

INHERITANCE OF AN ENTERPRISE OF A SELF-EMPLOYED ENTREPRENEUR: A COMPARISON OF POLISH AND SLOVAKIAN REGULATIONS

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Abstract: *The work presents a comparative legal analysis of the issue of inheritance of businesses of natural persons in Poland and Slovakia. The subject scope was established, namely the concepts of enterprise and sole proprietorship in Poland and Slovakia were compared (taking into account the Act on succession management that has been in force in Poland relatively recently). Then, civil law institutions in the case of the death of a natural person running a business activity were discussed, distinguishing them into actions that the entrepreneur himself may undertake during his lifetime and possible actions of legal successors after the entrepreneur's death. The conducted considerations allow to conclude that the analysed legislation largely provides for similar legal solutions, and the differences demonstrated (in particular the institution of succession management regulated in the Polish legal system) may constitute mutual inspiration for future amendments.*

Key words: *Inheritance; Sole Entrepreneur; Trade; Trading License; Heir; Administrator*

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1. INTRODUCTION (RESEARCH PROBLEM)

The inheritance of an enterprise by a natural person is a very important question in practice. The death of a natural person running a business (sole proprietor) has significant consequences in the sphere of the enterprise he or she runs. That's because the indicated economic activity is closely related to self-employed entrepreneur. Such an entrepreneur personally creates his position in market, is responsible and entitled under the contracts, administrative decisions concern him, is the one who employed the employees and has obligations towards them, etc.

After the death of a sole proprietor, his enterprise exists in civil law aspect. The lack of effective management of this enterprise may poses a threat to its existence. Such issues as rules regarding the continuation of existing contractual relations, entrepreneur obligations towards employees, public and legal obligations (related to civil law, commercial law, administrative law, labour law and social security, tax law, and other) require regulations. Even if some issues are regulated, the provisions are contained in various legal acts, which undoubtedly creates difficulties in their application. The continuation of the activity of a sole proprietor (making binding decisions or simply the possibility of using the deceased entrepreneur's business name at all) may and often raised justified doubts, especially until the inheritance proceedings are completed. It seems necessary to secure the interest of the enterprise and ensure its continuation after

the entrepreneur's death, especially to ensure legal successors time to decide whether they want to continue operating the enterprise after the death of an entrepreneur on their own, sell the enterprise or close it down.

An important reason for undertaking this analysis is, among others, the Polish Act of July 5, 2018, on the succession management of a natural person's enterprise and other facilitations for success in enterprises,¹ which is a relatively new legal act that regulates the legal situation of taking over an enterprise after the death of an entrepreneur running a business as a natural person and entered into the Central Registration and Information on Economic Activity (CEIDG).² It is said that the institution of the succession manager was not directly modelled on any institution regulated in another legal system (Wrzecieonek, 2020), what makes it unique and therefore worth attention.

In turn, in reference to the above, applicable Slovak law doesn't contain any similar consolidated legal regulation. It should be noted that the legal regulation of the issue of conducting business after the death of a natural person - sole proprietor is quite complex. The death of a natural person - a sole proprietor does not automatically lead to the termination of his/her trade licence by law; however, the Trade Licensing Act does not exclude this possibility. The continuation of a sole proprietor's trade after his death is not excluded by the law, however, the continuation of a sole proprietorship after the death of a sole proprietor is subject to a number of conditions and is reserved only for a specified list of persons who are entitled to enter into the business of another sole proprietor under specified conditions, which in practice results in a wide complex of legal consequences, both on the part of heirs, third parties, as well as selected state authorities. In connection with this issue, it should also be noted that the death of a sole proprietor raises a number of issues relating to the transfer of debts, liability for the obligations of the sole proprietor, as well as the operation of the business, if the sole proprietor had employees. The procedure in the event of the death of a sole proprietor is regulated by the Act No. 455/1991 Coll. Trade Business Act (hereinafter only as „**Trade Business Act**”), together with Act No. 513/1991 Coll. Commercial Code provision (hereinafter only as „**Commercial Code**”), as well as Act No. 40/1964 Coll. Civil Code, as amended (hereinafter as „**Civil Code**”) and inheritance procedure, regulated in the Act No. 161/2015 Coll. Code of Extra-contentious Litigation (hereinafter as „**CEL**”).

The purpose of the analysis undertaken in this paper is to compare the binding regulations in Poland and in Slovakia regarding the actions to ensure continuation of business of sole proprietor that may be taken by the entrepreneur himself while he or she is still alive, as well as to present legal solutions appropriate in a situation where the entrepreneur has not taken any actions related to the succession of the enterprise and continuation of his business activity. The proposed theme has not been the subject of a wide comparative analysis so far. The considerations carried out may be a base for further studies, as well as serve contribution to changing regulations or introducing new solutions in the national laws.

2. SYSTEMATISATION OF THE CONCEPTUAL SCOPE

In case of comparative analysis of inheritance of an enterprise by a natural person seems important to systematise conceptual issues. At this point, the concepts of

¹ Act of July 5, 2018, on the succession management of a natural person's enterprise and other facilitations for success in enterprises, Journal of Law 2021, item 170, hereinafter: „**Act on the succession management**”.

² CEIDG is a register regulated in Act of March 6, 2018, on the Central Registration and Information on Economic Activity and the Information Point for Entrepreneurs, Journal of Law 2022, item 541, hereinafter: „**Act on Central Registration**”.

an enterprise and an entrepreneur running a business as a natural person (sole proprietor) require confrontation.

2.1 Enterprise

2.1.1 Polish Law

According to Polish doctrine there are three meanings of the concept of an enterprise, i.e. subjective, functional and objective. In subjective terms, an enterprise means an entity of civil law, e.g., a state-owned enterprise. In its functional sense, the term enterprise is used to designate some economic activity. After all, this concept in its objective meaning covers the components that form the basis of a business activity.

Developing the objective meaning of the enterprise it is worth mentioning the art. 55¹ of the Polish Civil Code.³ Pursuant to this provision, an enterprise shall be an organised complex of material and non-material components designed for carrying on an economic activity. It shall particularly include: 1) a designation that identifies an enterprise or its separate parts (the name of the enterprise); 2) ownership of immovable or movable properties including devices, materials, goods and products, and other proprietary rights to immovable and movable properties; 3) rights under contracts of lease and contracts of tenancy of immovable and movable properties and rights to use immovable and movable properties under other legal relationships; 4) receivable debts, rights attached to securities, cash means; 5) concessions, licences and permissions; 6) patents and other industrial property rights; 7) author's economic rights and neighbouring economic rights; 8) business secrets of an enterprise; 9) books and documents connected with the economic activity carried on (art. 55¹ of the PCC). The enterprise is distinguished from property, because a property is just a set of elements that make up an enterprise, while the enterprise also contain an element of organisation (its functionally organised property complex).⁴ An enterprise is considered as an independent legal good, and as such it may be the object of civil law transactions (Gniewek, 2021), as well as being the object of inheritance. While it must be emphasised that enterprise is not an entity (the entity is the entrepreneur), therefore enterprise has neither legal capacity, i.e. the ability to be the subject of rights and obligations, nor capacity to undertake legal actions, i.e. the ability to independently enter into legal relationships.

In connection with the issue raised in this paper, the attention should be paid to the concept of an enterprise in the context of the Act on the succession management. That's because the mentioned Act uses the term "running an enterprise in inheritance" (Art. 2), but does not introduce the clear legal definition of this term. The provisions provide that the inherited enterprise includes intangible and tangible components intended for the entrepreneur's business activities, constituting the entrepreneur's property at the time of his death (Art. 2 sec 1 of the Act on the succession management). Further, if, at the time of the entrepreneur's death, the enterprise within the meaning of Art. 55¹ of the PCC was the entire property of the entrepreneur and his spouse, the inheritance of the enterprise includes the entire enterprise (Art. 2 sec 2 of the Act on the succession management). At last, the inherited enterprise also includes intangible and tangible assets intended for conducting business activities, acquired by the successor administrator or on the basis of the activities referred to in Art. 13 of the Act on the succession management, in the period from the death of the entrepreneur to the date of

³ Act of April 23, 1964, The Civil Code (consolidated text, Journal of Law of 2023, item 1610, as amended), hereinafter: **the PCC** (Polish Civil Code).

⁴ Poland, Supreme Court, II CSK 215/09 (3 December 2009), Legalis No. 303899.

expiry of the succession management or the expiry of the right to appoint a succession administrator (Art. 2 sec 3 of the Act on the succession management). However, taking into account all the provisions of the Act on the succession management (such as Art. art. 5, 17, 29, 32) the term "enterprise" appears in an objective and functional sense. It is not only a material substrate (in the objective sense, a set of components of an enterprise), but also means conducting a specific business activity (in the functional sense). Broadly understood, "running a business in inheritance" means performing all activities related to running such a business, both in the area of decision-making and acting towards third parties (Kopaczyńska-Pieczniak, 2018, pp. 4-11). In other words, an enterprise in inheritance is created at the time of the entrepreneur's death, and it is based on intangible and tangible assets used by the entrepreneur to run a business during his or her lifetime.⁵

However, it should be emphasised here that not every enterprise run by a natural person on the basis of an entry in the CEIDG will become an inherited enterprise upon the death of the entrepreneur. It is possible that the entrepreneur regulates the legal status of the enterprise during his lifetime, e.g., making this enterprise the subject of an absolute legacy created in the will drawn up in the form of a notarial deed (art. 981¹ of the PCC).

Due to the fact that the discussed issue of inheritance of an enterprise by a natural person appears to be extensive, situations where the enterprise is the object of inheritance and is covered by marital property are left out of the scope of this considerations. Further analysis therefore concerns the situation when the deceased entrepreneur was the sole owner of the enterprise.

2.1.2 Slovakian Law

In the Slovak law we can find many direct and indirect definitions of the enterprise. Pursuant to the Article 118 Section 1 of the Civil Code,⁶ an enterprise falls under the category of an eligible subject of legal relations. It can thus be the subject of private law disposition, but also the subject of enforcement of a decision, the eligible subject of inheritance, donation, as well as other private law dispositions (e.g., within the meaning of Section 476 of the Commercial Code). Article 5 of the Commercial Code defines an enterprise as a set of tangible as well as personal and intangible elements of a business which belong to the entrepreneur or serve, by their nature, the operation of the enterprise. This particular aspect of the entrepreneur's authority to dispose of the components of the enterprise with the purpose of assigning these components to the operation of the enterprise is significant in relation to the entrepreneur-physical person or legal person that was not established for the purpose of business (Grambličková and Patakyová, 2022, p. 32).

An enterprise includes goods, rights and other assets owned by an entrepreneur and used or intended by their nature to be used in the operation of the enterprise. The term undertaking refers to a specific set of business activities carried on within a single business entity. Tangible assets of the enterprise are represented, for example, by real estate, if owned by the entrepreneur. The personal elements are constituted by the entrepreneur, his qualifications, experience and will be all the more specific the more complex the requirements under the specific legislation are. The intangible elements represent intellectual property rights from the economic sphere - such as exclusive rights

⁵ Poland, Supreme Administrative Court in Warsaw, II GSK 1749/21 (23 November 2021), Legalis No. 2634788.

⁶ According to the Article 118 Section 1 of the Civil Code: *The objects of civil law relationships are things, animals and, if their nature permits, rights or other property.*

(the right to the trade name and other industrial property rights) and non-exclusive rights (the reputation of the legal entity, trade secrets, know-how, logo, franchise), rights under a licence agreement. Therefore, it is always possible to refer to an enterprise only if all of its legally defined components, i.e. the tangible, intangible and personal exist at the same time. An enterprise may be the subject of legal relations, which means that it may also be the subject of inheritance and must be included in the assets and liabilities of the inheritance in the succession proceedings. After the death of the testator-owner of the enterprise, it is necessary to ensure the continuance of the operation of the business. This process is regulated by the provisions of Article 184/1 of CEL⁷ when the notary, as a court commissioner, appoints an administrator of the inheritance in cases where it is necessary for the maintenance of the assets of the inheritance, within the scope defined by the court. The administrator is usually appointed from the heirs, persons close to the heir, but may also be a notary. The resolution appointing the administrator sets the scope of the administrator's rights and obligations, as well as an indication of the administrator's responsibility for the property in his charge which forms the basis of the inheritance proceedings. The administrator is obliged to handle the inheritance with professional care, is obliged to carry out the acts necessary for the maintenance of the inheritance during the inheritance proceedings and is obliged to report to the court on his/her activities on an ongoing basis. The administrator is also entitled to file a petition for the enforcement of receivables owed to the testator. Following the aforesaid it should be stated that a sole proprietor may not appoint his or her own administrator during his or her lifetime. This applies even if he had made such an appointment in his last will. It follows from Section 478 CC that the acquisition of the inheritance cannot be made subject to conditions as to the heir's disposition with regard to the inheritance. Conditions are understood under this provision to be legal conditions, the impositions of time and an instruction.

2.2 Entrepreneur – Sole Proprietor

2.2.1 Polish Law

In the Polish legal system, an entrepreneur is defined in various legal acts. The Polish Civil Code defines entrepreneur as a natural person, a legal person or an organisational unit referred to in article 33¹ § 1 conducting business or professional activity on its own behalf (Art. 43¹ of the PCC). The Entrepreneurs' Law⁸ defines entrepreneur as a natural person, a legal person or an organisational unit that is not a legal person, to which a separate act grants legal capacity, conducting business activity (art. 4 sec 1); also partners in a civil partnership are entrepreneurs in the scope of their business activities (art. 4 sec 2). It should be also taken into account that Art. 1 of the Act on the succession management limited the scope of its regulation to the entrepreneur who conducted business activity in his own name on the basis of entry in the CEIDG.

Natural persons conducting business activity (sole proprietor) in Poland should obtain an entry in the Central Register and Information on Business Activity. That means the formal condition is the entry of the entrepreneur into CEIDG, that is a public register, a system for recording the establishment and running of business activities by natural

⁷ According to the Art. 184 Sec. 1 of the Code of Extra-contentious Litigation: *"The administrator of the inheritance carries out the actions necessary for the maintenance of the assets included in the inheritance, within the extent determined by the court"*.

⁸ The Act of March 6, 2018, Entrepreneurs' Law, Journal of Law 2023, item 221, hereinafter: **"Entrepreneurs' Law"**.

persons individually and under civil partnership agreements (art. 860 and following of the PCC) on a nationwide scale (Żywicka, 2019). By the way, the CEIDG is a register of entrepreneurs who are natural persons, but not a register of business activities conducted by these persons (Kozieł, 2019). The registration confirms the legality of the business activity of a sole proprietor. Therefore, it is concluded that it may be every sole proprietor, regardless of the type of business activity, as well as those who conducted professional activity, excluding those entrepreneurs who have not been registered, even if they have submitted an appropriate application, and those who are not subject to such entry (the exclusion applies to persons performing trivial activities referred to in Art. 5 section 1 of the Entrepreneurs' Law, unless they have submitted an appropriate application and have been entered into CEIDG, as well as individual farmers conducting business activities referred to in Art. 6 of the Entrepreneurs' Law, see Kopaczyńska-Pieczniak, 2018, pp. 4-11).

2.2.2 Slovakian Law

In Slovakia, a natural person can perform the business in several forms, either independently, as a sole proprietor, or in partnership with another natural person.

According to Article 2/2 of the Commercial Code, an entrepreneur is a) a person registered in the commercial register, b) a person who operates a business on the basis of a trade licence, c) a person who operates a business on the basis of a licence other than a trade licence pursuant to special regulations, d) a natural person who carries out agricultural production and is registered in the register pursuant to a special regulation. A trade is only one of the four categories listed above, the general principle is that every trade is a business, but not every business has to be a trade.

The largest type of entrepreneurship of a natural person is the operation of a trade within the meaning of Act No. 455/1991,⁹ which refers to natural persons engaged in activities that are trades and are compulsorily registered in the trade register. A trade is any independent and continuous operation of an activity which is not excluded from the Trade Licensing Act and which is operated by a natural person in his own name, on his own responsibility, for the purpose of making a profit. A person may carry a trade on the basis of a trading licence, which must also be issued to an entity that is required to be entered in the commercial register if it carries on an activity that is a trade. Therefore, even for persons who are registered in the commercial register, the right to conduct business does not arise for activities which are a trade on the basis of registration in the commercial register, but on the basis of a trading licence (Kopál and Urmin, 1994, p. 16). When it comes to the definition of the trade, the Trade Licensing Act, chooses a combination of the so-called positive definition of the scope of application with a negative definition of what does not belong to the scope of the trade.¹⁰ In this respect, a trade is only an activity which is carried out (i) continuously, (ii) independently, (iii) under one's own name, (iv) on one's own responsibility, (v) for the purpose of making a profit, (vi) under the conditions laid down by the Trade Licensing Act.¹¹ The general conditions are

⁹ Act No. 455/1991 Coll. On trade business, as amended (hereinafter as the "Trade Licensing Act").

¹⁰ Art. 3 Sect. 1, 2, 3 and 4 of the Trading Act stipulates activities that are not considered as trade, such as activities of attorneys, psychologist, notaries, translators.

¹¹ In the case of a trade, the term (i) continuity of activity - must be understood as meaning that it is not a coincidental, rare or one-off activity; seasonal activities also fulfil the condition of continuity, as they fulfil the condition of a certain temporal repetitiveness of the activity; it may be a relatively long-term effort to carry out an economic operation, but this does not imply that it is unlimited in time, ii) autonomy of conduct - it is to be

(i) at least 18 years of age, (ii) legal capacity, (iii) legal integrity. Trade Licensing Act divides trades into either declared or licensed. This distinction results from whether it is sufficient to obtain the Trading license only simply declaration in front of the Trade Licensing Authority or whether it is necessary to fulfil professional competence, which are either professional or other competence required by the Trade Licensing Act or other legislation. Professional competence means the qualifications necessary to operate a trade and experience in the relevant or related field. The assessment of the fulfilment of the condition of professional competence is regulated by various legal provisions and depends on the level of education or qualification required to operate a trade. Other competence is understood, for example, as compliance with the conditions relating to the premises, technical and technological equipment strictly necessary for the safe conduct of the trade (Hamráček, 2023, pp. 94–95). A natural person may start its business only after notifying the Trade Licensing Authority, which will enter the person into the Trading Register and issues a Trading licence.¹² Granting a Trading licence creates the conditions for the operation of a trade, in the event that a natural person starts to carry out business activities, creates an enterprise within the meaning of Section 5 of the Commercial Code. It should be also pointed out, that, pursuant to the Article 10 Sect. 7 of the Trade Licensing Act, Trading licence cannot be transferred to another person, which means that if the sole proprietor wishes to transfer his business to another person, or after his death, his Trading licence is never transferred to the transferee, only the enterprise and the transferee, or persons inherited the enterprise are obliged to fulfil the conditions for the operation of the trade within the meaning of the Trade Licensing Act (see more details in Section 3.1.2. of this paper).

The second form in which physical person can carry out business activities is in association with another physical person - civil partnership. This legal regulation is contained in § 829 et seq. of the Civil Code, which regulates the Contract of Association. The Civil Code does not grant legal personality to such associations, which means they do not hold the capacity for rights and obligations and thus cannot be independent parties to legal relations, nor can they be an independent subject of rights and obligations. An association can be founded by at least two natural persons, its advantage is that it has no registration obligation in any registry.

understood when the entrepreneur is driven by his or her own considerations and makes his or her own decisions about business plans and activities, decides for himself or herself the time, place, manner and extent of his or her business, is autonomous in obtaining income; iii) acting on own behalf - it is understood when the entrepreneur acts in business relations under his/her own business name; iv) acting on own responsibility - it can be understood both if the entrepreneur is responsible for the business with his/her own assets, bears the risk of his/her business, i.e. bears both the profit and the possible loss, and at the same time the entrepreneur is responsible for the violation of the conditions and obligations arising from the generally binding legal regulations; (v) acting for the purpose of making a profit; in principle, the aim of the business is to make a profit, although the entrepreneur may not always succeed in this aim, the intention to make a profit is decisive; (vi) acting under the conditions laid down by the Trade Licensing Act (Hamráček, 2023, pp. 30–31).

¹²The Trade Licensing Office is the district office competent according to the place of residence of the natural person, in the case of a foreign person it is the address of the place of activity of the enterprise or the foreign branch of the enterprise of the foreign person. The Trade Register registers data on sole traders - individuals determined by the Trade Licensing Act. The registration, change and deletion of these data are carried out by the district offices, departments of trade business, the administrator is the Ministry of Justice of the Slovak Republic.

2.3 Recapitulation

In a view of the above the considerations made at this paper concern only natural person as an entrepreneur. Therefore, on the contrary, within the scope of the considerations undertaken in this paper is not an enterprise in inheritance in the event of the death of a partner in other partnerships/companies. Additionally, due to the breadth of the issue and significant differences in the analysed legal systems, the authors decided not to discuss the inheritance of an enterprise by a natural person under civil partnership agreements. This issue may freely be the subject of separate considerations in future.

Moreover, due to the fact that the discussed issue of inheritance of an enterprise by a natural person appears to be extensive, situations where the enterprise is the object of inheritance and is covered by marital property are left out of the scope of consideration. Further analysis therefore concerns the situation when the deceased entrepreneur was the sole owner of the enterprise.

3. ENTREPRENEUR ACTIVITIES TO ENSURE THE CONTINUATION OF BUSINESS ACTIVITY AFTER DEATH

3.1 *Establishment of Succession Management*

3.1.1 Polish Law

In the Polish legal system, among the *mortis causa* solutions that the entrepreneur himself can take in connection with his business activity, the most important is the establishment of succession management. The aim of mentioned institution is to secure the interest of the enterprise and ensure its continuation after the entrepreneur's death. It is said that before the Act on the succession management came into force it was difficult to organise the continuation of business activity by the legal successors of the deceased entrepreneur, because the only regulation was art. 20 of the Constitution of the Republic of Poland providing for the principle of economic freedom (Babiarz, 2021). The provisions of the Act on the succession management provide for, among others: possible solutions in the event of death/after the death of a natural person running a business, but also regulate issues related to the management of the inherited enterprise until the date of establishment of the succession management or the expiry of the right to appoint the succession management (Art. 13-16 of the Act on succession management), rules regarding the validity of existing legal relationships (art. 30 of the Act on the succession management), possibility to use a business name of the deceased entrepreneur from the date of opening of the inheritance to the division of the inheritance with the addition "in inheritance" (art. 17 of the Act on the succession management).¹³

The conditions for establishing a succession management are specified in the Art. 6 of the Act on succession management. This provision states that in order to establish a succession management by a sole proprietor, it is required to appoint a succession manager, consent of the person appointed as the succession manager to perform this function and enter the succession manager in the CEIDG. It should be emphasised that if the entrepreneur does not submit an application for entry of a succession manager in the CEIDG, then after his death, the succession management may be established only as a result of the appointment of a succession manager pursuant to Art. 12 of the Act on the succession management (Article 10 of the Act on succession management). It is worth adding that the suspension of business activity does not constitute an obstacle to the establishment of a succession management (Art. 6, sec. 2)

¹³ More about succession management, for example: Martyniec and Rataj (2019).

of the Act on succession management), but a succession management cannot be established if the entrepreneur's bankruptcy has been announced (Art. 6 sec. 3 of the Act on succession management). In the circumstances discussed, succession management is established at the moment of the entrepreneur's death, unless the entrepreneur's death certificate does not contain the date of death or the moment of the entrepreneur's death is specified in the decision confirming the death or declaring the entrepreneur dead (Art. 7 of the Act on succession management).

Pursuant to Art. 9 of the Act on succession management, an entrepreneur may appoint a succession manager by designating a specific person to act as a succession manager or by stipulating that upon his death, the indicated proxy (commercial proxy) will become the succession manager. Both the appointment of a succession manager by the entrepreneur and the consent of the person appointed as a succession manager to perform this function require written form under pain of nullity (Art. 9 sec. 2 of the Act on succession management). It is worth adding that a natural person who has full legal capacity and at the same time has not been legally prohibited from conducting business activity, as referred to in Art. 373 section 1 of the Act of February 28, 2003 - Bankruptcy Law,¹⁴ or a punitive or protective measure in the form of a ban on conducting specific business activities, including business activities performed by an entrepreneur or business activities in scope of property management (Art. 8 of the Act on succession management).

As stipulated in Art. 18 of the Act on succession management, succession management includes the obligation to run an enterprise in inheritance and the authorisation to perform judicial and extrajudicial activities related to run an enterprise in inheritance. From the moment of establishment of the succession management, the succession manager exercises the rights and obligations of the deceased entrepreneur resulting from his business activity as well as the rights and obligations arising from running an enterprise in inheritance (Art. 29 of the Act on succession management). This means that the succession manager represents the enterprise externally, exercises rights and obligations in the field of enterprise management (e.g., may enter into new legal relations by concluding contracts, see Wrzecionek, 2021, pp. 46-51), and exercises rights and obligations in the field of tax law, labour law and social security (Art. 31 sec. 2 of the Act on succession management), as well as may exercise the rights and obligations arising from administrative decisions regarding the inherited enterprise (see Chapter 7 of the Act on succession management) (Martyniec and Rataj, 2019, p. 59). These are the competences of the successor manager that guarantee the continuation of the activity of the sole proprietor until the enterprise is taken over by the legal successors. It should be emphasised that the succession administrator acts on his own behalf, but on behalf of the owners of the inherited enterprise (Art. 21 sec. 1 of the Act on succession management). Therefore, he enters into the general legal situation of an enterprise in inheritance, and the actions taken by him relate not to his assets, but to a separate asset mass, which is the enterprise in inheritance (Martyniec and Rataj, 2019, p. 59).

It should be noted that the succession management is a temporary institution (see Art. 59 of the Act on succession management). The assumption is that it will last until the enterprise is taken over by the legal successor (heir, absolute legatee, purchaser of the enterprise). However, its purpose is to achieve lasting effects in the form of continuation of business activity by a person (persons) who, as a result of inheritance or, for example, sale of the enterprise, will permanently manage the enterprise (Bieluk, 2022).

¹⁴ Act of February 28, 2003 - Bankruptcy Law, Journal of Laws of 2020, item 1228.

Representatives of the doctrine state that succession management is an institution that provides the company with an effective manager and allows for continuity of business activities and a smooth takeover of these activities by the target buyer (Bieluk, 2022). Thanks to the succession management, persons entitled after the death of a sole proprietor have time to put their affairs in order, in particular to determine the circle of heirs, divide the inheritance, as well as think and prepare for the possible continuation of the deceased's business activity. During this time, the enterprise operates, functions, and does not disappear from the market. However, as a result of appointing a succession administrator, there is no substitution of another entity, i.e. a natural person, e.g., an heir, in place of the deceased entrepreneur. As a rule, death is a sudden event, and by appointing a successor manager, the entitled persons gain time to make decisions and, possibly, to create conditions for the continuation of the deceased's business activity (e.g., to continue business activity on their own account), because at that time the enterprise is operating (can operate), as it operates in the entrepreneur's life.

3.1.2 Slovakian Law

In the Slovak legislation there is no possibility for a sole proprietor to set up succession management during his lifetime, the only way in which a sole proprietor can manage the succession of his business during his lifetime is by testamentary disposition of the enterprise and his trade.

In case of the death of a sole proprietor, the Trade Licensing Act in Art. 13 distinguishes 3 situations - 1. proceedings until the end of the inheritance proceedings, 2. proceedings 6 months after the end of the inheritance proceedings, 3. procedure required after 6 months from the end of the inheritance proceedings.

1. Continuing the trade during inheritance proceedings until the end of the inheritance proceedings - in the event of the death of a natural person - a sole proprietor, the trade may be continued until the end of the inheritance proceedings by (i) the heirs by intestate succession, if there are no testamentary heirs, or (ii) the testamentary heirs and the spouse, even if he or she is not the heir, if he or she is a co-owner of the property used for the trade, (iii) the spouse if he or she is a co-owner of the property used for the trade, if the trade is not continued by the heirs, and (d) the administrator of the estate, if appointed by the court. This order shall be binding for the Trade Licensing Office. Under the Trade Licensing Act, the entitled persons are only obliged to notify the Trade Licensing Office within one month after the death of the sole proprietor that they are continuing in the trade, provided that they meet the condition of competence to carry on the trade of the sole proprietor. If these persons do not meet the conditions, they must appoint a responsible representative without delay. If these persons wish to continue their trade after the death of the entrepreneur, they must notify the trade licensing authority within one month of the death of the entrepreneur at the latest. Business relationship with suppliers and customers remains unchanged.

In the case of the death of a sole proprietor, there is no transfer of the trading licence to a person who is entitled to continue the business, i.e. there is no creation of a new business entity, but only the acquisition of the right of one of the entitled subjects until the end of the inheritance proceedings.¹⁵ Until the end of the inheritance proceedings, this person carries on a trade in the name of and on the basis of the trading licence acquired by the deceased sole proprietor, and does not carry on his/her own business. The persons entitled are therefore not, in the legal sense, successors to the

¹⁵ Slovakia, Constitutional Court, I. ÚS 142/2017 (22 March 2017).

sole proprietor, i.e. they do not become a new business entity to which the rights and obligations of the deceased sole proprietor have been transferred. Those entitled persons only acquire the right to continue the business as an executor of the trading licence acquired by the sole proprietor prior to his death. This follows from the provision of Article 10 Sect. 6 of the Trade Licensing Act, according to which it follows that a Trading licence cannot be transferred to another person. Until the end of the inheritance proceedings, the entitled person conducts business under the business name of the deceased testator - sole proprietor, registered in the Trading Register, during the inheritance procedure this person is not a legal successor of the deceased sole proprietor and therefore the rights and obligations of the deceased sole proprietor are not transferred to him.¹⁶

The entitled person is temporarily – until the conclusion of the inheritance proceedings – authorised to carry on the business of the deceased sole proprietor under the scope of the trade licence granted to the deceased, without having to meet the general and specific conditions for conducting a trade (i.e. age of 18 years, legal capacity, integrity). However, if these conditions are not fulfilled, a representative who does meet them must be appointed. Furthermore, this person is not required to meet the condition of professional competence; it is sufficient for them to appoint a responsible representative who fulfils this requirement.

It is also important to note that there may be a concurrence of more entitled persons to continue the business after the natural person - sole proprietor. For example, if several legal heirs are willing to continue the business after the testator - sole proprietor. This issue is resolved by the case law of the courts in a way according to which, if several entitled persons are interested in continuing the business after a sole proprietor, there may be a simultaneous exercise of the right to continue the trade. However, such coexistence can only occur at the relevant degree of succession level (for example, by several legal heirs). These persons have acquired a special legal status by which they have legally entered into the rights and obligations of the sole proprietor who acquired the trading licence before his death and the right to continue the business to the same extent as the deceased sole proprietor. If these persons are not interested in the continuing of the business after the sole proprietor, they must notify the Trade Licensing Office of this fact and the Trade Licensing Office will then declare the trade licence of the sole proprietor in the register as inactive.

If the entitled person is the administrator of the inheritance, appointed by the notary according to Article 184 of CEL, the administrator is obliged to notify the Trade Licensing Office about fulfilment of the special requirements for operating the business. However, if the administrator does not meet such requirements, he must appoint a responsible representative who meets these requirements. Appointment of the administrator of the inheritance does not create a new legal entity.¹⁷

The role of the administrator of the inheritance is to carry out, until the final decision in the inheritance proceedings, the acts necessary for the maintenance of the assets included in the inheritance, and to act with professional care in the performance of his duties. The termination of the authorisation to exercise his role takes place upon the final court decision terminating the inheritance proceedings.

2. Continuing the trade after the final settlement of the inheritance proceeding at the latest within 6 months after the final settlement of the inheritance proceeding - after the final settlement of the inheritance proceeding, those who inherited property from the sole proprietor, including the property that was used for the operation of the trade (i.e.

¹⁶ Slovakia, County Court Žilina, 14 Cob 16/2016 (20 October 2016).

¹⁷ Slovakia, Supreme Court, 7 Sžso 61/2011 (15 August 2012).

the business), shall continue the trade. In this case, a new business entity is not created, but the heirs continue the business of the deceased sole proprietor, with no change in the business name, the subject of the business. Contracts concluded with suppliers, customers and the deceased sole proprietor remain unchanged. They are obliged to notify the Trade Licensing Office of the continuation of the trade within one month of the end of the succession proceedings. Heirs do not have to obtain a new trade licence in their own name, but they must meet all the criteria required for carrying on all types of trade or appoint a responsible representative to act for them.

3. Procedure required after 6 months from the end of the inheritance proceeding - if the heirs wish to continue the business of the deceased sole proprietor for more than 6 months after the final conclusion of the inheritance proceeding, they must obtain their own trade licence for the operation of the trade before the expiry of this period in accordance with Article 13 Sect. 6 of the Trade Licensing Act, which results in the establishment of new business entities. If they do not take this action, they may no longer carry out business activities.

The above does not apply, i.e. the exemption from the obligation to obtain a new trade licence applies if the surviving spouse of the sole proprietor was a co-owner of the property used for the trade or who acquired that property or an interest therein by inheritance. In such a case, he may continue the trade of the deceased sole trader after the expiry of 6 months from the end of the succession proceedings without obtaining his own trading licence, while operating his business on the basis of the trading licence of the deceased spouse. If the surviving spouse is a sole trader, he/she shall notify the trade licensing authority within one month following the end of the succession proceedings of the business name under which he/she will continue to trade.

3.2 Testamentary Dispositions

3.2.1 Polish Law

Civil Code provisions in the field of inheritance law, provide for a number of institutions in the event of death that can be used by natural persons, including those who are self-employed. Among other things, an entrepreneur - the future testator - can prepare a testament. Then, he can determine the circle of heirs, but it can also, for example, appoint only one person to the inheritance, and thus protect the enterprise against its division into parts (which would happen in the event of several people claiming the right to the inheritance).

Moreover, an entrepreneur may, by means of a testamentary disposition, oblige a statutory or testamentary heir to provide a specific property benefit to a specified person (ordinary legacy, Art. 968 § 1 of the PCC). The legatee may demand the execution of the legacy (immediately after the announcement of the testament, Art. 970 of the PCC), so it causes only obligatory effects, and is therefore not an effective solution for continuing the business activity of a sole proprietor.

Another regulation, worth attention, absolute legacy provision in a will drawn up in the form of a notarial deed (Article 981¹ of the PCC).¹⁸ The design feature of the above-mentioned institution is the *ex lege* acquisition at the moment of opening the inheritance by the absolute legatee of the item (singular succession). An absolute legacy, unlike an particular (ordinary) legacy (causing only obligatory effects), has a material effect at the moment of opening the inheritance, in which the absolute legatee immediately becomes the owner of the thing, and this feature brings him closer to the status of an heir

¹⁸ Wider about absolute legacy: Górniak (2023, pp. 285–360).

(Sylwestrzak, 2023). Establishing an enterprise as an object of absolute legacy automatically excludes this item from the estate. As an aside, it should be noted that the acquisition of an enterprise in the form of an absolute legacy upon the death of the entrepreneur is temporary, because the absolute legatee has the opportunity to submit a declaration of acceptance or rejection of the subject of the debt collection legacy (Art. 1012 in connection with Article 981⁵ of the PCC). The legislature clearly indicates that an enterprise may be the subject of an absolute legacy (Article 981¹ § 2 point 3 of the PCC), however, what the absolute legatee will actually acquire is determined not by the moment of drawing up the testament, but by the moment of opening the inheritance (Dyszlewska-Tarnawska, 2019). The acquisition of the subject of the legacy by the absolute legatee at the time of opening the inheritance undoubtedly gives the entitled person the opportunity to take over the estate allocated to him (the enterprise) immediately, i.e. without having to wait for the heirs to execute the legacy or without the need to wait for the division of the inheritance, in which it is finally decided who will receive a given asset (Sylwestrzak, 2023). However, as in the case of traditional inheritance, an absolute legacy enables the transfer of items from the inheritance to a specific person, i.e. in the discussed case, an enterprise understood as all tangible and intangible assets used to run a business. Legal succession in the ownership sphere is a reliable basis for the continuation of the deceased's activity, but it is not sufficient.

The above-mentioned activities i.e. made a testament and appointing a legatee (either ordinary or absolute), in themselves do not constitute the possibility of formally and automatically continuing the business activity of a sole proprietor in the literal sense. Their object may include, among others enterprise in its objective meaning, but it cannot be a business activity. Legal succession in the ownership sphere is a reliable basis for the continuation of the deceased's activity, but it is not sufficient. Continuing business activity based on elements of the acquired enterprise is not the same as continuing the this business activity (Zięba and Wróbel, 2012). In the circumstances discussed above, it is additionally necessary for the entitled person to have a confirmation of the acquisition of inheritance, an inheritance certificate or a European certificate of inheritance (Art. 1027 of the PCC), which may be time-consuming, but above all requires the involvement and activity of the entitled person. However, thanks to the provisions of the Act on succession management, the entrepreneur's testamentary heir or absolute legatee, who, in accordance with the announced testament, is entitled to a share in the enterprise in the estate, may, among others: appoint a succession manager, as well as perform activities necessary to preserve the estate or the ability to run the enterprise in the inheritance.

The issue of appointing a succession manager by the indicated entities is regulated in detail by Art. 12 of the Act on succession management. Pursuant to this provision, if the succession management has not been established at the time of the entrepreneur's death, after the entrepreneur's death, the succession management may be appointed, among others, by: the statutory heir of the entrepreneur who accepted the inheritance, or the testamentary heir of the entrepreneur who accepted the inheritance, or the absolute legatee who accepted the absolute legacy, if, in accordance with the published testament, he is entitled to a share in the enterprise in inheritance (sec. 1). In such a case, the appointment of a succession manager requires the consent of persons who have a joint share in the enterprise in the inheritance greater than 85/100 (sec. 3), and if no final decision confirming the acquisition of inheritance has been issued, no deed of inheritance has been registered, nor has a European certificate of inheritance been issued, the amount of shares in the enterprise in the estate is determined taking into account all persons known to the person appointing the successor manager who are entitled to a share in the enterprise in inheritance at the time of appointing the succession

manager (sec. 4). The right to appoint a successor manager expires after two months from the date of the entrepreneur's death. If the entrepreneur's death certificate does not contain the date of death or the moment of the entrepreneur's death was indicated in the decision confirming the death, this period runs from the date of finding the entrepreneur's body or the date of the decision confirming the death becomes final (sec. 10). It can be stated that if the entrepreneur's testamentary heir or absolute legatee does not decide to appoint a succession manager, then to as a result of the death of a sole proprietor, commercial contracts, concessions, licenses, permits (as a rule, they are not object to civil law transactions),¹⁹ as well as employment contracts of employees²⁰ (Art. 63² § 1 of the Labour Law)²¹ directly related to natural person as entrepreneur and his business activity, expires. Then the entitled person can obtain appropriate administrative decisions and regulate employee matters anew (Blajer, 2016, pp. 531–543) as a new entrepreneur.

Regarding the competences of the testamentary heir of an entrepreneur or absolute legatee to perform activities necessary to preserve the property or the ability to run an enterprise in inheritance, the relevant provision is Art. 13 of the Act on succession management. This provision states that in the period from the death of the entrepreneur to the date of establishment of the succession management, and if the succession management has not been established - until the date of expiry of the right to appoint the succession manager, among others: the entrepreneur's testamentary heir or absolute legatee who, in accordance with the announced testament is entitled to a share in the enterprise in inheritance, may perform actions necessary to preserve the assets or the ability to run the enterprise in inheritance, consisting in particular of: 1) satisfying due claims or accepting receivables resulting from the entrepreneur's obligations related to the performance of business activities, arising before his death; 2) disposal of tangible current assets within the meaning of Art. 3 sec. 1 point 19 of the Act of 29 September 1994 on Accounting²² (see sec. 1). The persons in question may also perform ordinary management activities in the scope of the business activity carried out by the entrepreneur before his death, if the continuity of this activity is necessary to maintain the possibility of its continuation or to avoid serious damage (sec. 2).

Finally, it is worth pointing out the possibility of an entrepreneur appointing an executor in his will (Art. 986 of the PCC). The executor of the will acts on his own behalf, but in someone else's interest (for someone else's benefit) - he should be treated as an indirect substitute.²³ His tasks include (as provided for in Art. 988 of the PCC), unless the testator has decided otherwise, managing the inheritance property, repaying inheritance debts, in particular executing ordinary legacies and orders, issuing the inheritance property to the heirs in accordance with the will of the testator and the law, and in any case immediately after the division of the estate (§ 1). The executor of the will may sue and be sued in matters arising from the administration of the estate, or an organised part or a specified component. He may also sue in matters concerning rights belonging to the state and be sued in matters concerning inheritance debts (§ 2). The executor of the will

¹⁹ Pursuant to Art. 42 of the Act on succession management, the owner of the enterprise (a person with a valid confirmation of the acquisition of the subject of the absolute legacy) may submit to the public administration body that issued the decision related to the enterprise an application for the transfer of this decision to it within six months from the date of the entrepreneur's death (if succession management has not been established).

²⁰ Employee employment contracts do not expire on the day of the employer's death if the absolute legatee takes over the employee under the terms specified in Art. 231 of the Labour Code, provided that the acquired enterprise meets the criteria of a workplace (Article 632 § 3 point 1 of the Labour Code).

²¹ The Act of June 23, 1974, Labour Code, Journal of Law 2023, item 1465, hereinafter: "Labour Code".

²² Act of 29 September 1994 on Accounting, Journal of Laws of 2019, item 351, as amended.

²³ Poland, Supreme Court, I CSK 62/10 (11 August 2010), Lex no. 1375302.

should hand over to the person to whom a thing was left on an absolute legacy, the object of that legacy. (§ 3). Therefore, the executor of the will takes care of the proper fulfilment of the will of the testator (he is to secure the implementation of the will of the testator expressed in the testament, for more see Wolak, 2023). The executor of the will is basically responsible for maintaining the estate in the best possible condition and expediting the division of the estate, especially if there is a conflict between the heirs/legatees. However, the executor of the will does not have any special powers regarding the sole proprietor's business.

3.2.2 Slovakian Law

A sole proprietor may alter the scope of the heirs of his enterprise. If this is the case, these entities (both natural and legal) shall have preference over the intestate heirs. Testamentary succession is, however, limited by the right of forced heirs under Article 479 of the Civil Code, according to which, if the natural person make a testamentary disposition of the business and trade to someone other than his descendants, they may claim the relative invalidity of the will and are entitled to half of the legal share of inheritance if they are adults and the entire legal share of inheritance if they are minors. If the inheritance also includes a trading licence, as mentioned above, this does not automatically cease if the descendants wish to continue the trade of the sole proprietor, they shall notify the trade licensing authority of this fact within one month of the death of the sole proprietor. The Trade Licensing Office is bound by the order of heirs according to Article 13 Section 1 of the Trade Licensing Act, which are descendants only if the testator did not leave heirs by will. Thus, if he has left heirs by will and the descendants have been omitted and claim the relative nullity of the will, they become heirs in the proportions mentioned above. The heirs of the intestate, including the descendants, are obliged to have the authority to carry on a business identical to that of the sole proprietor. If they do not possess with such authority, they shall be obliged to appoint a responsible representative.

According to Slovak law, it is not possible that the sole proprietor regulates the legal status of his enterprise during his lifetime, e.g., making this enterprise the subject of an absolute legacy created in the will drawn up in the form of a notarial deed. Similarly, it's not possible to appoint the administrator of the will during his lifetime.

It follows from the provision of the Article 478 of the Civil Code that the acquisition of an inheritance cannot be subject to any conditions, which are understood to be legal conditions, time stipulations and imposed orders.

If the will contained any of the above-mentioned conditions, they would have no legal effect.

3.3 *Power of Attorney and Commercial Proxy*

3.3.1 Polish Law

The legislator regulates power of attorney in the provisions of Art. 98-109 of the PCC. As a rule, a power of attorney expires with the death of the principal or attorney, however, the power of attorney may be stipulated differently for reasons justified by the content of the legal relationship that is the basis of the power of attorney (Art. 101 § 2 of the PCC). Therefore, the authorisation may continue to exist even after the death of the principal, and therefore also in case of a sole proprietor. However, it should be noted that pursuant to Art. 101 § 2 of the PCC, there is no extension of the legal capacity of the principal and granting it to him even after death, which would allow the attorney to act in

the situations specified in this provision on his behalf and with consequences for him. The importance of this provision is that in the situations specified therein, the attorney may act on behalf of the heirs of the deceased principal (even if they are not yet known).²⁴ Such an attorney may be revoked by the heirs. Formally, however, there are no obstacles to an attorney acting despite the death of an entrepreneur managing (taking care of) the deceased's enterprise. If the power of attorney does not expire with the death of the principal, such an attorney has a power of attorney document, which enables him to manage the enterprise immediately after the principal's death (the type of power of attorney granted is also important). However, the scope of actions (authorisations) that can be undertaken in relation to individual business activity has not been specified, so this solution raises many doubts. Significant difficulties may include, among others: public law regulations, e.g., regarding a license granted to a deceased sole proprietor.

A special type of power of attorney is a commercial proxy. It is a power of attorney granted by an entrepreneur subject to the obligation of entry in the Central Register and Information on Economic Activity or in the register of entrepreneurs of the National Court Register, which includes the authorisation to perform judicial and extrajudicial activities related to running the enterprise (Art. 109¹ § 1 of the PCC). In accordance with applicable regulations, an entrepreneur may stipulate that upon his death, the designated proxy will become the successor manager (Art. 9sec. 1, point 2 of the Act on succession management). Then the observations regarding the appointment of a succession manager will remain appropriate. Pursuant to Art. 38 of the Act on Central Registration, an entrepreneur entered in CEIDG may publish information about his/her attorney or commercial proxy via the CEIDG IT system (sec. 1), and, in the case of a commercial proxy, indicate whether he/she has stipulated that upon his/her death the proxy will become the successor manager (sec. 2). It should be clarified that until the date of entry into force of the Act on succession management, the provision of Art. 109⁷ § 4 of the PCC stipulated that the death of an entrepreneur does not result in the expiry of commercial proxy. This wording encouraged entrepreneurs planning succession to establish a proxy in the event of death. Nevertheless, this solution raised a number of doubts (including regarding the functioning of the institution of commercial proxy when the heirs did not have the status of an entrepreneur) and was therefore criticised (for more see Wrzecionek, 2020). Currently, the provision of Art. 109⁷ § 4 of the PCC, states that the loss of legal capacity by an entrepreneur does not result in the expiry of the commercial proxy. Given this wording of the provision of Art. 109¹ of the PCC, and at the same time the lack of a regulation analogous to Art. 101 § 2 of the PCC (allowing for the establishment of a power of attorney that does not expire upon the death of the principal), it is concluded that the commercial proxy always expires upon the death of the entrepreneur (Osajda, 2024). In addition, it can be considered that the Act on succession management introduces the principle of priority of succession management and excludes an enterprise in inheritance from estate management on general principles (Pilich, 2021).

3.3.2 Slovakian Law

The legislator regulates power of attorney in the provisions of Art. 31 – 33 of the Civil Code. As a rule, a power of attorney expires with the death of the principal or attorney (Art. 33b/d). Slovak law does not allow to grant a Power of Attorney with the effects of

²⁴ Poland, Supreme Court, IV CSK 252/14 (21 January 2015), OSNC-ZD 2016/2/22; Poland, Supreme Court, I CSK 362/07 (24 January 2008), OSNC 2009/3/46.

mortis causa, the Power of Attorney is no longer valid after the death of the sole proprietor. According to legal doctrine it could be admitted that the grantor expresses in the power of attorney a desire that the principal represent his interests even after his death. In such a case, the power of attorney does not terminate on the death of the principal and the heirs have the option to revoke the power of attorney (Jurčová, 2019, p. 219).

3.4 *Mortis Causa Donation of Enterprise*

3.4.1 Polish Law

The donation *mortis causa* is not a contract legally regulated in Polish law. This is the argument that it is not a completely forbidden option (because of the principle of freedom of contract). The Supreme Court recognised the conclusion of a donation *mortis causa*, stating as a thesis that it is permissible to conclude a donation contract in the event of death if its object are specific things or rights, and the refusal is not contrary to the principles of social coexistence.²⁵ The doctrine is divided, which means that some authors approve of the Supreme Court's opinion (Bieranowski, 2014, p. 31 et seq.), others are quite critical (Justyński, 2014, pp. 1263-1278; Księżak, 2015, pp. 123-128.). For this reason alone, making a donation of an enterprise in the event of death should be questioned. Moreover, for the same reasons as in the case of testamentary dispositions, there is no basis for the possibility of formally continuing the business activity of a sole proprietor as a consequence of the donation of the enterprise.

3.4.2 Slovakian Law

The legal framework for the disposition of property in the event of death is currently governed by the provisions of the Civil Code on intestate succession (Art. 476 of the Civil Code). In addition to the prohibition of *donation mortis causa* (Art. 628 Sect. 3 of the CC), the law also prohibits joint testamentary succession of several testators (Art. 476 Sect. 3 of the CC). Pursuant to Article 628 Sect. 3 of the Civil Code, if the person makes *donation mortis causa*, such a legal action is absolutely invalid.

3.5 *Transformation of a Sole Proprietors into a Commercial Law Company*

3.5.1 Polish Law

The transformation of a sole proprietor (a natural person running a business activity, entered into the CEIDG) into a commercial law company or its economic transformation involving the transfer of the enterprise to the company are not *mortis causa* legal actions. Transformation is an action that can be undertaken by a sole proprietor during his or her lifetime, and which will also enable his or her legal successors to continue the business. Then we are no longer dealing with the issue that is the subject of these considerations.

Because it is a noteworthy solution, it can be stated that, according to the provisions of Art. 551 § 5 of the Commercial Companies Code,²⁶ an entrepreneur who is a natural person conducting business activity on his or her behalf within the meaning of

²⁵ More arguments for the admissibility of the donation *mortis causa* are in Poland, Supreme Court, III CZP 79/13 (13 December 2013), OSNC No. 10/2014, item 98.

²⁶ Act of September 15, 2000, The Commercial Companies Code (Journal of Law of 2024, item 18, as amended, hereinafter: **"Commercial Companies Code"**).

the Entrepreneurs' Law (transformed entrepreneur) may transform the form of business into a sole proprietor company (transformed company), i.e. a limited liability company or joint stock company. The procedure for transforming an entrepreneur who is a natural person into a capital company is regulated in detail in Art. 584¹–584¹³ Commercial Companies Code. When reviewing the above-mentioned provisions, it can be stated that the transformed entrepreneur becomes a transformed company upon entry in the register (transformation date), as stipulated in Art. 584¹ of the Commercial Companies Code. The issue of rights and obligations is regulated by Art. 584² of the Commercial Companies Code, from the content of which it should be concluded that on the date of transformation, the transformed company generally becomes the subject of rights and obligations, the subject of which was the transformed entrepreneur and which are related to his current business activity (in particular permits, concessions and reliefs, which were granted to the entrepreneur before its transformation, unless the act or the decision granting a permit, concession or relief provides otherwise). In turn, a natural person (i.e. the entrepreneur subject to transformation) becomes a partner or shareholder of the transformed company on the date of transformation. Therefore, the transformed entrepreneur ceases to be the subject of rights and obligations, and only his joint and several liability with the transformed company for the obligations of the transformed entrepreneur related to the business activity he has previously conducted remains (within specified time limits) (Art. 584¹³ of the Commercial Companies Code). What is important for the present considerations, it remains controversial in the doctrine and case law whether the transformation of a sole proprietor into a commercial law company should be treated as a type of universal succession, which has a limited scope and takes place as a result of one legal event *inter vivos*, and not *mortis causa*, or turn, the transformation of a sole proprietor in question is a special form of continuation (quasi-continuation) of the activity of a sole proprietor business activity.²⁷

3.5.2 Slovakian Law

Transformation is an action that can be undertaken by a sole proprietor during his or her lifetime, and which will also enable his or her legal successors to continue the business. The transfer of the trade during the life of the sole proprietor to the successor of the entrepreneur is not directly regulated in the Slovak legislation, therefore it is necessary to apply the related provisions of other legal regulations. It should be noted that under Article 10 Sect. 7 of the Trading Act a trade licence cannot be transferred to another person. It follows from the above that the trade licence is linked to the person of the sole proprietor and cannot be the subject of civil law relations (e.g., donation, inheritance).

However, a sole proprietor may, during his lifetime, transfer the business to his or her descendants as well as to any third party, either **(i) by selling the business or (ii) by contributing the sole proprietor's business to a commercial company.**

(i) In the case of selling the business, it is a legal regulation under Article 476 - 488 of the Commercial Code No. 513/1991 Coll. regulating the sale of the company. In such a case, the sole proprietor and his successor conclude a contract on the sale of the business, on the basis of which the ownership right to the things, rights and other property values constituting the business and which are used for the operation of the sole proprietor's business passes to the successor of the sole proprietor. All rights and

²⁷ See: Poland, Supreme Court, III CZP 133/22 (31 January 2023), OSNC 2023, no. 7–8, item 7; Poland, Court of Appeal in Szczecin, I ACa 45/16 (10 March 2016), Lex no. 2044443. In: Tofel (2024).

obligations arising from commercial law relationships shall also pass to the successor, as is the case where the sole trader employed employees. It is necessary that the successor is a natural person - sole proprietor and possesses a trade licence for the exercise of the trade, the subject matter of which was entered in the trade licence by the transferring sole proprietor.

Another option for a sole proprietor to transfer his business to another person during his lifetime is through **(ii) the contribution of the sole proprietor's share of the business to the successor company**. In this case, the condition is that the successor is not a natural person - sole proprietor, but acts in business relations as a legal person. In such a case, it is necessary to quantify the value of the sole proprietor's business and to increase the share capital of the company by that value. All rights and obligations in relation to business partners and employees are transferred to the company by the contribution. In this case, too, in order for the company to be able to carry on the business of a sole trader, it is necessary for it to have as its object of business those activities which are covered by the sole proprietor's trade licence.

3.6 Recapitulation

Summarising the above, it can be noted that the establishment of succession management appears to be a promising tool (given its relatively short period of validity, still requiring verification in practice, including in case law) to ensure the continuation of business activity after death. In the absence of a similar (close) regulation in Slovakian law, its detailed analysis may be valuable for future legal solutions. At the same time, it can be stated that the application of other proposed solutions, i.e. testamentary dispositions, power of attorney and commercial proxy, as well as *mortis causa* donation, both in Polish and Slovakian law, does not provide certainty as to ensure the continuation of business activity after death. In turn, the indicated process of transformation of a sole proprietor is rather the solution during lifetime, but not exactly in the case of death.

4. POSSIBLE ACTIONS OF LEGAL SUCCESSORS AFTER THE DEATH OF AN ENTREPRENEUR

4.1 Polish Law

The inheritance opens upon the death of the testator (Art. 924 of the PCC), and the heir acquires the inheritance upon the opening of the inheritance (Art. 925 of the PCC). The acquisition of the inheritance therefore occurs *ex lege*, regardless of the heirs' awareness. What is more, as a result, from the moment the inheritance opens, the heir may take possession of the inheritance, manage it and collect the benefits. From that moment on, the heir is also entitled to dispose of the entire inheritance, as well as individual components of the inheritance property (Kawałko, 2019). However, the security of legal transactions requires that the heir proves his status with an appropriate document (Karaszewski, 2024).

Therefore, in practice, it is necessary to formally regulate the acquisition of inheritance (conducting proceedings for the confirmation of the acquisition of inheritance and then division of the inheritance). Such proceedings are conducted by the court at the request of a person with an interest in it, or a notary public draws up a deed of inheritance certification under the principles specified in separate provisions. It should be noted that this will not happen without the cooperation of the deceased family members (potential heirs), and the length of such proceedings may also make it difficult to maintain and continue the business activity. Meanwhile, in accordance with art. 30 sec. 2 of the Act on

Central Registration, the entrepreneur is deleted from CEIDG immediately after 2 months from the date of death or finding the entrepreneur's body, no later than within 7 days from the date on which this period expired, unless the entry in CEIDG contains information on the appointment of a successor manager by the entrepreneur or a successor manager was appointed during this period.

In response to the difficulties of inheriting the company, a valuable solution was introduced by the Act on succession management. This Act provides in detail possible actions of legal successors after the death of an entrepreneur. It should be noted that in the meaning of art. 14 of the Act on succession management, legal successors are: the entrepreneur's spouse who is entitled to a share in the enterprise in the inheritance, or the entrepreneur's statutory heir, or the entrepreneur's testamentary heir or an absolute legatee who, in accordance with the announced testament, is entitled to a share in the enterprise in the inheritance. The actions that may be taken by indicated group (legal successors) after the death of the entrepreneur (assuming that the deceased entrepreneur did not take appropriate actions, in particular did not appoint a successor manager), until the final decision confirming the acquisition of inheritance, registration of the inheritance certificate or issuance of the European Certificate of Inheritance, include: among others the ability to perform activities necessary to preserve assets or the ability to run an enterprise in inheritance (see the previously mentioned Art. 13 of the Act on succession management). An important right in a situation where the deceased entrepreneur and natural person running a business (sole proprietor) did not appoint a succession manager during his lifetime is the possibility of appointing a succession manager (Art. 12 of the Act on succession management). If the succession management has not been established at the time of the entrepreneur's death, after the entrepreneur's death, the succession administrator may be appointed by: 1) the entrepreneur's spouse who is entitled to a share in the enterprise in the inheritance, or 2) the statutory heir of the entrepreneur who accepted the inheritance, or 3) the entrepreneur's testamentary heir, who accepted the inheritance, or an absolute legatee who accepted the debt collection legacy, if, in accordance with the announced testament, he is entitled to a share in the enterprise in the inheritance.

In turn, after the decision confirming the acquisition of inheritance, registration of the inheritance certificate or issuance of the European certificate of inheritance becomes final, the succession manager may only be appointed by the owner of the inherited enterprise (Art. 12 sec. 2. The right to appoint a successor manager expires after two months from the date of the entrepreneur's death. However, if the entrepreneur's death certificate does not contain the date of death or the moment of the entrepreneur's death is indicated in the decision confirming the death, this period runs from the date of finding the entrepreneur's body or the date of the decision confirming the death becomes final (Art. 12 sec. 10). Appointing a succession manager after the death of an entrepreneur requires a number of additional actions, but it seems to be a convenient solution due to the status and powers of the succession manager in terms of continuing the business activities of the deceased entrepreneur.

Broader rights have the owner of the inherited enterprise, who is a person who, in accordance with a final decision confirming the acquisition of inheritance, a registered inheritance certificate or a European inheritance certificate, acquired intangible and tangible assets intended for the entrepreneur to conduct business activities, constituting the entrepreneur's property at the time of his death, on the basis of inheritance by statute, or will or acquired an enterprise or a share in an enterprise on the basis of an absolute legacy provision (Art. 3 sec. 1 of the Act on succession management). For example, the owner of an enterprise in inheritance may submit to the public administration body that

issued a decision related to the enterprise an application to transfer this decision to him (for more information, see Art. 42 of the Act on succession management).

4.2 Slovakian Law

As it was described previously, there is no possibility under the Slovak law for a sole proprietor to set up succession management during his lifetime. The only way a sole trader can administer the succession of his business during his lifetime is by testamentary disposition of his business and trade. Other than that, in case of the death of a sole proprietor, the Trade Licensing Act in Art. 13 distinguishes 3 situations:

- 1. proceedings until the end of the inheritance proceedings,**
- 2. proceedings 6 months after the end of the inheritance proceedings,**
- 3. procedure required after 6 months from the end of the inheritance proceedings.**

As the relevant provisions have already been discussed in subchapter 3.1.2 of this paper, the present section will reference them without additional commentary.

5. CONCLUSION

The previous (general) inheritance regulations mainly focus on the assets left by the deceased entrepreneur, and not on the continuation of his business. Inheritance of a sole proprietor's business represents a complex legal process with consequences for heirs, contractual parties, as well as obligations towards third parties. Based on the above considerations, it can be stated that Polish regulations, and specifically the Act on succession management, address the problems that may be encountered by the heirs of a deceased sole proprietor. In the provisions discussed, the legislator focuses on the actions that may be taken by the heirs in order to continue the business of the deceased sole proprietor. In Slovakia, the similar regulation to the Polish law is missing. The death of a natural person who is a sole proprietor results in the termination of the trade license, however, the business itself, as a set of assets and legal relationships, may pass to the heirs within the inheritance proceedings. During the inheritance proceedings, the notary appoints an administrator who manages the business until the conclusion of the inheritance process. The heirs can decide to continue the business, in this case they must obtain a new trading license within the conditions stated by the law. If the heirs do not wish to continue the business of the sole proprietor, the business may be liquidated, with the assets being divided among the heirs according to the provisions of inheritance law.

The issue addressed in this article appears to be extensive and quite complicated. Meanwhile, the heirs of a natural person, especially those interested in continuing the deceased's business activity, may encounter a number of formal difficulties. Sole proprietor as the simplest form of conducting business activity should be equally simple to continue after the entrepreneur's death. The review of possible actions in the event of death, as well as actions that can/must be taken by heirs, proves that there is no ideal, simple, fast, etc. institution in this respect, both in Polish and Slovakian law. All of the discussed ones seem to be insufficiently adapted to the situation of the entrepreneur's death and to the needs of the heirs. It can be stated that in principle it is impossible to maintain full continuity of business activity on all applicable legal levels. As a functional solution may be considered the Polish regulation of the succession manager, which really focuses on the possibility of continuing (resuming) business activity. This is a relatively new regulation, it should be verified in practice. Still relevant,

in both legal systems, are demands to accelerate the inheritance procedures necessary for the efficient continuation of the business activity of a sole proprietor.

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