

Succession planning in Poland

Piotr Augustyniak of PATH Law examines the increased popularity of private foundations in family-owned business succession planning



Family-owned companies generate 18% of the GDP of Poland. There are more than 800k family-owned businesses in Poland. Currently founders face the problem of the succession. In the following five years new generations should take over approximately 60% of these companies. However, only 8% of successors declare the will to run the businesses. It has been some time since Polish entrepreneurs decided to use the concept of the private foundation as the tool of the efficient succession planning. Unfortunately, for many years, due to very convenient tax regimes of these vehicles, the tax authorities in Poland treated private foundations as part of aggressive tax planning schemes. The most popular jurisdictions among Polish entrepreneurs are Liechtenstein, Malta and The Netherlands.

However, it looks like Polish law makers have finally seen the demand on that kind of entity and there is a chance that the private foundation concept will be present in the Polish legal system.

Creation of the family foundation concept should protect the family-owned business against the change of ownership and enables

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easier and more efficient management by successors.

Private foundations should concentrate the ownership in one entity and protect its durability in case of uncontrolled succession. In case of the death of the founder it should help to continue the vision of the person who created the business and then contributed it into foundation. The important role is also smooth succession process and avoidance of potential conflicts between the successors.

The draft law allows the setup of the foundation with the notary as well as in the last will of the founder. This solution is coherent with other jurisdictions. The most important regulations will be included in the statutes of the foundation.

The assets of the foundation could be cash, cash equivalents, shares, bonds, real estate. The founder will have the flexibility in the setup of governance rules of the foundation. It will be his competence to designate the beneficiaries. It could be family members, but also charitable organisations.

If there are no successors or they are not interested in business operations, it is possible to engage the professional management team which will lead the development of the family business as well as will take a proper care on family assets. Successors may just be the beneficiaries and may benefit from passive distributions of profits accordingly.

The family-owned company has been very often built by generations. Its value is

consequently created by older and younger family members. As highlighted above, the number of successors is usually limited. Lack of continuity of the business may put the company in danger. In some cases, it may end up with the liquidation.

Currently existing legal solutions were not compatible with sizeable businesses. Change of the legal form or succession management are not enough to support the succession. They only solve the problem of two generations. It is still not possible to implement the advanced succession planning process. These solutions are well known in Western European countries and in the world's most developed countries. It helps to set up a multi-generational solution which allows the smooth transition and development of businesses for ages. The new draft law implements lots of solutions which will position Poland as an advanced jurisdiction for family-owned businesses. Poland may join countries like Austria, The Netherlands, Germany, Switzerland, or Sweden. Entrepreneurs from Poland may still use international solutions, especially if they operate abroad, however Polish family foundation may become more affordable, and more entrepreneurs will have this solution.

This attractive legal vehicle may also be interesting for entrepreneurs from Central and Eastern Europe. New regulations also look very attractive from the tax perspective. Endowment of assets will be tax neutral both for the founder as well as for the foundation. The new law also precises tax treatment of distributions to beneficiaries. Today it is one of the most important problems for foreign foundations. In new regulations the closed relatives will be exempted from the tax in the same way as in the case of donations from individuals.

There are still elements which require more precise language, however, if the law will enter into force, most probably in 2022, Poland may become an important succession planning jurisdiction in its geographical region as well as an attractive alternative to well established locations.

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One of Poland's foremost private client lawyers with international recognition, he is trusted by some of the most influential individuals in the country with legal and tax advice related to their private wealth. One such example is advising on setting up a number of private foundations. He also specialises in the relocation of families from Poland to other countries, particularly to Switzerland. His international expertise, combined with corporate and tax experience,

makes him a market leader in cross-border matters, particularly with a taxation and asset protection angle. He understands clients from both legal and business perspectives. His track record also includes tax litigation, organisation of business structures, and tax (both advisory and contentious) and corporate law, including company acquisition and spin-offs.

Piotr Augustyniak is recognised by *The Legal 500 EMEA* as a Leading Individual in the private client area.

FIRM PROFILE

PATH Law is a market-leading law firm specialising in comprehensive legal and tax advice. The firm offers expertise in complementary business lines – legal, tax and family office. PATH Law supports entrepreneurs, capital groups, HNWI's, family businesses and other organisations.

PATH Law renders professional advice in all legal and tax matters, including knowledge of European and non-European jurisdictions. The firm focuses on a direct, constant contact rooted in trust and knowledge of the needs of the client.

Companies and their owners are offered professional legal support, starting from the company formation by offering effective capital structures through ongoing service, ownership changes, transformations of both partnerships and companies, mergers, divisions, and liquidation. PATH Law advises on mergers and acquisitions as well as venture capital transactions, company financing and corporate law for domestic and foreign clients.

Private clients are supported in all legal and tax matters related to asset planning and management, tax planning, succession management, investment and real estate transactions, as well as maintaining relationships with banks and corporate administrators in foreign jurisdictions.

The firm's lawyers have broad experience in IT, new technology law, capital markets, real estate, renewable energy and litigation.

The compliance team offers clients comprehensive assistance in monitoring and verifying their legal compliance and designing appropriate programmes and regulations to ensure compliance in a constantly changing legal environment.

PATH Law clients include some of Poland's wealthiest and most influential individuals, who trust the firm's lawyers with their most important and high-value affairs. PATH provides legal services in English, French, Italian, Polish, Russian, Spanish and Ukrainian. In 2019 the firm opened PATH Family Office (Suisse) SA in Geneva.



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