

Legal alert

Family Foundations

On 22 May, the Family Foundation Act entered into force. It provides for a new legal structure modelled on similar solutions that have been in place for years in countries such as the Netherlands, Austria, Germany, Malta and Liechtenstein. The legislature intended a family foundation to be the optimal legal form for managing family assets and for succession planning.

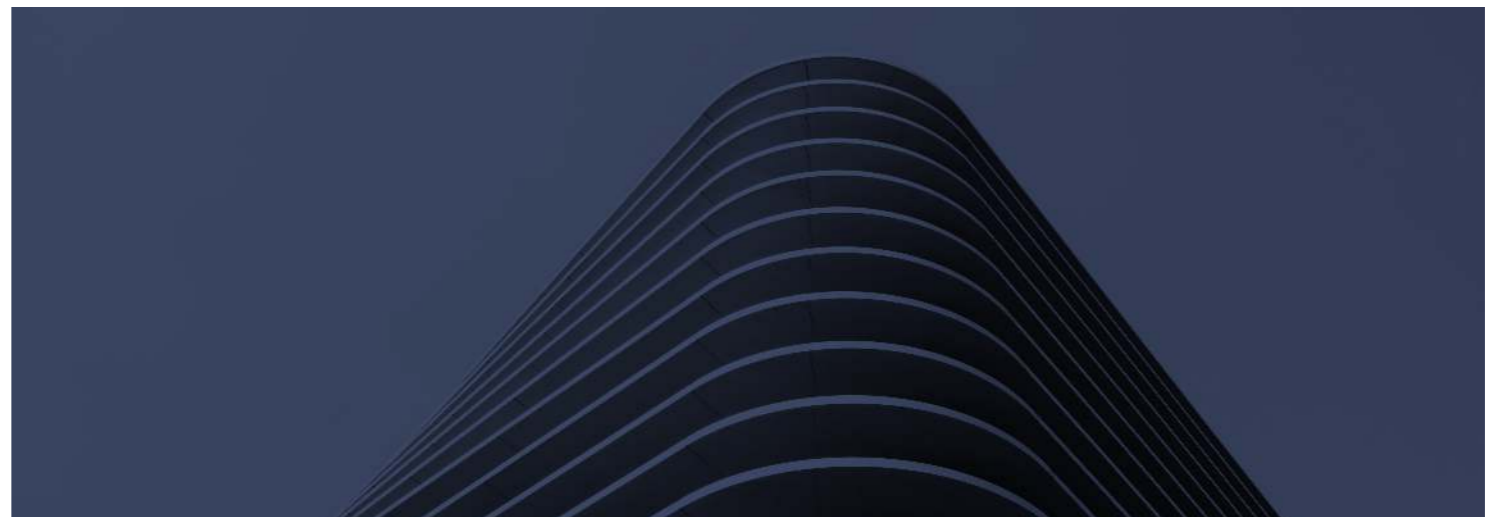
Why set up a family foundation?

A family foundation can enable you, among other things, to:

- plan the succession of assets over multiple generations;
- reduce the risk of inheritance disputes and inheritance claims relating to legitim;
- provide certain benefits to persons (beneficiaries) designated by the founder, the scope and nature of which can be freely determined;
- allow the value of the assets to increase while deferring the taxation of income earned until the foundation pays benefits to the relevant beneficiaries, or is liquidated;
- carry out a merger or division of a company, or an exchange of shares (stocks) in companies, which were contributed to the foundation, in a tax-neutral and risk-free manner; and
- flexibly form the rules for the operation and management of the foundation.

How is the activity of a family foundation taxed?

- the contribution of assets to the foundation by the founder is not subject to income tax;
- in principle, a family foundation has been subjectively exempted from income taxation and will not pay income tax on income from transactions related to the management of its property, including the disposal of certain assets contributed to the foundation by the founder (including securities and derivatives);
- benefits provided by the foundation to the founder and the immediate family members of the founder are not subject to PIT;
- benefits transferred by the family foundation to its beneficiaries are subject to taxation (at a 15% CIT rate);
- the income of the founder, and/or a person who is a member of what is known as the "zero group" in relation to the founder, who are entitled to receive property in connection with the winding-up of the family foundation, has been exempted from PIT.



What does the process of forming a family foundation look like?

The most important steps involved in establishing a family foundation include:

- the filing by the founder of a declaration of the establishment of a family foundation before a notary public in either deed or will (last will and testament) form;
- drafting the statute of the family foundation in the form of a notarial deed;
- preparing an inventory of property and transferring the assets included therein to the family foundation fund (the minimum value of the contributed assets is PLN 100,000);
- appointing members to the governing bodies of the family foundation; and
- having the family foundation entered in the relevant official register.

Founder, beneficiary, benefit

Only an individual can be the founder of a family foundation. A foundation may have one or more founders. The rights and obligations of the founder are non-transferable. The role and influence of a founder in the operation of the family foundation depends on the founder's intent.

The primary purpose of a family foundation is to provide benefits to beneficiaries. The beneficiaries may include any individuals and non-profit organisations designated by the founder. The founder decides on the size and terms of the benefits provided to beneficiaries.

The founder may establish different benefits for specific beneficiaries. He/she is free to shape the conditions on which the payment of benefits depend (such as the beneficiary's age, education or marital status). Benefits can take the form of one-time payments, periodic annuities or other types of financial advantage. Moreover, the founder may freely modify the rules regarding the designation of beneficiaries and the benefits to which they are entitled.

Governing bodies of a family foundation

A family foundation, as a legal entity, operates through its governing bodies. These include:

- the management board;
- the supervisory board (mandatory when there are more than 25 beneficiaries); and
- the assembly of the beneficiaries.

Changes in inheritance law

The Family Foundation Act also introduces changes to inheritance law regulations. In particular:

- when calculating the legitim, the family foundation's founding fund will be added to the estate if it was contributed less than 10 years before the opening of the inheritance (unless the family foundation is the heir);
- the amount of the beneficiaries' legitim will be proportionally reduced by the benefits they received from the foundation (and by the value of the property received in connection with the winding-up of the family foundation);



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- it has become possible to postpone the payment of a legitim, to divide it into instalments, and, in exceptional cases, to reduce it;
- the possibility of a partial or full waiver of the right to a legitim, or its transfer to another person entitled to the inheritance, has been introduced.

Imagine
having us
on your side.

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