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Succession management of a natural person's enterprise in Poland. Outline of the regulation

Zarząd sukcesyjny przedsiębiorstwem osoby fizycznej w Polsce. Zarys regulacji

Abstract

The subject of the article is a newly established in the Polish legal system institution of the succession management board of a natural person's enterprise. The article presents individual components of this institution, starting from the appointment of a succession manager, the legal and business requirements imposed on him, through his legal relationships with heirs entitled to inherit the enterprise after the deceased entrepreneur and the legal relationships that occur between the succession manager and business partners, consumers and employees of the existing enterprise, to the issues related to the legal and administrative consequences of the succession of the enterprise. The article ends with comments devoted to a specific situation in which the enterprise is run as a part of a civil partnership of partners who are natural persons. Issues related to the loss of authorization to perform the function of a manager and the expiry of the succession board together with the evaluation of the functioning of the regulations close the structure of the article.

Keywords

enterprise, entrepreneur, inheritance, management, natural person, succession

Streszczenie

Przedmiotem artykułu jest nowo utworzona w polskim systemie prawnym instytucja zarządu spadkowego przedsiębiorstwa osoby fizycznej. W artykule przedstawiono poszczególne elementy składowe tej instytucji, począwszy od powołania zarządcy spadku, nałożone na niego wymogi prawne i ekonomiczne, poprzez stosunki prawne ze spadkobiercami uprawnionymi do dziedziczenia przedsiębiorstwa po zmarłym przedsiębiorcy oraz stosunki prawne zachodzące pomiędzy zarządcą spadku a partnerami biznesowymi, konsumentami i pracownikami istniejącego przedsiębiorstwa, aż po kwestie związane z prawnymi i administracyjnymi skutkami sukcesji przedsiębiorstwa. Artykuł, choć nie rozwija zagadnienia, to jednak wskazuje na szczególną sytuację przedsiębiorstwa prowadzonego w ramach spółki. Kwestie związane z utratą uprawnień do pełnienia funkcji zarządcy i wygaśnięciem zarządu spadkowego wraz z oceną funkcjonowania przepisów zamykają strukturę artykułu. Artykuł ma charakter opisowy i jego głównym celem jest przedstawienie czytelnikom obcojęzycznym przedmiotowej konstrukcji prawnej.

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Słowa kluczowe

przedsiębiorstwo, przedsiębiorca, sukcesja, dziedzictwo, dziedziczenia, osoba fizyczna

Running a business by a natural person may not only be a source of revenue, but may also provide a particular emotion. Often economic activity, business activity is a form of human self-realization. This happens especially when the performed activity is at the same time his passion, or otherwise, passion is realized through the performed business activity. Undoubtedly, running an individual business gives a specific professional freedom, which usually is not experienced by people working on the basis of a contract of employment. It is not about this normatively defined freedom, the limits of which are determined primarily by the norms of public law, but by the internal freedom of man. Responsibility is inseparably combined with freedom. Responsibility is considered in legal, moral and ethical terms². Responsibility for oneself, one's work, often also other people. This is one of the reasons why not everyone is predisposed to run a business. Further, responsibility immanently imposes obligations. Time and work, which the entrepreneur devotes to the business activity, tighten his relationship with the enterprise. A strong emotional relationship between the entrepreneur and the activity or enterprise may also be shared by members of the entrepreneur's family, not only when the enterprise is of a family nature. Consequently, from the point of view of the close relatives of the entrepreneur, his enterprise acquires a special status. Of course, it is determined first and foremost by the material situation of the family and the profitability of the enterprise. However, the possible emotional relation with the achievements of the entrepreneur's life should not be underestimated. This relationship may take on a special character, especially after the death of the entrepreneur. In such a situation, it is a special legacy of the deceased.

Until 2018, the legal status of a natural person's enterprise after death was not clearly regulated. The legislation in force at the time did not, in principle, provide for the possibility of continuing economic activity after the deceased. The case became significantly more complicated if the business activity conducted was regulated. A natural person conducting business activity, wishing to ensure the smooth functioning of the company after his death, should have taken certain previous steps to this end. She/h could, for example, transform the enterprise into a commercial company, contribute it as an in-kind contribution to another enterprise, or make a donation or sale of the enterprise³. This state was significantly modified by the Act of 24 August 2018 on the succession

² See the judgment of the Polish Constitutional Tribunal of 26 June 2019, ref. no. K 16/17, in the so-called case of the printer and the position of the Sejm in this case (letter of 22 March 2018).

³ See: R. Blicharz, *Successive Management Board of the company inherited*, Warsaw 2019, p. 7 et seq.; M. Pazdan, *Successive administrator and executor of the will*, [in:] Dańko-Roesler A. (ed.), Leśniak M. (ed.),

management of a natural person's enterprise⁴, introducing an additional, optional and temporal solution. The Act regulates the rules of temporary management of an enterprise after the death of an entrepreneur who, on his own behalf, carried out economic activity on the basis of an entry in the Central Register and Information on Economic Activity⁵ and continuation of economic activity carried out with the use of this enterprise. The basic aim of the Act is therefore to regulate the possibility of continuing business activity after the death of the entrepreneur by persons indicated in the Act for a specified period of time⁶. This very important issue directly affects the legal situation not only of the heirs and legatees of the deceased entrepreneur, but also, possibly, his employees, contractors with whom he cooperated, as well as consumers who used services / purchased products / entrepreneurs. We should positively assess the legislator's perception of the need to regulate these issues both in the context of the functioning of the enterprise itself and the protection of the market.

The solutions introduced by the Act are optional. The persons indicated in the law who are entitled to the enterprise after the death of the entrepreneur may or may not use the institution of the succession management of the enterprise of the natural person. This means that after the death of the entrepreneur the enterprise is subject to the general principles of succession, however, if the persons indicated in the law wish to manage it on the basis of the law, then it is also subject to the regime of the law on succession management of the enterprise of a natural person. This is of key importance for both current and long-term operations of the enterprise. It should be emphasized that although the succession board regulated by the Act is not permanent in nature, i.e. it is established only for a specified period of time (until the succession board expires), the solutions adopted in the Act refer to key aspects of conducting business activity allowing it to continue even if it has been conducted so far on the basis of an administrative decision or an entry in a specific register of regulated activity (regulated activity).

The central point of the act is the enterprise remaining after the death of the entrepreneur. The Act calls it an inherited enterprise and, as a rule, by not granting it the status

Skory M. (ed.), Sołtys B. (ed.), *Ius Est Ars Boni et Aequi. Księga pamiątkowa dedykowana Profesorowi Józefowi Frąckowiakowi*, Wrocław 2018, p. 885.

⁴ The Act of 24 August 2018, Journal of Laws. 2018.1629, hereinafter referred to as the Act.

⁵ The Act of 6 March 2018 on Central Records and Information on Business Activity and Information Point for Entrepreneurs, Journal of Laws 2018.647, hereinafter referred to as the CEIDG Act.

⁶ These persons are listed in Article 14 of the Act. They include: the spouse of the entrepreneur who is entitled to share in the company in the inheritance, the statutory heir of the entrepreneur, or the testamentary heir of the entrepreneur or the debt collection legatee who, according to the will announced, is entitled to share in the company in the inheritance. Only in the margin of these arguments, it is worth noting that the legislator probably misused conjunctions when indicating the above mentioned persons, resulting in doubts as to the determination of the circle of persons authorized to perform specific so-called behavioural actions after the death of the entrepreneur. Ultimately, entitled persons become the so-called owners of an inherited enterprise (Article 3 of the Act).

of a legal entity⁷, stipulates that it includes intangible and tangible assets intended for business activity by the entrepreneur, constituting the property of the entrepreneur at the time of his death⁸. It also includes intangible assets intended for business activity, acquired by a succession manager or on the basis of conservative activities (referred to in Article 13 of the Act), in the period from the moment of entrepreneur's death until the date of expiration of the succession management board or expiration of the right to appoint a succession manager. Such an inherited regulation of the enterprise deviates slightly from the regulation of the enterprise in the light of the civil code⁹. The difference comes down to the fact that there is no need for an organised link between a group of components forming the enterprise in the inheritance. The definition of an inherited enterprise is of key importance in the Act, determining its application in specific circumstances. Depending on the adopted approach to the enterprise – subjective or functional – the act may (or may not) be applied¹⁰. The rule is that entrepreneurs conducting business activity use property, components necessary for its execution. These components constitute an organized set of intangible and tangible elements, i.e. an enterprise in the material sense¹¹. A problem arises when a given entrepreneur runs a business and does not have an enterprise in the material sense¹². In the absence of the enterprise in the material sense, it is possible to increase the inability to apply the institution of succession management, because there is no enterprise inherited. The situation may be rescued by the adoption of the view that the Act on succession management of an enterprise of a natural person, in so far as it defines the enterprise in the inheritance, also refers to the functional significance of the enterprise. In such a situation, however, serious doubts may arise as to the legitimacy of establishing a succession board.

⁷ See e.g. Article 14n §1(3) of the Act of 29 August 1997, OJ. 2018,800 as amended, tax ordinance. For more details see also R. Blicharz, *Succession Board ...*, p. 65 et seq.

⁸ The subject of the Act is only such enterprise of the entrepreneur who has registered with CEIDG. Therefore, it is not possible to take over the succession management of a company which was run outside the CEIDG register. This applies, among others, to the so-called unregistered activity referred to in Article 5 of the Act of 6 March 2018 on the entrepreneurial rights (Journal of Laws 2019.1292).

⁹ Act of 23 April 1964 on the Civil Code, Journal of Laws 2019.1145.

¹⁰ I'm omitting subjective, for obvious reasons.

¹¹ See E. Gniewek [in:] E. Gniewek (ed.), P. Machnikowski (ed.), *Kodeks cywilny. Komentarz*, Warszawa 2017, p. 117 et seq.; M. Habdas, *Przedsiębiorstwo jako przedmiot stosunków prawnorzeczowych*, Katowice 2007, p. 63 et seq.; M. Litwińska, *Pojęcie przedsiębiorstwa w prawie handlowym i cywilnym. Przedsiębiorstwo jako przedmiot obrotu (II)*, "Przegląd Prawa Handlowego" 1993, No 2.

¹² Compare justification of resolutions. SN of 17 March 1993, III CZP 30/93, OSN 1993, No. 9, item 154; orz. SA in Warsaw of 16 October 1993, I ACr 678/93, OG 1993, No 4, item 83. See also: M. Habdas, *Przedsiębiorstwo ...*, p. 48; M. Litwińska, *Pojęcie przedsiębiorstwa ...*, pp. 8-9; E. Gniewek [in:] E. Gniewek (ed.), P. Machnikowski (ed.), *Kodeks cywilny ...*, p. 91; M. Pazdan [in:] K. Pietrzykowski (ed.), *Kodeks cywilny...*, Volume I, Warszawa 2004, p. 133; M. Szydło, *Pojęcie przedsiębiorcy w prawie polskim*, "Przegląd Sądowy" 2002, No. 7-8; R. Blicharz, *Succession Board ...*, p. 45 et seq.

In addition to the regulation of the enterprise in the succession, the Act regulates the rules for the appointment of a succession manager, general principles for the performance of this management board and the conduct of the enterprise in the succession, relations between the owners of the enterprise in the succession and the succession manager, significantly modifies the legal consequences of the death of the entrepreneur in the event that he ran a regulated business activity, also applies to the situation in which the entrepreneur was a partner in a civil partnership. The institution of succession management of an inherited enterprise, introduced by the Act, forced the introduction of many changes in the legal and financial consequences of the death of an entrepreneur. As it has been already mentioned above, the succession board is temporal in nature, therefore the Act also regulates the prerequisites for the cessation of the succession board.

The succession administrator may be appointed by the entrepreneur himself or after his death by persons indicated in the Act (in the light of Article 12 of the Act, they are the spouse of the entrepreneur who is entitled to participate in the enterprise in the inheritance, or the statutory heir of the entrepreneur who accepted the inheritance, or the testamentary heir of the entrepreneur who accepted the inheritance, or the legatee of the debt collection who accepted the debt collection legacy, if according to the announced will they are entitled to participate in the enterprise in the inheritance¹³). The law calls these persons the owners of the enterprise in the inheritance (or a share in it)¹⁴. The nomenclature of the Act in this respect differs from the hitherto accepted understanding of the term „owner”, as well as the very phrase „owner of the enterprise in the inheritance” seems unfortunate. The process of appointing a succession manager consists of two stages. The first is the appointment of a succession manager, the second is its appointment. According to Article 6 of the Act, this process requires the appointment of a succession manager, then the consent of the person appointed as the succession manager to perform this function and finally make an entry to the Central Records and Information on the Business Activity of the succession manager¹⁵.

¹³ Only by the way, it is worth noting the change in the existing regulation of the Civil Code with regard to the subject of the debt collection clause. According to the literal interpretation of Article 981¹ § 2 point 3 of the Civil Code, only an enterprise within the meaning of Article 55¹ of the Civil Code may be the subject of a debt collection provision. However, the Act provides expressly for the possibility of establishing the subject of a debt collection clause also as a subject of a shareholding in an enterprise, which until now has been considered inadmissible. Cf. E. Kremer, *The institution of a debt collection clause and spouses* [in:] M. Pecyna (ed.), J. Pisuliński (ed.), M. Podrecka (ed.), *Rozprawy cywilistyczne. Księga pamiątkowa dedykowana profesorowi Edwardowi Drozdowi*, Warszawa 2013; P. Książak, *Zapis windykacyjny*, Warsaw 2012; S. Wójcik, F. Zoll, *System prawa prywatnego. Prawo spadkowe*, volume 10, B. Kordasiewicz (ed.), Warszawa 2013; L. Kaltenbek, W. Żurek, *Prawo spadkowe*, Warszawa 2012.

¹⁴ These persons also include a potential inherited purchaser of the enterprise – Article 3 of the Act. See more in detail: R. Blicharz, *Succession Board ...*, s. 11–12.

¹⁵ Look at the wider picture: P. Bajer, *Successive management of a company of a natural person. Questions and answers. Templates of letters. Law*, Warszawa 2019, p. 50 et seq.; R. Blicharz, *Successive Board...*, p. 13 et seq.

A succession manager is a person who runs an enterprise inherited after the death of the entrepreneur. It is worth noting the circumstances in which the person performing this function performs the duties entrusted to him/her. After the death of the entrepreneur, the family usually does not concentrate on running the enterprise, but experiences the death of the closest person. In these circumstances, a person acting as a succession manager should enjoy special trust of the entrepreneur and his family. Therefore, the Act does not impose any specific restrictions on the person of the succession manager, introducing only minimum safeguards in this respect. Thus, according to the Act, a succession administrator may be only a natural person having full capacity to perform legal acts, against whom a ban on conducting business activity, referred to in Article 373 paragraph 1 of the Bankruptcy Act¹⁶, or a penal measure or a protective measure in the form of a ban on conducting specific business activity, covering business activity performed by an entrepreneur or business activity within the scope of asset management (Article 8 of the Act), has not been legally ruled against. It should be noted here that if the entrepreneur's activity was a regulated activity, the prerequisite for its continuation after his death may be that the manager obtains a succession administrative decision confirming the possibility of its continuation. The Act provides that such a decision may be issued after the conditions required to obtain a regulatory decision have been fulfilled (Article 38(2) of the Act). Therefore, it is reasonable to appoint as successor manager a person who meets or can meet the requirements of the law in this respect.

After the death of the entrepreneur, if no succession manager has been appointed by him, until the establishment of the succession management board of the enterprise are managed by persons authorized to perform conservative actions, indicated in Article 14 of the Act¹⁷. The succession administrator takes over the obligations related to running an inherited business only from the moment of establishing the board, i.e. if it was appointed by the entrepreneur – from the moment of his death, and if it was appointed after his death, from the moment of making an entry in the CEiDG. From the moment of taking over the management of an inherited enterprise, the owners of the enterprise and the succession manager establish a legal relationship regulated by the Act. To some extent, it may also be shaped by a contract, but only within the scope of disposable provisions. This agreement may be concluded with the succession manager by the entrepreneur himself. Since it concerns the enterprise and is not closely connected with the entrepreneur, the property rights and obligations arising from it will, upon the entrepreneur's death, be transferred on the basis of Article 922 of the Civil Code to the heirs inheriting

¹⁶ Act of 28 February 2003, Journal of Laws. 2019.498.

¹⁷ See footnote 5. Once the decision to declare an acquisition of succession has become final, to register an act of succession certification or to issue a European Certificate of Succession, these transactions may be carried out only by the business owner of the succession.

the right to the enterprise or to the debt collection legatees. If the entrepreneur has not concluded such an agreement with the successor manager, the persons authorised to appoint him may do so after the death of the entrepreneur. The agreement to administer the succession is an unnamed, consensual, cautious and mutually binding agreement and may be for a fee. It is structurally similar to a managerial agreement¹⁸.

The succession manager acts in his own name and on behalf of the owners of the inherited company. This solution corresponds to the construction of an indirect substitute (e.g. bankruptcy trustee, commissioner)¹⁹. The structure of a succession administrator has, however, a certain specificity. As a rule, it is assumed that an indirect deputy performs a legal act on his/her own behalf and the effects of this act directly concern his/her property sphere. Since an indirect deputy acts on behalf of another person, he or she is obliged to settle accounts with the replaced person on whose behalf he or she acted. On the other hand, the effects of actions taken by a succession manager in the course of managing an inherited enterprise are directly related to the assets belonging to that enterprise. The liabilities incurred by the succession manager and rights acquired by him within the framework of running the enterprise inherited by virtue of the Act are included in the assets of the enterprise in the inheritance. Therefore, it is not necessary to perform separate legal actions, which should transfer these liabilities (rights) to the property mass, which is created by the inherited company in order to settle with its owners²⁰.

Running an inherited enterprise is connected with the necessity to take legal actions, including in particular making decisions. A succession administrator is empowered to independently perform ordinary management actions in matters arising from the running of the business inheritance without the need to consult the owners of the business inheritance. The succession manager's performance of activities exceeding the scope of ordinary management requires the consent of all the owners of the enterprise in the succession, and in the absence of such consent – the permission of the court (Article 22 par. 2 of the Act). In a special way, the Act protects persons who have no legal capacity to perform acts in law, or whose capacity is limited. On its basis, the guardianship court restricts the succession management of such a person's property, if it is necessary to ensure the proper management of its property. This limitation consists in indicating which activities in the scope of succession management with the assets of such a person cannot be performed without the permission of the court, or subjects the succession manager to other restrictions to which the guardian is subject (Article 23 of the

¹⁸ See J. Jacyszyn (ed.), *Spółki handlowe. Pytania i odpowiedzi*, Warszawa 2010, p. 242 et seq.

¹⁹ See Article 160 of the Act of 28 February 2003, Bankruptcy Law, OJ C 302, 31.12.2003. 2019.498. See more details: R. Adamus, *Przedsiębiorstwo upadłego w upadłości likwidacyjnej*, Warszawa 2011, p. 67 et seq.; M. Hejbudzki, [in:] K. Deputat et al., *Ustrój prawny przedsiębiorców*, Olsztyn 2006, p. 74.

²⁰ For more information see R. Blicharz, *Succession Board...*, p. 37 et seq.

Act)²¹. The succession administrator may sue and be sued in matters arising from the conduct of the business inheritance. He/she also has the right and obligation to participate in administrative, tax and court-administrative proceedings in such cases. In proceedings in such cases, the succession administrator acts in its own name, on behalf of the owner of the inherited enterprise. Therefore, the succession administrator holds the position of a party in the formal sense of these proceedings, while the owners of the inherited enterprise are parties in the material sense²². It seems that if a specific administrative, tax or court-administrative proceeding was initiated while the entrepreneur was still alive and the succession administrator was appointed upon his death (i.e. in the case of the appointment of the succession administrator by the entrepreneur), he or she smoothly takes over the place of the existing entrepreneur in the proceeding. In the case of a public administration body conducting proceedings under the Code of Administrative Procedure²³, there are no grounds for suspending the proceedings (Article 97 §1 point 1 of the Code of Administrative Procedure)²⁴. In the case of tax proceedings, the death of a party is the basis for mandatory suspension of proceedings (Article 201 §1 point 1 of the Tax Ordinance)²⁵. However, the Act on succession management of a natural person's enterprise has amended Article 205a of the Tax Ordinance, according to which the tax authority undertakes ex officio suspended proceedings when the reason for suspension ceases to exist, including, inter alia, after determining the succession manager in matters covered by the succession management board²⁶.

An important component of any enterprise is the legal relationship in which the entrepreneur remains. At the moment of his death, in accordance with the inheritance law, part of the rights and obligations arising from the succession enters into the inheritance. The arrangements in this respect do not take place either immediately or automatically when the inheritance is opened. From the perspective of the company and the people involved (consumers, contractors, employees), this poses a serious risk. This creates a state

²¹ See e.g. Articles 109, 165, 166 of the Act of 25 February 1964, Family and Guardianship Code, OJ C 304, 23.12.1964. 2017.682 as amended, hereafter referred to as krio.

²² For a broad description of a party to administrative proceedings, see: Hauser R. (ed.), Wierzbowski M. (ed.), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa 2018, p. 225 et seq., together with the literature and case-law cited there.

²³ Act of 14 June 1960, Code of Administrative Procedure, Journal of Laws. 2018.2096, hereinafter referred to as "the Code of Administrative Procedure", hereafter referred to as kpa.

²⁴ Article 97 §1 point 1 of the Code of Administrative Procedure refers to Article 30 §5 of the Code of Administrative Procedure, where it refers to persons administering the estate of the estate. It seems that within the framework of persons administering the estate, there is also a succession administrator. Cf. R. Hauser (ed.), M. Wierzbowski (ed.), *Kodeks postępowania administracyjnego...*, p. 378 et seq. and 710 et seq.

²⁵ Act of 29 August 1997, Journal of Laws. 2019.900.

²⁶ For more information see: A. Mariański (ed.), *Planowanie sukcesyjne. Prawne i podatkowe aspekty zarządu sukcesyjnego przedsiębiorstwem osoby fizycznej*, Wolters Kluwer Polska 2019; R. Blicharz, *Succession Board...*, p. 64 et seq.

of uncertainty as to the further fate of the legal relationship established during the life of the entrepreneur. Bearing it in mind, the legislator has introduced the right of deterrence (Article 30 par. 2 of the Act). It consists in the possibility of withholding the performance of obligations by each of the parties to the contract²⁷. It is created at the moment of the entrepreneur's death and lasts until the establishment of a succession board²⁸. In addition, the run of deadlines for the performance of contract and deadlines for the performance of other obligations or rights under the contract does not begin, and is suspended in the period from the date of death of the entrepreneur to the date of establishment of the succession board, and if the succession board has not been established – until the date of expiry of the right to appoint a successor manager (Article 30 par. 3 of the Act). The Act devotes a separate place to the regulation of employment contracts. In view of the need to ensure possible continuity of employment relationships, the Act on succession management of a natural person's enterprise amended the Labour Code²⁹ by supplementing its provisions with situations related to the establishment of succession management³⁰.

Legal enforcement of the institution of succession management to the Polish legal system forced the modification of the regulation of running a regulated business activity after the death of the entrepreneur. Bearing the above in mind, the Act on succession management of a natural person's enterprise collectively calls concessions, permits, licences and permits issued to an entrepreneur in the form of an administrative decision, which are related to the business activity performed by the entrepreneur, decisions related to the enterprise (Article 36 of the Act). The Act adopts a rule according to which, in the event of the death of an entrepreneur, decisions related to the enterprise expire. However, due to the purpose of the Act, which is to extend the functioning of the enterprise after the death of the entrepreneur, the Act introduced a special prolongation period for the validity of decisions related to the enterprise, which is 3 months, counted from the date of establishment of the succession board, and if it was not established, this period is 6 months from the date of the death of the entrepreneur. During the pro-

²⁷ However, the other party to the contract concluded by the trader may not withhold performance if the person referred to in Article 14 gives a consideration in return. In this case, the other party's performance period starts from the day on which the service is offered. With respect to this legal construction, the relevant remarks made in the doctrine and case-law on the basis of Article 488 §2 of the Civil Code, Article 490 §1 of the Civil Code and Article 496 of the Civil Code remain valid.

²⁸ However, the right of deterrence does not solve the problem in the case of the appointment of a successor manager by an entrepreneur. The appointment of a succession manager takes place in this situation at the same time, i.e. at the moment of the death of the entrepreneur. In these circumstances, the right of retention will not arise at all. Similarly, if the succession manager has been appointed by the entrepreneur, the run of deadlines for performance of the service and deadlines for the performance of other obligations or rights under the contract will not be stopped or suspended. This is a significant shortcoming of the Act. For more details see R. Blicharz, *Succession Board ...*, p. 69 et seq.

²⁹ Act of 26 June 1974, Journal of Laws 2019.1040.

³⁰ Look at the wider picture: M. Zbucka, *Skutki prawne śmierci pracodawcy*, LCI 2018.

longation period, the succession administrator may request the competent authority to issue a decision under which the existing decision related to the enterprise may continue to be in force, i.e. it will not expire³¹. Such a decision was called a decision confirming the possibility of executing a decision related to the enterprise (Article 38 of the Act). A decision confirming the possibility to execute a decision related to the enterprise does not, however, solve the problem of the possibility for the owner of the enterprise to continue the business activity inherited when the succession board ceases. In order to prevent the expiration of the business decision after the succession board ceases, the owner of the inherited business should request the transfer of the decision from the competent authority. The request should be made within 6 months from the date of death of the entrepreneur if no successor administrator has been appointed or if the board of directors has expired. Since it is possible for a succession administrator to simultaneously apply for a decision confirming the enforceability of a decision relating to an undertaking and for the inherited owner of the undertaking to transfer that decision to it, the legislator makes both procedures mutually dependent, giving higher priority to the procedure initiated on the request of the succession administrator. In the case of concurrence of such proceedings³², the body conducting them is obliged to suspend ex officio the proceedings instituted at the request of the owner of the enterprise in the succession (Article 37 paragraph 2 of the Act)³³. In this way, a collision of exercising rights and obligations resulting from a decision related to the enterprise is prevented, which, if it were not for this regulation, would be available to both the succession manager and the owner of the enterprise inherited (or a partner in a civil partnership in which the deceased entrepreneur was a partner). After the expiration of the succession board, suspended proceedings on the motion of the owner of the enterprise in the inheritance are undertaken ex officio. The possibility of transferring an administrative decision to a third party should be considered as an exception to the rule. The rule is that an administrative decision is stable, which, in combination with the double concreteness of the decision – as regards the person and the case – means that it is not possible

³¹ It is worth noting that the prorogation periods specified in Article 37(1) of the Act may be extended if the entitled applicant submits an appropriate application and the period of 3 or 6 months expires respectively before a decision terminating the proceedings is issued. In such a situation, the decision related to the enterprise does not expire despite the lapse of the indicated deadline. However, if a decision related to the enterprise was issued for a definite period of time (e.g. a concession for security services for persons and property), and its expiry date falls within the prolongation period, the decision expires on the date on which it was issued. For more details see R. Blicharz, *Succession Board ...*, p. 77 et seq.

³² This is only possible under Art. 42 of the Act if the first application is filed by the owner of the enterprise inherited.

³³ Furthermore, in order to avoid prolonging the uncertainty as to the person entitled to exercise the rights and obligations arising from the decision relating to the undertaking, the suspension decision is not open to challenge.

to change the administrative decision³⁴. However, the principle of the durability of an administrative decision is not absolute. An example of exception to this principle is the essence of the succession board structure combined with the need to enable the continuation of business activity by the legal successors of the entrepreneur, even after the termination of the succession board³⁵.

The regulation of the act is supplemented by provisions concerning legal consequences of the death of a civil partnership partner, which take into account the specificity of conducting business activity in this legal form. The loss of the authorization to perform the function of a manager and the expiry of the succession board close the construction of the succession board normalized by the law. Relatively few provisions refer to issues related to liability related to both the appointment of a succession manager and the performance of the management board. It concerns the liability towards the succession manager, the owners of the company inherited and third parties in various configurations. In this respect, it is essential to refer to the relevant provisions of the Civil Code.

The law on the succession management of a natural person's enterprise allows for a smooth takeover of the management of the enterprise after the death of the entrepreneur. In this respect, it provides a constructive solution to the existing difficulties faced by the employees of the entrepreneur, his contractors, consumers and the closest relatives at the time of the inheritance's opening in the context of the functioning of the company. Like most legal institutions, by solving one problem, the Act generates or contributes to the creation of others. However, the importance of its regulation allows for a positive assessment of the solutions adopted in it. It should be stressed that the Act introduces only a temporary solution. Ultimately, the owners of an inherited enterprise must decide on the possible continuation of business activity based on the inherited enterprise after the succession board expires.

Currently in Poland about 3 million natural persons run enterprises in the form of so-called self-employment. Taking into account the fact that about 70% of enterprises run by natural persons after the death of the entrepreneur cease their activity³⁶, it seems that the Act gives future owners of enterprises inheritance a real legal instrument allowing to change the current trend in this area.

³⁴ See J. Malanowski J. [in:] R. Hauser (ed.), M. Wierzbowski (ed.), *Kodeks postępowania ...*, p. 1166 et seq. together with the literature and case law referred to therein.

³⁵ For more information see R. Blicharz, *Succession Board ...*, p. 85 et seq.

³⁶ See the Explanatory Memorandum to the Bill, Sejm Paper No. 2293, p. 4.

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