



Family business in Poland

a Poland perspective

Celichowski – Szyndler i Partnerzy
Kancelaria Adwokatów i Radców Prawnych

I. Introduction

- Changes in Poland since 1989:
from socialism to capitalism
from state property to private property
- Poles acquire property, establish enterprises, companies – it means that they start to inherit,
- but it means also problems they have not known before.

II. Polish specificity

- Lack of usage to prepare the solution for succession.
- Very narrow circle of statutory successors.
- Inheritance means general succession of all assets and debts of a deceased person.
- Heritage in a moment of a decease of a testator (a decease is a moment when property passes from a testator to successors)

Poland

- Succession by testamentary disposition.
- Possibility to refuse succession
- or to accept it under beneficium of inventory, which means that the responsibility of successor for the debts of a deceased person is limited to the assets of a heritage.

III. Problems

- Inheritance in a moment of a decease, but a confirmation in a moment of a verdict of a court and in some cases in a moment of a notarial confirmation. It means that an execution of the rights connected with the inheritance is possible from a day of this confirmation.
- After the confirmation the ownership of a heritage belongs to all inheritors in proportion, in which they inherit. All decisions then has to be taken by all of them. Afterwards there is a procedure of dividing of a heritage between inheritors, by court or by contract.
- If the inheritors are minor, any decision concerning the inheritance (division and management) has to be accepted by a court.

IV. Business – forms of activity

- Individual firm
- Personal company
- Commercial company
(limited responsibility company, stock company)

V. Business – inheritance

- In case of personal company and commercial company there is a possibility to limit in deeds of company an inheritance of the shares. In such a case there has to be an obligatory decision, how the company should pay off the inheritors. The money from company enters into inheritance.
- There is a possibility to limit the inheritance, as well, e.g. to reduce this possibility to inheritors having specific attributes (e.g. law company – you may inherit the shares, only if you are a lawyer).

VI. Some specific problems in business

- Minors as inheritors if a deceased parent was the only shareholder and simultaneously a director of the company (not clear who is an owner, who is a director and long procedure to have all decisions permitting to confirm the ownership of a company and then to establish a director).
- Long procedures of dividing of a heritage if there is a conflict between inheritors, between inheritors and other shareholders.

Poland

- If the clauses of an exclusion of shares from inheritance require lots of financial resources from a company, it may have a problem to withdraw these resources.
- In personal company: the death of a partner means a liquidation of a company, which as further result means high taxation. To avoid it in a deed of a company there has to be a clause saying that in case of a decease of a partner a company will continue its existence.

VII. Possible solutions

- Deeds of companies giving a right to the inheritors to be paid instead of inheriting the shares (especially if children are minor).
- More shareholders and more members of a board of directors to avoid a problem of non-existence of a board after a death of a director.
- Children as shareholders : a decease of one shareholder does not stop the activity of a company, because there are more shareholders, who are able to continue the activity.
- In personal companies clauses saying that company continues to exist if a partner dies.

VIII. General conclusions

- New legal issue: first judgments , first cases.
- Clients start to understand that it has to be regulated,
- but the law does not give a lot of possibilities.