

## FAMILY FOUNDATIONS IN POLAND – AN ANALYSIS OF FUNCTIONING AND LEGAL STATUS

Justyna DOMANOWSKA

Uniwersytet Łódzki; justyna.domanowska@uni.lodz.pl, ORCID: 0000-0002-6257-3475

**Purpose:** This article analyzes the role of a family foundation as a tool for managing the assets of family businesses, comparing them to similar solutions operating in other countries. In particular, the study covered: foundation management mechanisms, the roles of beneficiaries, and the impact on succession and tax optimization. The article also presents key challenges and limitations related to the implementation of this instrument.

**Methodology:** The article uses a mixed approach combining comparative legal analysis and a case study.

**Findings:** Family foundations are effective for securing assets and planning succession, especially in family businesses. The Polish model of family foundations draws inspiration from foreign solutions, but has specific regulations regarding taxation and beneficiaries.

**Research limitations:** Due to the recent introduction of family foundations into the Polish legal system, there is no comprehensive research on their long-term practical functioning.

**Originality/value:** The article contributes significantly to the existing literature on family foundations by analyzing their functioning in the context of the Polish legal system, which has only recently introduced this institution. Due to the small number of studies on this issue in Poland, this article fills a significant gap in analyzing this issue.

**Keywords:** family foundations, wealth management, succession, business law, beneficiary, founder.

**Category of the paper:** research paper.

### 1. Introduction

In the literature, family businesses are often called "economic stabilizers". Family business owners most often operate in a long-term perspective and are more inclined to accumulate and multiply wealth for future generations. A family business is capable of long-term investment and effectively resists the pressure to achieve short-term benefits.

Due to economic changes, many family businesses in Central Europe are entering a critical moment in their activities—after 30 years of activity, they are entering the succession phase. The task of mature legal systems is to create mechanisms that will make it easier for owners of

family businesses to carry out a generational change. One tool for multi-generational family business activities is family foundations.

The family's influence on the enterprise's functioning depends on ownership. Some researchers argue that a firm must be considered a family firm if it is majority-owned. The majority ownership is so that the family can influence decisions in the firm. Other researchers suggest that control is possible even without majority ownership. In the case of publicly traded companies and in many other instances in which family ownership is fragmented, a significant minority share is sufficient to control critical strategic decisions, such as the appointment of board members and management staff, acquisitions, divestitures, restructuring, etc. (Zellweger, 2017). As a result, in the case of large, publicly traded family firms, there is a growing consensus that an ownership stake of 20-25% may be sufficient to exert decisive influence on strategic decisions (Anderson, Reeb, 2003; Villalonga, Amit, 2006).

The concept of property is related to the term of wealth management. Families can decide on a form of wealth management with a powerful delegation of control. This forms trusts in countries such as the United States, Great Britain, Japan, Scotland, Israel, and some Latin American countries (Zellweger, 2017). There is no universally accepted definition of a trust. We interpret it as a relationship that arises whenever a person called a trustee is obliged to hold property based on a title of ownership or other title, for the benefit and in the interests of other people or to achieve the goals specified by the founder (Tomczykowski, 2023).

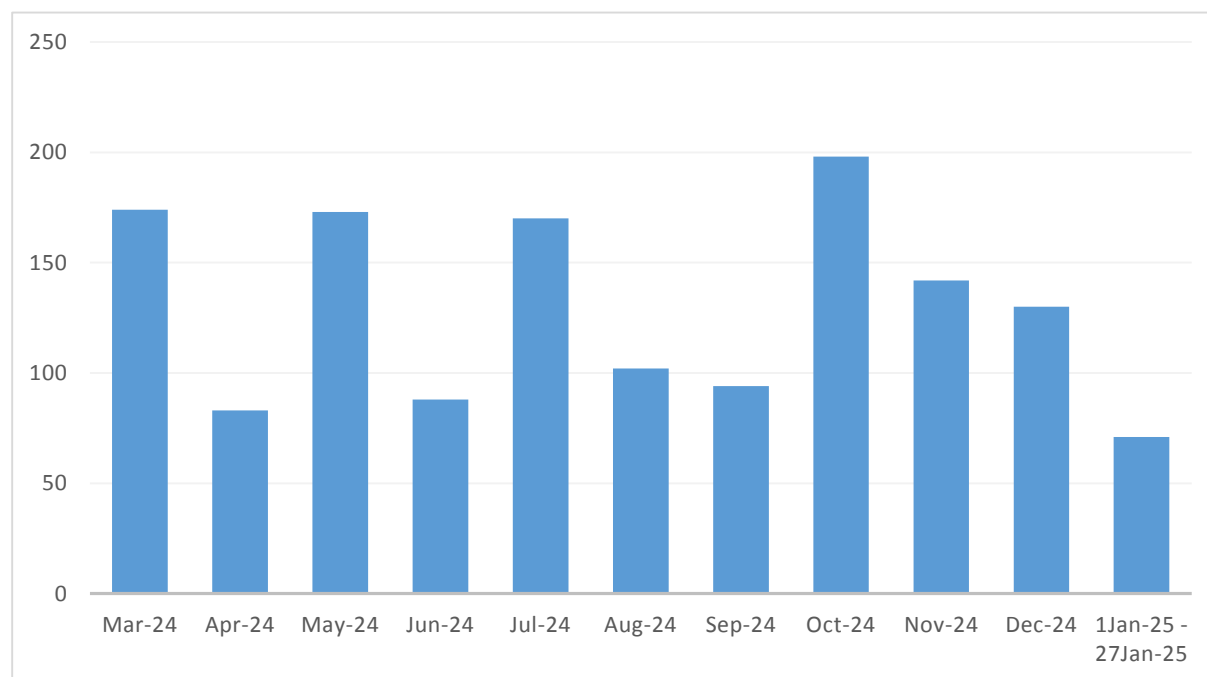
The grantor (settlor) transfers property in a trust to benefit the recipient (beneficiary). For this purpose, the grantor appoints a trustee who promises to manage the property for the recipient's benefit and following the grantor's *ex ante* instructions (Sitkoff, 2004). The beneficiary waives all property rights to the property placed in the trust and has limited ability to monitor the trustee. The trustee, not the beneficiary, exercises property rights in the trust (Zellweger, 2017).

Polish law does not provide for the possibility of establishing trusts (Górniak, 2022). However, this does not mean that it does not have solutions that fulfill similar functions. Private-purpose foundations, often referred to simply as private foundations, unlike trusts, constitute a separate entity of rights and obligations and have legal capacity. This means that the foundation acts in legal transactions in its name and on its account.

The first registrations of family foundations in Poland took place in July 2023 - 8 entities were registered then, in August 2023 - 72, in September 2023 - 77, in October 2023 - 111, in November 2023 - 76, in December 2023 - 14, in January 2024 - 59, and by 27 February 2024 - 92 (Domanowska, 2024).

In March 2024, another 174 foundations were registered, 83 in April 2024, 173 in May 2024, 88 in June 2024, and 170 in July 2024, and the number of foundations waiting for consideration of the registration application increased significantly.

In August 2024 - 102, September 2024 - 94, October 2024 - 198, November 2024 - 142, and 130 December 2024. The data was obtained directly from the District Court in Piotrków Trybunalski.



**Figure 1.** Registrations of family foundations in Poland by month.

Source: own study based on data from the President of the District Court in Piotrków Trybunalski.

## 2. Legal framework for family foundations

The word "foundation" is derived from the Latin verb "fundare", which means to cause something to arise, to create something, to build a foundation, or to establish and strengthen something (Dominowska, 2017).

A family foundation as a new legal entity /business entity/ has been in force in the Polish legal system for a short time. The Act of 26 January 2023 on the family foundation entered into force on 22 May 2023. It is intended to be an entity responsible for managing the assets of a family business and constituting property security for a group of people indicated by the founder. In practice, it most often protects families and enables the effective implementation of the family succession process in business activities (Dz.U. z 2023, poz.326).

The law requires that a family foundation have its registered office in the territory of the Republic of Poland. It is a legal person, established to collect property and manage it in the interests of beneficiaries or provide benefits to beneficiaries. The founder specifies the specific purpose of the family foundation in the statute. A foundation may be established either by a founding act or a will and takes the form of a notarial deed.

A family foundation can only be established by individuals with full legal capacity, acting individually or jointly. A family foundation established in a will can only have one founder. Family foundations are entered in the court register.

The foundation may not conduct business activity, which is justified by the assumption of limiting the risk associated with conducting business activity and the need to protect the assets contributed to it. The exceptions are: disposal of property of which the foundation is the possessor or owner, lease or tenancy, acquisition or disposal of securities. A family foundation as a legal person is a taxpayer of corporate income tax (CIT); however, as a rule, it is exempt from this tax. Art. 6 sec. 1 item 25 of the Corporate Income Tax Act "A family foundation is exempt from tax" (Dz.U. z 2025, poz. 278). This exemption does not apply absolutely. The applicable regulations provide for many exceptions to this rule. Following Art. 6, sec. 6, 7, and 8, the exemption of a family foundation from CIT does not apply:

- to the tax referred to in Article 24b, i.e., the tax on income from buildings,
- to the tax referred to in Article 24q, i.e., the tax on benefits or property transferred or made available by a family foundation.

The exemption from CIT taxation does not apply to business activities of a family foundation other than business activities permitted by the provisions of the Family Foundation Act, i.e., activities other than those within the scope of:

- disposal of property, unless the property was acquired solely for further disposal,
- renting, leasing, or making property available for use on any other basis,
- joining commercial companies, investment funds, cooperatives, and entities of a similar nature, having their registered office in the country or abroad, as well as participating in these companies, funds, cooperatives, and entities,
- acquiring and selling securities, derivative instruments, and similar rights,
- granting loans to: capital companies in which the family foundation has shares or stocks, partnerships in which the family foundation participates as a partner, beneficiaries,
- trading in foreign means of payment belonging to a family foundation to make payments related to the foundation's activities,
- production of plant and animal products processed in a manner other than industrial, except processed plant and animal products obtained within the framework of special branches of agricultural production and products subject to excise duty, provided that the number of plant or animal products originating from own cultivation, breeding or rearing, used to produce a given product constitutes at least 50% of that product,
- forest management.

Article 5 of the Family Foundation Act describes the principles of taxation for a family foundation performing activities other than those permitted. Article 24r of the Corporate Income Tax Act regulates the tax rate, which is a penalty rate of 25% of the tax base.

Establishing a family foundation and transferring assets is not subject to corporate income tax. These activities are also exempt from tax on civil law transactions (PCC). Establishing a family foundation and transferring assets to it does not result in calculating PCC or CIT. A subjective exemption from corporate income tax covers family foundations. Therefore, the tax exemption covers the free acquisition of assets, e.g., from the founder (endowing the family foundation with assets will be tax-neutral) and income earned by the family foundation from the activities it conducts to the extent permitted by the Family Foundation Act.

The income of the founder and beneficiary received from the family foundation is subject to the provisions on personal income tax, and is not subject to inheritance and gift tax. The tax rate is then 15% of the tax base, i.e., the payment of benefits from the family foundation to the beneficiaries is each time taxed with 15% CIT, regardless of the beneficiary's tax group concerning the founder.

As a rule, family ties between the founder and the beneficiary are considered when taxing family foundations. The acquisition by individuals of benefits and property from a family foundation in connection with the dissolution of the family foundation is subject to personal income tax. Its amount depends on the degree of relationship of the beneficiary with the founder (exemption in the case of the founder and close persons belonging to the so-called "zero group" concerning the founder, specified in the Act on Inheritance and Gift Tax, i.e. spouse, descendant, ancestor, stepchild, sibling, stepfather and stepmother or in the case of other persons 15%).

The Family Foundation Act changed the provisions of inheritance law concerning the compulsory share (i.e., the rights of close relatives of the testator to demand payment of a specified amount from persons who have acquired rights to the inheritance). Among other things, it provides for the possibility of waiving the compulsory share, dividing it into installments, postponing the payment deadline, or reducing its amount. In addition, benefits received from the family foundation by the entitled person reduce the value of the compulsory share.

### **3. Family foundations as a wealth management tool**

In the context of a family business, trusts are a common tool for structuring family affairs (Zellweger, Kammerlander, 2015). Trusts are often seen as a way to avoid family conflicts that are detrimental to both the assets and the family.

Family foundations are legal institutions that allow for the protection and succession of assets. Their goal is to enable multi-generational management of assets and eliminate the risk of their division.

The mechanism for managing family assets in family foundations includes the following entities:

- The founder defines the statute and the specific purpose of the foundation. He defines the principles of the foundation's operation and indicates the beneficiaries. The founder can withdraw from active business without losing income, and decides what shares will be in the foundation.
- Governing body (foundation board or supervisory board).
- Beneficiaries, or people entitled to use the foundation's assets, may belong to two categories of entities: individuals or non-governmental organizations conducting public benefit activities. In the case of a family business, these are usually members of the founder's family, but it can also be the founder himself. The founder determines the circle of beneficiaries of a family foundation and the scope of their rights.

The foundation is a tool for separating business matters from family matters. It is to improve business succession and minimize the risk of conflicts. According to art. 2, sec. 1 of the Act, a family foundation is a legal person established to collect property, manage it in the interests of beneficiaries, and provide benefits to them (Dz.U. z 2023, poz. 326). Family foundations may have various beneficiaries, including members of the founder's family and other persons indicated in the statute. The basic task of a family foundation is to manage assets and distribute them following the will of the founder.

The following theoretical models of family foundations exist in the literature (Adamus, Stec, 2023):

- Pure family foundation, the so-called proper family foundation. Its sole purpose is to provide the financial benefits specified in the statute to benefit the founder's family members.
- A family maintenance foundation whose goal is to support family members in a long-term manner.
- A family foundation with an ideal goal, i.e., supporting the cultural, spiritual, and intellectual needs of the founder's family members.
- A mixed family foundation, i.e., supporting the founder's family members and carrying out activities of a general social nature.

Article 43 of the Family Foundation Act lists three bodies of a family foundation: the management board, the supervisory board, and the meeting of beneficiaries (Dz.U. z 2023, poz. 326). The management board and the meeting of beneficiaries are obligatory bodies. In contrast, the supervisory board is generally an optional body, and unless the number of beneficiaries exceeds 25, it becomes a mandatory body of the family foundation. Bodies of a family foundation:

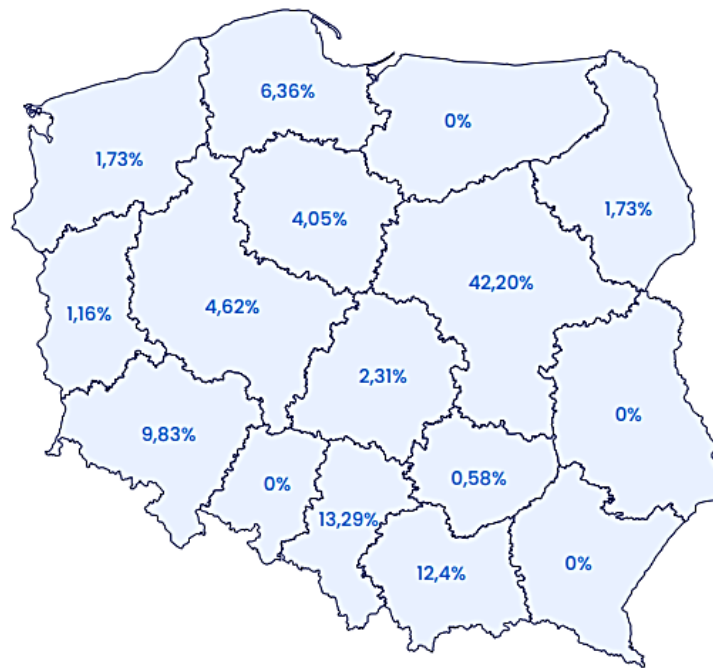
- Management Board - is responsible for the current functioning of the foundation and its representation.
- Supervisory board – the scope of supervision exercised by the supervisory board includes compliance by the management board with the law and the provisions of the foundation's statute art. 65, sec. 1 of the Act (Dz.U. z 2023, poz. 326). The right to appoint and dismiss supervisory board members is vested in the founder, and after his death, the meeting of beneficiaries art. 68 sec. 3 of the Act (Dz.U. z 2023, poz. 326).
- Beneficiary Assembly - a beneficiary of a foundation is a person who, according to the statute, may benefit from a family foundation or property in connection with the dissolution of a family foundation. Not every beneficiary is a member of the beneficiary assembly; only those who have been granted such rights in the statute in art. 70, sec. 2 of the Act. The beneficiary assembly is the decision-making body of a family foundation.

The income and assets of a family foundation may be used to finance, in particular:

- In the case of a beneficiary who is a natural person, the costs of his or her maintenance, education, or treatment.
- If a beneficiary is a non-governmental organisation conducting public benefit activities, expenses for that organisation's statutory purposes are covered.

A family foundation is liable for the founder's obligations, including maintenance obligations, arising before the establishment of the family foundation (joint and several liability) and for maintenance obligations arising after the establishment of the family foundation if enforcement against its assets is ineffective. Financial security for persons for whom the founder has maintenance obligations should be prioritized.

Figure 1 shows the percentage distribution of foundations established in Poland, as of May 2024. As can be seen, the most significant number of foundations were established in the Masovian Voivodeship (42%), Silesian Voivodeship (13%) and Lesser Poland Voivodeship (12%), and the smallest in the Świętokrzyskie Voivodeship (0.58%), Lubuskie Voivodeship (1.16%) and West Pomeranian Voivodeship and Podlaskie Voivodeship (both 1.73%). There are also voivodeships in which no family foundations have been registered, these are: Warmian-Masurian Voivodeship, Lublin Voivodeship, Podkarpacie Voivodeship, and Opole Voivodeship.



**Figure 2.** Register of family foundations in Poland, divided into voivodships.

Source: Business Insider, Tomczykowski - Tomczykowska, PNB Paribas – wealth management "Family foundations report", May 2024.

#### 4. Comparison of Family Foundation Solutions in Other Countries

Family foundations are popular in many countries (Chrebelski, Podedworna-Tarnowska, 2024).

In Germany, transferring property to a family foundation is subject to taxation, unlike foundations established in Poland, where transferring property to a foundation is not subject to additional taxation. The amount of tax paid when establishing a family foundation in Germany depends on the degree of relationship between the founder and the beneficiaries. In Poland, individuals acquiring benefits and property from a family foundation in connection with the dissolution of a family foundation are subject to personal income tax. Its amount depends on the degree of relationship between the beneficiary and the founder (exemption in the case of the founder and close persons belonging to the so-called "zero group" concerning the founder, specified in the Act on Inheritance and Gift Tax, i.e. spouse, descendant, ancestor, stepchild, sibling, stepfather and stepmother or in the case of other persons 15%).

When establishing a family foundation in Germany, the founder must contribute assets worth at least 100,000 euros, in Poland it is 100,000 PLN, to cover the founding fund. As in Poland, assets can be cash, a company's shares and securities, stocks, or even real estate. A family foundation in Germany is a taxpayer of corporate income tax, regardless of whether



the income remains in the foundation or is paid out to beneficiaries. In the case of paying benefits to beneficiaries, tax is levied on the beneficiary. In Poland, a family foundation is a taxpayer of corporate income tax, but is exempt from income tax. The need to pay income tax arises when paying benefits to beneficiaries. Benefits for beneficiaries can take monetary and non-monetary forms and will be subject to personal income tax (Chrebelski, Podedworna-Tarnowska, 2024).

Currently, around 100,000 family foundations operate in Germany. In Poland, this number fluctuates around 1500 entities (District Court in Piotrków Trybunalski—as of the end of 2024).

Family foundations in Austria have a minimum capital of EUR 70,000 or its equivalent in tangible assets. The statute contains information on the foundation's objectives, the assets contributed to it, the name, registered office, and date of establishment. The foundation's beneficiaries can only be disclosed in an annex to the statute, which is not transferred to the register or court. This is a significant difference from the law in Poland, where beneficiaries are publicly identified following the Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing (Dz.U. z 2023, poz. 1124). The foundation is established as a notarial deed by registration in the Austrian Commercial Register of Companies. In Poland, family foundations are entered in a separate register of the judiciary.

## 5. Summary

Family foundations can be practical tools for protecting assets, and in the long term, they can become instruments of capital accumulation in the Republic of Poland (Adamus, Stec, 2023).

The history of Polish foundations dates back to the 12th and 13th centuries. During this period, networks of poorhouses were established in parishes in the Polish lands. Initially, they were associated with religious orders: the Maltese hospital in Poznań (1170-1180), in Kraków (1200-1220), in Wrocław (1214), and other cities. During this period, shelters were also established at episcopal cathedrals, e.g., the St. Lazarus Hospital in Wrocław (Blicharz, 2016). Foundations play a different role and are the subject of numerous analyses and scientific considerations.

A family foundation is an entity responsible for managing the assets of a family business, providing financial security for families, facilitating the process of succession in a family business, and minimizing the risk of potential conflicts over assets in families. The main advantages of family foundations include securing assets against division, tax optimization, and flexibility in asset management.

A family foundation protects the assets deposited in it by limiting the risks associated with running a business. Establishing a family foundation is intended to maintain the company's assets, protect them, and consequently develop the company and implement new investments. Most often, parents establish foundations for the benefit of their children. They do this to limit children's access to wealth for fear that they will ruin the assets, such as the family business, or conversely, wealth will ruin the children (Zellweger, 2017).

According to data from the District Court in Piotrków Trybunalski, which deals with the registration of family foundations in Poland, they are of great interest to entrepreneurs. The most significant number of foundations was established in the Masovian, Silesian, and Lesser Poland voivodeships, and the smallest in the Subcarpathian, Lublin, Warmia-Masurian, and Opole voivodeships.

A family foundation allows an entrepreneur to withdraw from active business without depriving him of income. The advantage of this solution is the financial security of loved ones who can benefit from the assets accumulated in the foundation. The lack of property fragmentation and property conflicts related to inheritance allows for more effective management. This applies to the consistency of decisions; one person or a small group makes strategic decisions without consulting and negotiating with others. Larger capital provides better investment opportunities, for example, in real estate, shares, or other companies, which increases financial efficiency. Deferring tax payment is an important element for many heirs; tax is charged only when making a benefit to the beneficiary.

## References

1. Adamus, R., Stec, P. (2023). *Fundacje rodzinne. Komentarz Linia orzecznicza*. Warszawa: C.H. Beck
2. Anderson, R.C., Reeb, D.M. (2003). Founding family ownership and firm performance evidence from the S&P 500. *Journal of Finance*, Vol. 58, Iss. 3, pp. 1301-1328.
3. Bieniak, M. (2023). Fundacja rodzinna - organizacja i funkcjonowanie. *Palestra*, Vol. 3, pp. 48-61.
4. Blicharz, J. (2016). *Fundacje. Wybrane zagadnienia*. Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego.
5. Business Insider, Tomczykowski-Tomczykowska. PNB Paribas – wealth management. (2024). *Raport fundacje rodzinne*, 05.
6. Chrebelski, M., Podedworna-Tarnowska, D. (2024). Perspektywy rozwoju fundacji rodzinnych w Polsce w świetle korzyści organizacyjnych i podatkowych fundatora i beneficjentów. *Studia i Prace. Kolegium Zarządzania i Finansów*, z. 199, pp. 95-117.

7. Domanowska, J. (2024). *Pozarodzinna sukcesja zarządzania w przedsiębiorstwach rodzinnych*. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.
8. Dominowska, J. (2017). *Prowadzenie działalności gospodarczej przez fundacje. Studium prawne*. Warszawa: Wolters-Kluwer.
9. Górniak, K. (2022). Trust w prawie kontynentalnym. *Kwartalnik Prawa Prywatnego*, t. XXXI, z. 2.
10. Lewandowska, A., Kłosowiak M., Lipiec, J. (2021). Fundacja rodzinna. Aspekty ekonomiczne i prawno-podatkowe. *Co do zasady. Studia i analizy prawne*, vol. 1.
11. Sitkoff, R.H. (2004). An agency costs theory of trust law. *Cornell Law Review*, Vol. 69, Iss. 3, pp. 621-684.
12. Tomczykowski, P. (2023). *Fundacja rodzinna. Aspekty prawne i podatkowe. Komentarz*. Warszawa: C.H. Beck.
13. Ustawa z dnia 1 marca 2018 roku o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu, Dz.U.2023.1124.
14. Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych, Dz.U.2025.278.
15. Ustawa z dnia 26 stycznia 2023 r. o fundacji rodzinnej, Dz.U.2023.326.
16. Villalonga, B., Amit, R. (2006). How do family ownership, control and management affect firm value. *Journal of Financial Economics*, Vol. 80, Iss. 2, pp. 385-417.
17. Wiórek, P.M. (2021). Ciemna strona” fundacji rodzinnej? Uwagi z perspektywy prawa niemieckiego. *Przegląd Ustawodawstwa Gospodarczego*, Vol. 11, pp. 8-15.
18. Zellweger, T. (2017). *Managing the family business. Theory and Practice*. Cheltenham: Edward Elgar Publishing Limited, Northampton: Edward Elgar Publishing, Inc.
19. Zellweger, T., Kammerlander, N. (2015). Family, wealth, and governance: An agency account *Entrepreneurship Theory and Practice*, Vol. 39, Iss. 6, pp. 1281-1303.