

CLOSING THE GAP



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SUPERVISOR, VISTRA POLAND, WRITES ABOUT THE FAMILY TRUST—A NEW
VEHICLE FOR MULTIGENERATIONAL BUSINESS MANAGEMENT**

On May 22, after a few years of working on the draft, the long-awaited act of January 26, 2023, on family trust came into force. It makes it possible to conduct an effective succession of a business within the family, and at the same time, it protects the business' assets.

Before the act became law, the successors of the deceased entrepreneur had to go through complicated and lengthy inheritance proceedings, which, in practice, often prevented an enterprise under inheritance from running its business effectively. To avoid it, the new act provides comprehensive mechanisms allowing to inherit and maintain the assets of a family business, and to operate the business efficiently despite potential disputes between the successors.

NEW VEHICLE

The act defines family trust as a legal entity established for the purpose of accumulating and managing assets and distributing its profits to the beneficiaries. The precise aim of the trust is determined in the statute by the founder.

To establish a trust, an incorporation deed or a will has to be drawn up by the notary. Both documents need to include the founder's declaration on the establishment of a family trust. Such a declaration can be made only by a natural person, who has total legal capacity to undertake legal action. After the execution of a deed or announcement of the will a trust is incorporated to the company under inheritance, and from that moment the trust will manage and protect the company's assets on its own behalf.

Apart from the above, a family trust also requires a statute, which would determine its purpose and nature. The statute is adopted by the founder through a notarial deed. Such a document indicates not only the general terms of the trust, such as business name, registered office, and purpose but also the manner of defining beneficiaries entitled to receive profits and the scope of their rights. The beneficiary can be an individual (natural person) or a public beneficiary, as well as the founder. The exact circle of beneficiaries of a family foundation and the scope of their powers should be determined by the founder in the statute. Moreover, once the statute is determined, it is required to establish the trust's governing bodies, draw up an inventory of the property, and contribute the assets by the founder. The assets owned by the trust let it achieve the objectives assigned to it.

The founder must contribute to the family foundation to cover the initial fund with a value specified in the statute, however not less than PLN 100,000. Additionally, apart from the contribution, the assets of the trust may be increased by donations, inheritance, or income from business activities. The family trust, like other legal entities, is subject to registration and gains legal personality upon registration in the register of family trust kept by the District Court in Piotrków Trybunalski.

STILL, IN BUSINESS

When drafting the act, lawmakers discussed whether it should prohibit family trust from conducting business activities or

not. The act introduces a compromise. It allows the trust to do business operations in a limited scope such as disposing of property, lease, acquisition and sale of securities and also joining and participating in commercial companies, investment funds, granting loans, trading in foreign means of payment belonging to the family foundation, forest management among others. The catalog of permitted activities is quite extensive and shows that a family trust may be able to become a viable investment vehicle. In that case, if the trust operates its business activity within the scope allowed by the act, it will be exempt from corporate tax. The act does not provide any regulation regarding breach of this provision, except when it comes to tax consequences. Going beyond the statutory scope of activities will impose on the trust an obligation to pay tax sanctions with a tax 25 percent tax rate on the activities beyond the scope.

GOVERNING BODIES

Within a family trust, there are three governing bodies: the management board, the supervisory board, and the beneficiaries' meeting. The management board is tasked with managing the trust's affairs and representing it vis-a-vis other parties. Additionally, the board ensures that the aims set out in the trust statute are achieved. Moreover, the founder may establish voluntarily the supervisory board in the statute. If the number of beneficiaries exceeds 25 then setting the supervisory board is

obligatory.

The supervisory board is responsible for overseeing the management board in obeying the law. Additionally, the statute may extend its power by making the management board obtain the supervisory's board consent for making certain decisions.

The governing body of the family trust is the meeting of the beneficiaries. Who they are is specified in the status of the family trust. The meeting is convened by the management board which has the right to adopt the most important resolutions relating to the foundation and its activity.

THE PROS

The family trust system brings many positive aspects and solutions for entrepreneurs. It is crucial for those who set up their businesses in 80' and 90' and nowadays their successors do not plan to continue family business or there are no descendants at all. With a family trust, family members can manage the assets, protect them from division or loss, do succession planning, and ensure that the family business grows. The use of family trust will help significantly to strengthen Polish brands without the risk of family disputes between successors. In addition, the family trust offers some tax advantages and thus may become a potential area for abuse. Family trust, therefore, must not be treated as a tax optimization tool but a vehicle for multigenerational business management.