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LEGAL STATUS OF THE SUCCESSION MANAGER

PRAWNA POZYCJA ZARZĄDCY SUKCESYJNEGO

Summary: The purpose of this publication is to present the legal status of the succession manager introduced to the Polish legal order by the Act of 5 July 2018 on the succession management of a natural person's enterprise and other facilities related to the succession of enterprises. The publication presents the methods of appointing a succession manager, the scope of his competences and the legal nature of his activities. Attention was also paid to the issue of succession manager liability and situations in which the succession manager ceases to perform his function.

Keywords: business, enterprise, succession, succession management, succession manager

Streszczenie: Celem niniejszego opracowania jest zaprezentowanie pozycji prawnej zarządcy sukcesyjnego, wprowadzonego do polskiego porządku prawnego ustawą z dnia 5 lipca 2018 r. o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej i innych ułatwieniach związanych z sukcesją przedsiębiorstw. W artykule przedstawiono sposoby powołania zarządcy sukcesyjnego, zakres jego kompetencji oraz charakter prawny jego działań. Uwagę poświęcono także zagadnieniu odpowiedzialności zarządcy sukcesyjnego oraz sytuacjom, w których dochodzi do ustania pełnienia funkcji przez zarządcę sukcesyjnego.

Słowa kluczowe: przedsiębiorstwo, spadek, zarząd sukcesyjny, zarządca sukcesyjny

INTRODUCTION

On 22 February 2018 the governmental draft bill on the succession management of a natural person enterprise¹ was submitted to the Sejm regarding the in-

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¹ Parliamentary document No. 2293.

roduction of legislative changes that would facilitate the further functioning of the natural person enterprise entered into the Central Register and Information on Economic Activity (hereinafter: CEIDG). It meant to be on the same principles as in the life of the entrepreneur between opening the succession and its share. After taking into account the changes proposed during the legislative process on 25 November 2018 the Act of 5 July 2018 came into force on the succession management of a natural person's enterprise and other facilities related to the succession of enterprises². The main purpose of this Act, introducing a new succession management institution³ into the Polish legal order is to provide entrepreneurs who are natural persons with conditions to maintain business continuity after their death as well as to strengthen the protection of third party rights related to running a business, in particular employees contractors, consumers and other entities cooperating with the entrepreneur⁴.

On the basis of the Act, the legislator does not construct the definition of succession management but sets its scope by indicating in art. 18 of the Act on civil law, that it includes the obligation to run a business succession, as well as the authorization for judicial and extrajudicial activities related to running a business succession, which will be discussed later in this publication. At the same time it explains the wording used above to „run a business succession”, indicating that it includes intangible and tangible assets intended for the business to be carried out by the entrepreneur, which is the property of the entrepreneur at the time of his death⁵. A key role in performing succession management is played by the succession manager, who takes over the obligations of the entrepreneur shortly after his death, and therefore at the most difficult moment for legal successors, when they themselves are unable to undertake ongoing activities related to the functioning of the enterprise for various reasons (e.g. delivery performance, customer service, tax settlements)⁶.

² Act of 5 July 2018 on the succession management of an enterprise of a natural person and other facilities related to the succession of enterprises, Journal Of Laws of 2019, item 1495. Abbreviations used: the Act on Succession Management (u.z.s.).

³ Although the existing regulations regarding the management of the enterprise after the death of the entrepreneur have been preserved, e.g. regulations regarding the probable title of acquisition of an enterprise are still in force (statutory succession, wills, debt recovery or the possibility of appointing an executor). See M. Pazdan, *Zarządca sukcesyjny a wykonawca testamentu*, [in:] A. Dańko-Roesler, M. Leśniak, M. Skory, B. Sołtys (ed.), *Ius est ars boni et aequi. Księga pamiątkowa dedykowana profesorowi Józefowi Frąckowiakowi*, Wrocław 2018, p. 885.

⁴ Justification of the Government bill on the succession management of a natural person enterprise, p. 8. Parliamentary document No. 2293 of 22 February 2018. Further on this topic among others A. Mariański (ed.), *Planowanie sukcesyjne. Prawne i podatkowe aspekty zarządu sukcesyjnego przedsiębiorstwem osoby fizycznej*, Warszawa 2019; M. Śledzikowski, W. Dubis, A. Łusznak-Zajac, T. Szarek, W. Zajac (ed.), *Zarząd sukcesyjny przedsiębiorstwa osoby fizycznej. Praktyczny komentarz*, Gdańsk 2019.

⁵ Art. 2 (1) Act on the succession management (u.z.s.).

⁶ P. Blajer, *Zarząd sukcesyjny przedsiębiorstwem osoby fizycznej. Pytania i odpowiedzi. Wzory pism. Przepisy*, Warszawa 2019, p. 29.

APPOINTMENT OF A SUCCESSION MANAGER

Pursuant to the Act on the succession management, the legislator does not formulate any requirements regarding the qualifications, experience or education of the succession manager. It merely indicates that a successor may be appointed by a natural person who has full legal capacity⁷, which he acquires upon acquiring the age of majority⁸ and loses due to total⁹ or partial¹⁰ incapacitation. From the above it should be concluded that the possibility of appointing the succession manager of legal persons or organizational units that are not legal persons who are granted legal capacity has been excluded¹¹. Therefore, the lack of full legal capacity constitutes an obstacle to performing the function of a successor manager. In addition to the obstacle indicated, the legislator in art. 8 (2) of the Act lists two more negative conditions for the possibility of performing the function of a succession manager. The first is a legally valid ruling prohibiting business operations in cases specified in the bankruptcy law¹². The second – a judgment of a criminal measure or a precautionary measure in the form of a ban on conducting specific business activities, in the event of a conviction for an offense committed in connection with the conduct of that activity, and a statement that its conduct threatens essential goods protected by law¹³. The person appointed as the succession manager submits to the notary public a statement on the lack of final prohibitions issued against him / her (under pain of criminal liability for making a false statement)¹⁴. In notarial practice there are discrepancies regarding the form of making such a declaration. K. Maj acknowledges that the declaration may be made in writing with a signature certified by a notary public, but does not exclude the possibility of submitting this statement to the minutes prepared by a notary public¹⁵. This view, in the part

⁷ Art. 8 (1) Act on the succession management (u.z.s.).

⁸ Art. 11 Act of 23 April 1964, i.e. Journal of Laws of 2019, item 1145, 1495. Abbreviations used: Civil Code, kc.

⁹ Art. 13 of the Civil Code.

¹⁰ Art. 16 of the Civil Code.

¹¹ K. Kopaczyńska-Pieczniak, *Status prawny zarządcy sukcesyjnego*, „Przegląd Prawa Handlowego” 2018, No. 12, p. 2.

¹² The Act of 28 February 2003 Bankruptcy Law, i.e. Journal of Laws of 2019, item 498 as amended – it concerns situations indicated in art. 373 paragraph 1 of the said Act, so the court may order the deprivation of the right to conduct business activity of a person who, due to his fault: did not file for bankruptcy within the statutory deadline or actually managed the debtor's enterprise, significantly contributed to the failure to file for bankruptcy within the statutory deadline, either after declaring bankruptcy, she has not issued or indicated assets, books, correspondence or other documents of the bankrupt, or after declaring bankruptcy, she has hidden, destroyed or encumbered assets belonging to the bankruptcy estate, or in the course of bankruptcy proceedings, as bankrupt, did not perform other obligations incumbent on him, or otherwise hampered the proceedings. Furthermore: P. Janda, *Prawo upadłościowe. Komentarz*, Warszawa 2017, p. 853 et seq.

¹³ Art. 39 in connection with art. 41 § 2 of the Act of 6 June 1997 – Penal Code, i.e. Journal of Laws of 2019, item 1950, 2128. In addition: M. Mozgawa (ed.), *Penal Code. Commentary*, Warszawa 2019, p. 153 et seq.

¹⁴ Art. 12 (8) Act on the succession management (u.z.s.).

¹⁵ K. Maj, *Czynności notarialne związane z ustawą o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej*, „Krakowski Przegląd Notarialny” 2018, No.2, p. 55 et seq.

concerning the written form with the signature authenticated by a notary public, is not approved by D. Celiński. He agrees however, with the form of submitting the statement to the minutes¹⁶ in accordance with the provisions of art. 95 § 1 (5) of the Act of 14 February 1991 – Notarial Law¹⁷.

An entrepreneur who first performs business activity on the basis of an entry in the Central Register and Information on Economic Activity CEIDG, and performs this by way of *mortis causa*, which takes effect at the time of his death, has the right to appoint a succession manager. This way of appointing a succession manager – that is during the testator’s lifetime – is the best solution for ensuring a smooth transition of management to the new person indicated by the entrepreneur. However, if the entrepreneur does not appoint a succession manager, the entrepreneur ID card active after his death can go to the spouse of the entrepreneur who is entitled to participate in the enterprise in decline or the legal heirs of the entrepreneur who accepted the succession, or the heirs of the will of the entrepreneur who accepted the succession, or the legatee who has accepted the vindication record if, according to the announced will, he is entitled to participate in the company in succession¹⁸.

However, the active ID of the above three categories of persons exists until the decision on the acquisition of succession, registration of the succession certificate or issue of the European succession certificate, as only the owner of the enterprise in succession may appoint the successor manager¹⁹.

The above-mentioned persons authorized to appoint a succession manager submit a statement to the notary public about their participation in the enterprise in succession and other persons known to them who are entitled to participate in the succession (under pain of criminal liability for submitting a false statement)²⁰. The appointment of a succession manager requires the consent of persons who jointly are entitled to a share in the enterprise in succession greater than 85/100²¹, as well as the preservation of the form of a notarial deed²², which is drawn up by a notary public (who can also draw up an act of dismissal of a succession manager²³, in order to ensure the correct appointment of a succession manager)²⁴.

¹⁶ D. Celiński, *Stosowanie w praktyce notarialnej przepisów ustawy o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej (uwagi polemiczne do artykułu Krzysztofa Maja „Czynności notarialne związane z ustawą o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej”)*, „Krakowski Przegląd Notarialny” 2018, No. 3, p. 188.

¹⁷ I.e. Journal of Laws of 2019, item 540 as amended. Abbreviations used: the Law on Notaries, pr. not.

¹⁸ Art. 12 (1) Act on the succession management (u.z.s.).

¹⁹ Art. 12 (2) Act on the succession management (u.z.s.).

²⁰ Art. 12 (6) Act on the succession management (u.z.s.).

²¹ Art. 12 (3) Act on the succession management (u.z.s.).

²² Art. 12 (7) Act on the succession management (u.z.s.).

²³ In situations indicated in art. 95 of the Law on Notaries, i.e. “(...) if during the preparation of the report on the appointment of a succession manager, circumstances revealing justified doubts as to the number of persons who are entitled to participate in the enterprise succession appear, making it impossible to state that the required majority of these persons has approved the appointment of a succession administrator”.

²⁴ J. Bieluk, *Ustawa o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej*, Warszawa 2019, p. 48 et seq.

The legislator provides for two ways to appoint – by the entrepreneur during his lifetime – a succession manager. The first is that the entrepreneur chooses a specific person to act as the succession manager. The second is to stipulate that at the time of his death, the designated proxy will become the succession manager. Regardless of the adopted method of appointing a succession manager, the appointment and expression of the consent of the person appointed as the succession manager to perform this function should be made in writing, otherwise being null and void²⁵. It should be emphasized that to establish a succession management, it is not enough to appoint a manager and express his consent to perform this function, as it is also necessary to enter the succession manager in the Central Register and Information on Economic Activity (CEIDG)²⁶. The lack of the said entry will mean that the succession board has not been established and authorized persons will be able to do it – however only after the entrepreneur's death²⁷.

At the same time, only one person can be the succession manager, which is a direct result of the regulation of art. 11 (1) of the Act on the succession management (u.z.s.), which undoubtedly prevents the entrepreneur from entrusting the function of succession manager to several people / team²⁸. In practice, pursuant art. 11(2) of the Act on the succession management (u.z.s.), the entrepreneur may appoint a succession manager called the „emergency succession manager”²⁹ or „substitute succession manager”³⁰. He is appointed only in the situations specified in the provision, such as resignation, death, limitation or loss of legal capacity of the succession manager, who is to perform the function in the first place, as well as in the event of his dismissal by the entrepreneur or the validity of a decision prohibiting specific business activities. The appointment of an „emergency / substituted succession manager” takes place upon the resignation of the succession manager appointed in the first place, his death, limitation or loss of his legal capacity, his dismissal by the entrepreneur or the validity of the decision prohibiting specific business activities³¹.

BASIC COMPETENCES OF A SUCCESSION MANAGER

The scope of competence of the succession manager is determined by the legislator in art. 29 of the Act on the succession management (u.z.s.), in which it is de-

²⁵ P. Blajer, *Zarząd sukcesyjny...*, p. 57. Art. 9 (1) and (2) u.z.s.

²⁶ Art. 6 (1) Act on the succession management (u.z.s.).

²⁷ Art. 10 of the Act on the succession management (u.z.s.). Furthermore: P. Blajer, *Zarząd sukcesyjny...*, p. 57.

²⁸ Of course, the succession manager can work with many people, but only one person can be formally registered.

²⁹ Such term is used by P. Blajer, *Zarząd sukcesyjny...*, p. 58.

³⁰ Such term is used by J. Bieluk, *Ustawa o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej*, Warszawa 2019, p. 41.

³¹ Art. 11 (3) Act on the succession management (u.z.s.).

cided that he may exercise the rights and obligations of the deceased entrepreneur that result from his business activities (i.e. the exercise of rights and obligations arising from licenses, permits, concessions, permits that concerned the deceased) and the rights and obligations that are connected with running a business succession (within the meaning of art. 922 of the Civil Code). The key distinction between succession manager competences is to correctly distinguish the components of an enterprise succession from other components that are components of a succession. In practice, this causes many difficulties, therefore accounting records should be decisive³². As it results from the above, the range of competences of the succession manager is wide, as it includes civil law cases (e.g. amicable settlements agreed between the parties during appropriate out-of-court proceedings), but also public law, resulting e.g. from post-inspection recommendations or administrative decisions that are related to business activity and remain valid despite the death of the entrepreneur or arose later. The succession manager may also exercise the rights and obligations arising from licenses, concessions, permits, approvals and permits, as well as submit an application to change the entry in the appropriate register³³.

On the basis of the abovementioned regulation of art. 29 of the Act on the succession management the legislator used the term „running a business in succession” to which he also refers in art. 18 of the Act in which he indicates that „the succession management includes the obligation to run the enterprise as a succession and the authorization to act in court and extrajudicial acts related to running a business in succession.” The concept of „running a business in succession” used in art. 18 of the Act should be understood narrowly, as „running business affairs”, which includes making property, financial and organizational decisions regarding the enterprise in succession³⁴.

The succession management of the affairs of a business in succession includes all activities related to running the business. However, it should be remembered that the succession management is a temporary condition, so the rights and obligations of the succession manager are reduced to the current management of the business in succession. One should also take into account the narrowing of the field of activities carried out independently by the succession manager, because the succession administrator performs ordinary management activities in matters arising from the business inheritance³⁵, while activities that exceed the scope of ordinary management are already carried out with the consent of all owners of the business in succession³⁶. While activities exceeding the scope of ordinary management are already

³² J. Bieluk, *Ustawa o zarządzie sukcesyjnym...*, p. 92.

³³ Justification of the Government bill on the succession management of a natural person enterprise, p. 44. Document No. 2293 of 22 February 2018.

³⁴ K. Kopaczyńska-Pieczniak, *Status prawny zarządcy...*, p. 6.

³⁵ Art. 22 (1) Act on the succession management (u.z.s.).

³⁶ The doctrine raises a contradiction: the need for the administrator to obtain successive consent of all business in succession owners to carry out activities exceeding the scope of ordinary management

carried out with the consent of all the owners of the enterprise in succession, and in the absence of such consent, with the permission of the court³⁷. D. Celiński rightly emphasizes that consent is to be given by the owners of the enterprise in succession³⁸, and not persons authorized to appoint a succession manager³⁹.

It should also be added that if a special form is required for the validity of activities exceeding the scope of ordinary management, a declaration covering consent of all the owners of the enterprise inheritance shall be made in the same form⁴⁰. The regulation cited above (art. 18 of the Act on the succession management) indicating that the succession management includes empowerment for judicial and extrajudicial activities related to running a business in succession, should be completed with the regulation applicable to the succession management included in art. 21 (2) of the Act. Pursuant to the wording of the aforementioned provision, the succession manager may sue and be sued in matters arising from the entrepreneur's business activity or running a business in succession. The succession manager may also take part in administrative, tax and administrative court proceedings in these matters. It is important that the succession manager only participates in matters that result from the business activity conducted during the lifetime of the entrepreneur or from running the business in succession⁴¹. In proceedings in such cases, the succession manager acts on his own behalf, in favor of the owner of a business in succession⁴². The authority of the succession manager, facilitating the functioning in practice, is to receive correspondence⁴³ related to the business activity of the deceased entrepreneur⁴⁴. If the succession manager does not indicate another address than in the Central Register and Information on Economic Activity (CEIDG), the correspondence will be forwarded to the address indicated in the records. Acting pursuant to art. 31 (2) of the Act on the succession manager also performs the rights and obligations of the employer from the time of the entrepreneur's death to the date of expiry of the succession board. In the absence of a succession manager, entitlements and the duties of the employer are exercised by a person performing conservatory measures.

(Article 22 (2) of the Civil Code) and the regulation indicating that succession management cannot be restricted with effect to third parties (Article 20 of the Act on the succession management). Further on this topic, among others J. Bieluk, *Ustawa o zarządzie sukcesyjnym...*, p. 76.

³⁷ Art. 22 (2) Act on the succession management (u.z.s.).

³⁸ Whose catalogue includes art. 3 of the Act on the succession management (u.z.s.).

³⁹ D. Celiński, *Stosowanie w praktyce notarialnej przepisów ustawy o zarządzie sukcesyjnym...*, p. 193.

⁴⁰ Art. 22 (3) of the Act on the succession management (u.z.s.).

⁴¹ P. Blajer, *Zarząd sukcesyjny...*, p. 75 et seq.

⁴² Art. 22 (2) sentence 2 of the Act on the succession management (u.z.s.).

⁴³ Statements and letters regarding matters arising from the entrepreneur's business activity or running a business in succession.

⁴⁴ Art. 21 (3) of the Act on the succession management (u.z.s.).

LEGAL NATURE OF THE ACTIONS OF THE SUCCESSION MANAGER

Pursuant to the Act on the succession management, the legislator did not specify in a uniform manner the legal position of the succession manager, because by regulation of art. 21(1) of the Act on the succession management he refers to the construction of the indirect representative, and in art. 18 to the construction of representation, which is a variation of direct representation. It is worth mentioning that the indirect representative performs legal action on his own behalf, but on someone else's account. However, according to the theory of representation adopted in Polish law⁴⁵, the representative makes his own declaration of intent, and thus performs legal action himself. However, he does so on behalf of and with effect directly for the represented person⁴⁶. Referring to the above constructions to the succession manager, it should be noted that in art. 21(1) of the Act the legislator explicitly indicated that the succession manager acts on his own behalf, on behalf of the owner of the business in succession. So he referred to the construction of indirect representative, which consequently means that the rights acquired by the succession manager should then be transferred to the owner of the business in succession. However, pursuant to art. 18 of the Act the legislator applied the structure of representation to the management board (using the phrase „empowerment”), which means that the successor's legal actions in the field of empowerment have legal effects directly in the sphere of representation. However, deciding on empowerment, the legislator does not indicate on whose behalf the succession manager is to perform legal actions. They are limited only to specifying their nature as related to the business in succession⁴⁷.

In the light of the above, it is reasonable to assume that by regulation of art. 21 (1) and 18 of the Act the legislator assumes that the actions of the succession manager are mixed, based on both the construction of the indirect representative and the representative. K. Kopaczyńska-Pieczniak claims that the structure of indirect representation, which forms the basis of the succession management, is applicable to relations with third parties, and therefore in external relations, which means that on this plane the succession manager performs actions on his own behalf. Representation, in turn refers to internal relations between the succession manager and the owner of the business in succession⁴⁸.

⁴⁵ Art. 95§ 2 Civil Code.

⁴⁶ Z. Radwański, *Prawo cywilne*, Warszawa 2009, p. 315 et seq.

⁴⁷ K. Kopaczyńska-Pieczniak, *Status prawny zarządcy...*, p. 4.

⁴⁸ Ibidem.

LIABILITY OF THE SUCCESSION MANAGER

The liability for the obligations of the business in succession (therefore, those obligations arising after the death of the entrepreneur and after the establishment of the succession board) are generally borne by the owners of the inherited enterprise⁴⁹. Their liability is joint and several, they are liable with all their property. The words „essentially” have been deliberately taken because it is not the rule that the succession manager is not totally liable with his personal property for the obligations incurred on the account of the succession of the business owner. The succession manager may also be held liable in the event of damage caused as a result of improper performance of duties – which results from the wording of art. 33 (2) of the Act on the succession management. It is emphasized in the literature that such a liability for damage to the succession manager narrows the catalog of events for which he will be responsible, and the owners of the company require the need to specify exactly what actions and at what time were performed by the succession manager improperly⁵⁰. The responsibility of the succession manager can take the form of both *ex delicto* and *ex contract* liability⁵¹. A person who, in bad faith appointed the succession manager or gave his consent, even though he was not authorized to do so, shall be liable for damage caused by the succession manager, appointed in violation of the abovementioned art. 12, jointly and severally with the succession manager⁵². In a situation where the appointment of a succession manager occurred in violation of art. 12 of the Act on his liability for damages should be assessed on the basis of provisions regarding the conduct of someone else's cases without an order⁵³.

TERMINATION OF THE FUNCTION OF SUCCESSION MANAGER

Pursuant to the Act on the succession management, the legislator regulated several situations in which the function of the succession manager ceases to function. Reflections on this topic should begin with the presentation of the possibility of dismissal of the successor manager by the entrepreneur. To effectively dismiss a successor manager, the entrepreneur must do two things. First of all, the entrepreneur must submit to the succession management board a declaration of his dismissal from the function of the succession manager. This declaration must be made in writing to be valid⁵⁴. In the said

⁴⁹ Art. 32 of the Act on the succession management (u.z.s.).

⁵⁰ P. Blajer, *Zarząd sukcesyjny...*, p. 89.

⁵¹ J. Bieluk, *Ustawa o zarządzie sukcesyjnym...*, p. 108.

⁵² Art. 33 (3) of the Act on the succession management (u.z.s). Furthermore: M. Sieradzka, *Zarząd sukcesyjny przedsiębiorstwem osoby fizycznej – analiza i ocena nowych rozwiązań prawnych (part II)*, „Monitor Prawniczy” 2018, No. 23, p. 1250.

⁵³ Art. 34 of the Act on the succession management (u.z.s.).

⁵⁴ Art. 51 of the Act on the succession management (u.z.s.).

statement, the entrepreneur does not have to indicate the reason for the dismissal, he does not have to justify the dismissal. On the other hand, it is important for the entrepreneur to be certain that the declaration has been successfully delivered to the manager – due to the lack of regulation in the succession management act regarding the issue of how to supply the declaration, the general rule of art. 61 of the Civil Code is applied⁵⁵. Secondly, the appeal is connected with the necessity for the entrepreneur to submit a request to change the entry in CEIDG regarding the dismissal of the succession manager⁵⁶.

The dismissal of a succession manager may also be made by a court in the event of gross violation of his duties⁵⁷. Each time the court assesses whether there has been a gross violation of obligations. In the justification of the Government bill on the succession management, citing the judgment of the Supreme Court of 10 March 2004, it was indicated that „these are exceptional cases, resulting in particular from gross negligence of the succession manager, occurring when he not only violates his duties or fails to perform the diligence required of him, but does so while failing to observe the basic principles of proper behavior in a given situation or for other reasons reprehensible.” The court, at the request of a person authorized to appoint a succession manager⁵⁸, may appoint a candidate indicated by that person to be the succession manager⁵⁹. The succession manager was not obliged to provide the entrepreneur with the reason for his resignation.

Another form of termination of the function of the succession manager is his resignation from the manager's function, which he may make at any time by submitting to the entrepreneur a declaration of resignation in writing under pain of nullity⁶⁰. Similarly to the above situation, also in the case of resignation of the succession manager from his function, the entrepreneur is obliged to submit an application for changing the entry in CEIDG regarding the dismissal of the succession manager⁶¹. However, in the event of resignation, the succession manager may also apply for a change in CEIDG⁶².

After the entrepreneur's death, the succession manager may resign from the function of succession manager before a notary public. He is then obliged to act for another two weeks, unless another succession manager has been appointed before⁶³. Based on article 55 of the Act on the succession management after the entrepre-

⁵⁵ P. Blajer, *Zarząd sukcesyjny...*, p. 152 et seq.

⁵⁶ Art. 15(1)(1) The Act of 6 March 2018 on the Central Register and Information on Economic Activity and the Information Point for the Entrepreneur, i.e. Journal of Laws of 2019, item 1291 as amended. Abbreviation used: CEIDG.

⁵⁷ Art. 56 (1) of the Act on the succession management (u.z.s.).

⁵⁸ On the basis of art. 12 of the Act on the succession management (u.z.s.).

⁵⁹ Art. 56 (2) of the Act on the succession management (u.z.s.).

⁶⁰ Art. 52 of the Act on the succession management (u.z.s.).

⁶¹ Art. 15 (1) (1) CEIDG.

⁶² Art. 15 (6) CEIDG.

⁶³ Art. 57 of the Act on the succession management. Furthermore: M. Pazdan, *Zarządca sukcesyjny...*, p. 891.

neur's death, a succession manager may also be dismissed⁶⁴. Such an appeal requires the consent of persons who jointly are entitled to a share in the enterprise in succession greater than 1/2. In addition to the dismissal of the succession manager and his resignation from performing the function, the legislator in art. 53 of the Act on the succession management formulates a catalog of situations in which the succession manager ceases to perform his function. It lists death of the succession manager, limitation or loss of the manager's legal capacity, dismissal, expiry of the two-week deadline from resignation, as well as the final decision on a ban on conducting specific business activities, including business activities performed by an entrepreneur or business activities in the field of property management. The termination of the post of successor manager should be disclosed in CEIDG⁶⁵.

Due to the fact that the succession management is a temporary institution, the legislator has determined its duration and the events of its expiry, which affect the situation of the succession management. According to the content of art. 59 (1) of the Act on the succession management the succession board expires, among others at the end of two months from the date of the entrepreneur's death, if during this period none of the entrepreneur's heirs accepted the inheritance or the legatee did not accept the debt recovery order whose subject is the enterprise or participation in the enterprise, unless the succession manager acts for the spouse of the entrepreneur who is entitled to participate in the enterprise in succession.

The succession board shall also expire on the date on which the decision on the acquisition of a succession, registration of a succession certificate or issue of a European succession certificate is valid if one heir or legatee has acquired the enterprise in full; as well as on the day of the bankruptcy of the entrepreneur. In the last point of art. 59 (1) of the Act on the succession management it was assumed that the succession board expires after two years from the day of the entrepreneur's death, unless for important reasons the court extends the period of succession board for a period not longer than five years from the day of the entrepreneur's death⁶⁶. The scope of „important reasons” has not been defined on the basis of the discussed act, therefore the court must always assess whether a given event qualifies as a reason that could constitute the basis for extending the duration of the succession board⁶⁷.

⁶⁴ Then accordingly apply art.12 (1, 2, 4-7) and (9) of the Act on the succession management.

⁶⁵ J. Bieluk, *Ustawa o zarządzie sukcesyjnym...*, p. 151.

⁶⁶ Art. 60 of the Act on the succession management.

⁶⁷ For example, long-lasting proceedings for a division of an estate, including an enterprise in succession. So in: J. Bieluk, *Ustawa o zarządzie sukcesyjnym...*, p. 161.

THE RELATIONSHIP OF THE SUCCESSION MANAGER AND EXECUTOR OF THE WILL

Based on the above considerations, it could be said that the legal position of the succession manager was included similarly to the legal position of the executor of the will, who (although there are considerable differences in the legal nature of the executor of the will) should be included in the category of indirect hosts, because he acts on his own behalf, but on someone else's account⁶⁸. And basically the similarities end there. Due to the extensive issue of differences between the succession manager and executor of the will, only the most important of them will be signaled. In accordance with the above, the appointment of a succession manager takes place in the entrepreneur's written statement with the written consent of the person appointed as the succession manager. However, the appointment of an executor or executors of a will can be made only in the will of each type, which is clear from art. 986 of the Civil Code⁶⁹. In addition, the appointment of an executor of a will does not require his prior consent, and taking up the function is not subject to entry in any register (as opposed to the succession administrator subject to entry in CEIDG). Another difference boils down to the number of entities performing a given function at the same time, because if there can be only one succession manager, a number of executors are not limited⁷⁰.

One of the noticeable differences between the succession manager in question and the executor of the will is an entity that can appear in the appropriate function. As we already know, only a natural person can be appointed as manager, when - according to the dominant view of the representatives of the doctrine - the executor can also be a legal person⁷¹.

One should also remember about - mentioned earlier - extensive regulation of the termination of the function of the succession manager and oppose it with the poor regulation of the termination of the function of the executor of the will. Because only in art. 990 of the Civil Code, the legislator indicates that „for important reasons, the court may release the executor” (e.g. because the executor loses his full legal capacity⁷²).

Another difference, in turn concerns the scope of activities performed. In the case of a succession manager, the legislator allows him to carry out only those activities that fall within the limits of ordinary management. However, the executor of the will is entitled to carry out independently not only the activities of ordinary management, but also activities exceeding such management⁷³.

⁶⁸ M. Pazdan, *Zarządca sukcesyjny...*, p. 888.

⁶⁹ E. Skowrońska-Bocian, *Prawo spadkowe*, Warszawa 2018, p. 129.

⁷⁰ P. Pacek, *Wykonawca testamentu a zarząd sukcesyjny przedsiębiorstwem osoby fizycznej - wybrane zagadnienia*, „Rejent” 2019, No. 6, p. 63.

⁷¹ M. Pazdan, *Zarządca sukcesyjny...*, 2018, p. 892 and supporters cited there allowing the appointment of a legal entity as an executor of a will.

⁷² E. Skowrońska-Bocian, *Prawo spadkowe...*, p. 131.

⁷³ *Ibidem*.

Finally, it should be added that the executor of the will is not entitled to manage a business in succession, provided that a succession board has been established. This regulation, contained in art. 24 of the Act, resolves collisions between the succession manager and executor of the will, although as M. Pazdan rightly argues in a fragmentary way. The author indicates that „in such a situation after the death of the entrepreneur may appear the executor of the will and the succession manager can appear, but their competences are separated”⁷⁴.

SUMMARY

By introducing the regulation of the Act on succession management, the legislator does not impose an obligation to appoint a succession manager, but for the first time gives entrepreneurs the opportunity to ensure security and to continue the business after their death.

Summing up the above considerations, it should be noted that more complete protection and continuation of the business is provided when the management board is established upon the death of the entrepreneur and from that moment the manager deals with the exercise of the rights and obligations of the deceased entrepreneur.

The advantages of such a solution include, among others maintaining full smoothness of operation by the company, the possibility of the successive manager to run the enterprise immediately after the death of the entrepreneur, continuing on all existing terms of employment relations, or maintaining the continuity of performance of contracts. In addition, the succession manager may use the funds on the entrepreneur's bank accounts, which makes it possible to pay liabilities on an ongoing basis. He can also quickly obtain confirmation of the possibility of exercising concessions or permits, as well as in the event of establishing a succession board, the entrepreneur will not be removed from the taxpayer records or from the VAT taxpayers register, thus maintaining continuity of tax settlements⁷⁵.

In turn, the appointment of a succession manager by authorized entities after the death of an entrepreneur is more difficult, because then a form of notarial deed is required, as well as the consent of the authorized persons (according to the size of their shares in the enterprise). In addition, the deadline for appointing a manager is two months from the date of the entrepreneur's death.

To sum up, the institution of succession manager introduced by the legislator should be assessed positively, because (together with the general institution of the succession board) it ensures smooth functioning of the enterprise of a single entre-

⁷⁴ M. Pazdan, *Zarządca sukcesyjny...*, p. 893.

⁷⁵ http://firmyrodzinne.pl/wp-content/uploads/2019/01/Sukcesja_firm_jednoosobowych-poradnik-MPiT.pdf.

preneur after his death⁷⁶. However, this institution also does not solve all problems. It should not be forgotten that the succession management board is a temporary solution that serves to ensure that at a critical moment after the entrepreneur's death there is a person – or it can be quickly established – who will take care of the most urgent matters related to the continuation of economic activity. The temporary nature of the introduced solution means that it does not release the legal successors of the enterprise from the task of determining further directions of enterprise development⁷⁷.

It should also be borne in mind that the legislator gives only legal instruments enabling succession. However, without the transfer of knowledge, skills and know-how on how the company operates and how to run it the effective succession will be difficult⁷⁸.

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⁷⁶ K. Maj, *Czynności notarialne...*, p. 77.

⁷⁷ P. Blajer, *Zarząd sukcesyjny...*, p. 29.

⁷⁸ <https://www.norekwspolnicy.pl/blog/zarząd-sukcesyjny-w-praktyce>.

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