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The changes introduced by a deregulation act on the succession administration of an enterprise of a natural person

Zmiany wprowadzone przez ustawę deregulacyjną w zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej

Abstract

The purpose of the amendments introduced by the Act of 31 July 2019 amending certain acts in order to reduce the regulatory burdens, called the deregulatory act, is to reduce unnecessary and excessive regulatory burdens. New provisions are to improve the succession by enabling or improving the exercise of rights in relation to assets of an enterprise when the share in the enterprise is included into an estate from a deceased spouse of the sole trader. The deregulation act provides for the amendment to the Act on the succession administration of an enterprise of a natural person to reduce inaccurate and excessive regulatory burdens, in particular, those of an administrative nature.

Key words: entrepreneur, succession, authorising acts, decisions related to the enterprise, interim representative

JEL: K2

Introduction

After more than a year of operation of the Act of 5 July 2018 on succession administration of an enterprise of a natural person (The Official Journal of Laws of the Republic of Poland 2019 item 1495), the legislator decided that it was necessary to amend it. The Act of 31 July 2019 amending certain acts in order to reduce the regulatory burdens introduces amendments, among others in the Act of 5 July 2018 on the succession administration of an enterprise of a natural Person. The amendments enter into force on 1 January 2020 and the need for them stems

Streszczenie

Celem zmian wprowadzonych przez ustawę z 31.07.2019 r. o zmianie niektórych ustaw w celu ograniczenia obciążeń regulacyjnych, nazywaną ustawą deregulacyjną, stało się ograniczenie zbędnych i nadmiernych obciążeń regulacyjnych. Nowe przepisy mają usprawnić sukcesję przez umożliwienie lub usprawnienie wykonywania praw w stosunku do majątku przedsiębiorstwa, w sytuacji gdy udział w przedsiębiorstwie wejdzie do spadku po zmarłym małżonku przedsiębiorcy jednoosobowego. Ustawa deregulacyjna zakłada nowelizację ustawy o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej w celu ograniczania nadmiernych i nieadekwatnych obciążeń regulacyjnych, w szczególności tych o charakterze administracyjnym.

Słowa kluczowe: przedsiębiorca, sukcesja, akty uprawniające, decyzja związana z przedsiębiorstwem, tymczasowy przedstawiciel

from the need to further facilitate carrying on economic activity after death of the entrepreneur. In the explanatory memorandum to the project of the Act it was indicated that the aim of the amendments was to reduce the regulatory burdens, in particular, those of an administrative nature. The Act is also an implementation of the announcements formulated in the Strategy for Responsible Development to reduce bureaucratic burdens and simplify regulations. The scope of the implemented solutions constitutes the second stage of the changes aimed at facilitating the succession of the enterprises (explanatory memorandum).

Scope of changes introduced in the Act on succession administration of an enterprise of a natural person

The legislator introduced the changes in the title of the Act on succession administration of an enterprise of a natural person and new wording aims to determine its general subject matter — Act on succession administration of an enterprise of a natural person and other facilitations in the succession of the enterprises. The material scope of the Act on succession administration of an enterprise of a natural person was extended, which required a change in the title of the act. In the legislator's assessment, it will enable the use of the mechanisms and tools designated for succession management (e.g. the procedure of appointing the succession administrator after death of an entrepreneur or the procedure for transferring decisions relating to the enterprise).

With regard to the amendments in the Act on succession administration of an enterprise of a natural person, we can divide them as follows:

- 1) of general nature that order the previous regulations on succession administration;
- 2) related to the transfer of rights and obligations related to concessions, authorisations, licences and permissions in the case of life-succession;
- 3) related to the death of the spouse of an entrepreneur entered in CEIDG (Central Registration and Information on Business).

The amendments of general nature

Among the classificatory amendments, the legislator divided the foregoing Chapter 1 "General provisions" and created two separate chapters. Chapter one will determine the material scope of the Act (chapter 1) and Chapter two will contain the existing content of Articles 2-5 of the Act pertaining to the issue of the enterprise in the inheritance (Chapter 1a).

The legislator clearly determined the material scope of the Act in Art. 1. The Act regulates the rules of:

- 1) temporal management of an enterprise after the death of an entrepreneur who carried out the economic activity on their behalf based on an entry in Central Registration and Information on Business and the continuation of the economic activity carried out using this enterprise;
- 2) administration of the estate in relation to temporal exercise of the rights from share in the enterprise of the entrepreneur's spouse, carrying out an economic activity on their behalf based on an entry in CEIDG after the death of that spouse;
- 3) assuming the concessions, authorisations, licences and permissions issued to an entrepreneur, carrying out an economic activity on their behalf based on an entry in CEIDG in the form of a decision of a public administration authority related to its economic activity, hereinafter referred to as "decision related to the enterprise".

Amendments concerning the transfer of rights and obligations relating to concessions, authorisations, licences and permissions in the case of life-succession

The amendment of the Act on succession administration of an enterprise of a natural person provides for the exercise of rights from the decisions related to the enterprise by its acquirer — when the acquisition is made based on an act in law inter vivos. The legislator introduced the new wording of title 7 of the act — Decisions related to the enterprise, regulated activity and entries in the register of regulated activity and other registers in the case of death of an entrepreneur. In this chapter, the legislator used the mechanism of transferring the decisions related to the enterprise, currently regulated in Arts 42-44 of the Act on succession administration which will entirely be of use in the case of an acquisition of an enterprise within the meaning of Art. 551 of the act of 23 April 1964 — Civil Code, if the acquisition was made directly from:

- 1) entrepreneur carrying out the economic activity on their behalf based on an entry in CEIDG;
- 2) entrepreneur carrying out the economic activity on their behalf based on an entry in CEIDG and their spouse;
- 3) entrepreneurs who are partners in a civil law partnership.

Therefore, the amendment will concern the cases of succession of an economic activity carried out based on an entry in CEIDG when the administrative decisions are formally related to the entrepreneur and transfer of an enterprise does not cause the automatic transfer of rights and obligations arising from such decisions.

The commented provisions, along with the Art. 36 and subsequent provisions of the act on succession administration of an enterprise of a natural person, will apply unless the separate provisions state otherwise, and will concern the "decisions related to the enterprise" currently defined in Art. 36 of the Act, to the exclusion of the cases, when:

- 1) according to the separate provisions, the decision may be issued solely for natural person (which is proof of its personal nature);
- 2) the rights and obligations arising from the decision are transferred onto the acquirer of an enterprise by virtue of law (e.g. water law permit issued under Water Law Act or integrated environmental permit issued under Environmental Protection Law Act).

The legislator clarified the notion of "decision related to the enterprise". Firstly, this notion will be common to both procedures provided in the act on succession administration of an enterprise of a natural person, which clarification was moved to its Art. 1(3). Decisions related to the enterprise concern the assuming of the concession, authorisations, licences and permissions issued for an entrepreneur who carries out an economic activity on their behalf and based on an entry in CEIDG in the form of a decision of a public administration authority related to the economic activity

carried out by them, hereinafter referred to as "decisions related to the enterprise" (on the subjects of the decisions related to the enterprise, see: Bieluk, p. 11).

Secondly — the exclusion of other decisions than those indicated in the material scope of the Act, whose addressee was the deceased entrepreneur, which does not include e.g. the authorisation for concentration issued under the Act on Competition and Consumer Protection or tax liability decisions.

The legislator introduced a new Chapter 7a (Arts 45a-45e) which allows the acquirer of an enterprise to fill an application to the competent authority for the transfer of the decision related to the enterprise to them.

Art. 45b of the Act contains the definition of an acquirer of an enterprise. It is an entrepreneur — including legal person and organizational unit referred to in Art. 331 para. 1 of the Act of 23 April 1964 of the Civil Code — to whom an enterprise was contributed. If the components of an enterprise will be acquired by a person who does not have the entrepreneur's status, there will be no grounds for transferring the decision related to the enterprise to them. The procedure of transferring the decision, as referred to above, will be analogous to the one provided in Arts 42-44 of the Act on succession administration of an enterprise of a natural person.

According to Art. 45c of the Act, the acquirer of the enterprise may fill an application for the transfer of the decision to them within three months from the day of the acquisition of an enterprise to the public administration authority which issued the decision related to the enterprise. The public administration authority which issued the decision related to the enterprise transfers, by means of a decision, the decision related to the enterprise to the acquirer of the enterprise by changing the decision related to the enterprise, in terms of its addressee, where:

- 1) the conditions for this decision required by separate provisions were fulfilled;
- 2) the acquirer of the enterprise submits the documents confirming the fulfilment of conditions;
- 3) the acquirer of the enterprise states that they accept all conditions included in this decision and commits themselves to fulfil all the obligations related to it;
- 4) the acquirer of the enterprise submits the written consent of other acquirers for the transfer of the decision related to the enterprise to them — when the enterprise was acquired by few people.

If the above conditions have personal nature, they shall be considered fulfilled when the acquirer of the enterprise who filled an application for the transfer of the decision related to the enterprise complies with them.

Amendments related to the death of the spouse of an entrepreneur entered in CEIDG

The next change is the introduction to the Act on succession administration of an enterprise of a natural

person, of Chapter 11a (Arts 60a-60j) concerning the interim exercise of rights from the share of the entrepreneur's spouse in the enterprise. The grounds of administration of the estate by an interim representative were introduced. According to Art. 60a(1) of the Act, the administration of the estate in terms of rights from the share of the entrepreneur's spouse in the enterprise may be exercised by an interim representative if, at the time of death of the entrepreneur's spouse entered in CEIDG, the enterprise in the meaning of Art. 551 of Civil Code, constituted in its entirety the property of the entrepreneur and their spouse, who is not an entrepreneur entered in CEIDG.

In the commented scope, the legislator combined the existing solutions, appropriate for the succession administration and for the executor of the testament in the new institution of interim representation in terms of the share of the entrepreneur's spouse in the enterprise. The regulations introduced are based on the possibility of appointing a person who will have the rights of an executor of the testament after the death of the entrepreneur's spouse.

The institution of an interim representative is introduced to "enable or improve the exercise of rights in relation to the assets of an enterprise, in a situation where a share in the enterprise will be inherited from a deceased spouse of a sole trader. Therefore, it is in a case of the death of a spouse if the enterprise was wholly owned by an entrepreneur entered in CEIDG and their spouse and that spouse was not an entrepreneur." The death of the entrepreneur's spouse, in the situation where an enterprise was entirely the property of both spouses, resulting in termination of the joint property regime, and entering of the share of the spouse into the components of an enterprise in the inheritance after the deceased spouse, and the succession of the share by the heirs, may lead to difficulties with administration of the enterprise's assets (explanatory memorandum, p.77-80).

The interim representative will have the right to exercise the rights with respect to inherited estate in terms of the share of the spouse in the enterprise. The interim representative should administer the inherited estate with regard to the share of the entrepreneur's spouse in the enterprise, pay the inherited debts, and then release the inherited estate to the heirs in accordance with the will of the testator and with statutory law, and in any case, do so without delay after division of the estate (Art. 60b para. 2 of the Act).

The interim representative will not obtain the rights to carry out economic activity or the related rights and conditions (they will not become e.g. an employer entitled to issue invoices or make use of concessions). This is because an interim representative of the share of the deceased spouse does not obtain the entrepreneur's status. Their competences include the ordinary management of inherited estate with respect to the share of the deceased spouse in the enterprise which is the essence of the powers of an executor of the testament.

Provisions applicable to the appointment of an interim representative were specified: in this respect, the provisions on appointment of a succession administrator will apply (subject to the lack of entry in CEIDG) (i.e. Art. 6 para. 1(1) and (2), Art. 8 para. 1, Art. 11 par. 1 and Art. 12 paras 1-7). Additionally, if the interim representative was appointed, the administration of the estate by the curator does not include the share which is represented by interim representative (cf. Art. 24 of the act on succession administration).

The legislator provides that a temporary representative will cease to perform this function for analogous reasons that cause the termination of the function of succession administration, with exception of rulings on prohibition of economic activity. In the case of such events as death, losing or limitation of capacity for acts in law, dismissal or resignation, the new representative may be appointed within a month from the day on which such event occurred. The principles of dismissal and resignation of interim representative are also analogous to those of succession administration after the death of an entrepreneur.

The legislator introduced, with respect to interim representation, an additional prerequisite of expiration of the authorization of the representative, i.e. the fact of publication of the testament in which the entrepreneur's spouse appointed an executor of the testament — to exercise the rights with the share in the enterprise (to entire inheritance or the part which contained the share in enterprise). In such an event, the testator's primacy is granted — the authorisation of the interim representative appointed by virtue of the act will expire on behalf of executor of the testament. Moreover, according to the amendment of the act on succession administration of an enterprise of a natural person, the interim representation expires for the same reasons as those for the expiration of succession administration. Thus, the authorisation expires mainly on the day of the division of the estate which contains the share of the spouse in the enterprise. It should be pointed out that the interim representative will have the same rights as the executor of the testament. Additionally, according to Art. 60j of the act on succession administration of an enterprise of a natural person, the fruits and other incomes from the share of the entrepreneur's spouse in the enterprise will be reduced by expenses and burdens connected with those rights. This regulation has a direct link to the principles of tax settlement with regard to the natural persons' income tax, also in the part concerning the share of the deceased spouse of the entrepreneur.

Amendments to other acts in connection with amendments to the Act on succession administration of an enterprise of a natural person

The amendments introduced by the Act of 31 July 2019 amending certain acts in order to reduce the regulatory

burdens aim to adjust the provisions in connection with the change of title of the act introducing the succession administration from "on succession administration of an enterprise of a natural person" to "on succession administration of an enterprise of a natural person and other facilitations in the succession of the enterprises".

As regards the amendments in the Act on succession administration of an enterprise of a natural person, the Act of 14 February 1991 — Notary Law was amended. The change introduced is not only aimed at adapting the provisions of this Act in connection with the amendment of the act on succession administration of an enterprise of a natural person and other facilitations in the succession of the enterprises. In order to adjust the content of individual provisions, it was necessary to supplement the provisions on the content of the appointment and dismissal acts of succession administrator with the information about the amount of the share in the enterprise in inheritance to which the person appointing or dismissing the succession administrator is entitled. Moreover, in order to correctly identify the succession administrator, in those acts, the date of birth of the administrator will be provided if they do not have PESEL number.

The amendments were also introduced in the provisions of the act of 10 April 1997 — Energy Law Act; act of 22 August 1997 on protection of persons and property, act of 6 September 2001 on road transport and act of 6 September 2001 — Pharmaceutical Law. The amendments aim to ensure that an acquirer of the enterprise can refer to:

- 1) promissory note when applying for a concession for carrying out an economic activity consisting of producing, processing, storage, transmission, distribution and trade of fuels and energy, liquefaction of natural gas and regasification of liquefied natural gas — amendment in the Energy Law Act;
- 2) promissory note when applying for a concession for conducting an economic activity specified in the application — amendment of the act on protection of persons and property;
- 3) authorisation to engage in the occupation of road transport operator or licence — amendment of the act on road transport;
- 4) promissory note when applying for an authorisation to conduct an economic activity specified in the application — amendment of Pharmaceutical Law.

In connection with the entry into force of the amendments to the act on succession administration of an enterprise of a natural person, the amendments of the Act of 6 March 2018 on Central Registration and Information on Business and Information Point for Entrepreneur were introduced. They are technical in nature and concern the transfer and publication of data in CEIDG. Furthermore, due to the change in Art. 22 of the Act on CEIDG, information about the succession administrator (and eventually substitute succession administrator), CEIDG transfers to the competent revenue office so the entrepreneurs will not have to do it on their own.

Conclusion

Analysing the content of the amended provisions, it can be expected that the regulations concerning the succession of the enterprise related to the death of the entrepreneur entered in CEIDG, will facilitate the life-succession, e.g. in the case of the retirement of the sole trader. Particularly noteworthy are the changes related to concessions, authorisations, licences and permissions in case of life-succession. Admittedly, Art. 551(5) of the Act of 23 April 1964 — Civil Code enumerates concessions, licences and

authorisations as the components of an enterprise in the material meaning, however, it shall be considered that the components of an enterprise under public law are transferred to the acquirer of an enterprise only when the relevant administrative act allows that. However, this provision does not provide a sufficient basis for public administration authorities to transfer the rights following the administrative decision to the acquirer of an enterprise. It should also be remembered that the new facilitations in the succession only concern the entrepreneurs who are sole traders.

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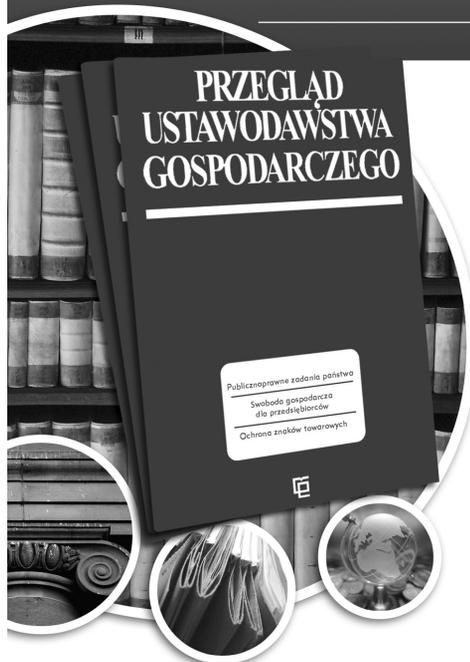
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