



SKARBIEC
KANCELARIA PRAWNA



Robert Nogacki

Founder and Owner
of Skarbiec Law Firm

Foundation, trust, testament vs. estate succession

18 percent of Polish enterprises are family-run businesses. They offer employment to 24 percent of all employed. They also make over 21 percent of investments. Their founders and owners would like to know how their power, knowledge and estate will be transferred one day. Usually, they are responsible for the enterprise growth and the implementation of its vision.

Succession concerns just any kind of estate. Actions being its components – meant to last a few

years – constitute an indispensable condition of enterprise stability.

To avoid unwanted and undesirable events, from the perspective of family wellbeing and their interests, a plan of estate succession should be properly devised, i.e. the process of estate transfer between generations should be well planned. It is advisable to do it within one's lifetime, taking appropriate steps in advance.

Thanks to the testament we can manage our estate efficiently after our death as, apart from pointing out the persons to whom we would like to transfer certain items of our assets, we can also take advantage of the system of legacies and instructions, by means of which we will arrange the moment when the given person may take over the indicated goods from us.

Things will go differently, should the estate be deposited in a family foundation or a trust.

In Poland, there is a possibility to establish a foundation only to execute socially and economically viable goals. On the other hand, the institution of a trust is completely un-

known. However, it is common practice worldwide, more and more often used by Polish residents, to establish a foundation in a country where it has been customary for many years, e.g. in Liechtenstein, Austria or Panama.

A foundation plays a role as far as private estate management is concerned and is related to company succession. What characterizes it is the protection of the estate from operational risk connected with current commercial activity – an estate deposited in a foundation is protected from the risk of being collected by private and public creditors. Moreover, it safeguards enterprises against being fragmented between heirs, as it is the foundation that becomes the owner of the whole estate having one decision-making centre. It also ensures protection from the inheritance and donations tax because the estate accumulated in the foundation is not part of the total estate – the foundation remains the owner of the estate. Additionally, the foundation ensures smooth passage of generations in company management.

Trust, on the other hand, is an institution analogical to a private foundation. This solution is, however, used commonly in countries operating on a common law system basis, such as England, Cyprus, The Bahamas, the United States or Singapore. Establishing a trust which is supposed to protect the donor's estate efficiently must involve estate ownership transfer, hence the choice of a trustworthy person (the trustee) and drafting an appropriate trust agreement are of vital importance.

To sum up, this way or another, succession, especially estate succession, will eventually take place. It is certain. Important is that it should happen on our conditions.

Skarbiec Law Firm – we have been advising entrepreneurs on effective VAT refund for ten years already.