION)



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Up until the beginning of 2023 there was no convenient solutions for estate planning in Poland that would ensure the continuation of the business on one hand and the protection of assets of the other.

That changed on 26 January 2023, when the Polish Parliament adopted an act on the family foundation. The act entered into force on 22 May 2023.

Available data shows that the introduced mechanism is rather popular – in 2023 over 400 family foundations were registered and over 800 applications for the registry of such foundation were filed.

## The Purpose of Introduction of a Family Foundation Into the Polish Law

The issue of succession posed a challenge for entrepreneurs and business individuals in Poland, as prior to the introduction of the aforementioned act, a practical solution for effective estate planning to secure business continuity and asset protection beyond a single generation was lacking. That is why a new vehicle, e.g. a family

foundation, was introduced into the Polish legal system.

***Family foundation is a legal entity established by the founder for the purpose of accumulating assets, managing them in the interests of the beneficiaries, and providing benefits for the beneficiaries.***

It is formed on the basis of the founder's statement (unilateral deed (statement) of incorporation), or in their last will and testament. Founders can create a family foundation based on their assets, e.g., real estate, movables, stocks, and shares. The minimal value of the assets is PLN 100,000 (ca. EUR 22,000).

The primary objective of the family foundation is twofold: firstly, to safeguard the assets of the family business, and secondly, to manage them in accordance with the founder's specified intentions outlined in the statute of the foundation. The foundation is entitled to administer its assets and property and to dispose

of them, while the beneficiaries appointed by the founder sharing in the foundation's profits.



The family foundation is permitted to engage in business activities within the limits set by the law, such as involvement in commercial enterprises, investment funds, and the acquisition and divestment of shares, stocks, and securities.

The concept of a family foundation hinges on the formal separation of business and family. Under this arrangement, family assets are transferred to the foundation's ownership, serving the dual purpose of furnishing financial support to the family and bringing the founder's vision to life,

while at the same time preserving the values instilled by the founder in their business.

## Advantages of Incorporating of a Family Foundation

Incorporating of a family foundation has many advantages, while key benefits being inter alia:

- Family foundation provides the founder with a real opportunity to maintain the unity and integrity of the family estate and its assets.
- It also gives the founder substantial control over the family assets, even after the founder's passing and prevents their division and fragmentation among heirs.
- The law provides for highly adaptable and flexible regulation regarding the distribution of the profits and benefits to appointed beneficiaries.
- Family foundation guarantees the continued operation of the company in alignment with the founder's specified intention, after their passing, and that it would be managed and administered by qualified and skilled individuals.

Aside from the aforementioned benefits, the lawmakers also introduced preferential terms regarding the taxation of family foundations. Said regulations may be the starting point for tax optimisation and effective structuring of the corporate framework for a specific family foundation may potentially lead to substantial tax reductions.

Overall, family foundations in Poland may serve as a versatile and beneficial vehicle for wealth management, estate planning, and the achieving the goals and intentions of the founder.



## Resolution Of Disputes Relating to Family Foundation in Arbitration

There is also yet another benefit when it comes to family foundations – it is possible to incorporate an arbitration clause into the statute of the family foundation and resolve disputes relating to the family foundation in arbitration. In this regard, Polish legislators drew inspiration from comparable approaches found in other jurisdictions, such as Switzerland, Austria, and Germany.



The newly introduced legislation permits the resolution of disputes related to family foundations through arbitration.

This grants the involved parties the option to decide whether they wish to pursue their cases in a state court or before an arbitral tribunal. Prior to the enactment of the mentioned act, Polish legislation lacked comparable provisions that would allow the resolution of such disputes through arbitration. This was primarily due to the nature of an arbitration agreement, which is fundamentally a mutual agreement – e.g. a legal act between two persons. Conversely, the establishment of a family foundation through a deed (statement) of incorporation is classified as a “unilateral legal act” and in the context of unilateral legal acts, such as a last will and testament, Polish law did not permit the inclusion of an arbitration clause.

The transfer and administration of private assets, often of considerable value, can lead to diverse disputes, both internally between the foundation's corporate bodies, its members and beneficiaries, and with external third parties. These conflicts may involve many various disagreements on various legal grounds, potentially more intense than “usual” corporate or commercial disputes taking into account their familial aspect. Given the arbitration's attributes, such as confidentiality,

professionalism, expeditiousness, and flexibility, it is likely to be the preferred method for resolving such disputes.

