Grzegorz Kozieł

Legal Status of Succession Manager in Terms of Polish Law

The author studies the legal status of a succession manager in Polish law. From the perspective of the origins and objectives of the institution of succession in Polish, he outlines the legal character of the civil-law representation of the inheritance owner by the succession manager, the characteristics of the succession manager as a civil law substitute compared to the powers of the holder of a commercial general power of attorney (prokurent) as a civil-law deputy of the entrepreneur and the consequent scope of power of attorney of the succession manager, the question of the liability of the succession manager for damage resulting from improper management and the waiver of the liability of the succession manager for the liabilities incurred on behalf of the owner of an enterprise in succession, as well as the conclusions from the deliberations (analysis). The author primarily uses the formal-dogmatic method for generally applicable law and all other available methods of legal interpretation.

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1. Introduction

A survey carried out in Poland by the Institute of Family Business (Instytut Biznesu Rodzinnego) before the entry into force of the Act of 5 July 2018 on succession management of a natural person's enterprise[1], shows that as many as 70% of owners of family businesses want to hand over their businesses to their legal successors, but 41.5% of them did not think about how to do this, 31% were interested in the issues of succession, but have no precise plan of action. Only 9.2% of the

1 Journal of Laws of 2018, item 1629, hereinafter: SMNPE.

respondents said they were well prepared to pass their businesses on to their successors[2].

With the death of an entrepreneur, who is a natural person[3] the legal existence of the enterprise as an „economic organism" is *de facto* terminated. This entails a number of problems in the areas of private and public law, which in practice made it impossible or significantly hindered the continuation or resumption of business activity by legal successors of the entrepreneur. The most important of these included: 1) absence of a „decision-making centre" – one person authorised to run the business and independent representation of all legal successors; 2) limited possibilities to use, even temporarily, the entrepreneur's business name, which identifies not only him personally, but also his enterprise in legal transactions; 3) expiry of employment contracts concluded by the entrepreneur and, as a rule, expiry of the powers of attorney granted to employees and collaborators; 4) expiry or lack of actual possibility to perform civil law contracts related to the activity of the enterprise; 5) expiry of administrative decisions necessary to conduct a given type of business activity (e.g. concessions, licenses and permits); 6) limited possibility for the takeover of fiscal rights and obligations; 7) difficulties with the access to the bank account held for the purposes of the enterprise's activity and with using funds therein; 8) obligation to return public aid received under agreements which have not yet been performed, in full, together with interest, from the date of its transfer by the financing entity[4].

Moreover, the procedures related to ascertainment of acquisition of the estate of the deceased person and to its partition, especially in the event of inactivity, lack of agreement or cooperation between heirs, often took many months. Until a decision on the ascertainment of acquisition of the estate (or specific bequest) of the deceased person becomes final, or until the registration of an inheritance certification deed, and in practice - until the partition of the estate of the deceased person covering the enterprise – the running of the enterprise is often prevented by the lack of an entity authorised to manage it, i.e. to independently and smoothly take basic business decisions. Even if there is a will to continue the business relationships of the deceased entrepreneur or to take over his/her site by one or some of his/her successors, the chances of continuing the business are strongly dependent on a number of

2 See Grounds for the draft Act on succession management of a natural person's enterprise, 5, http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=2293, [access: 31.08.2019].

3 On the definition of an entrepreneur see wider Grzegorz Kozieł, [in:] *Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji Biznesu. Komentarz*, ed. Grzegorz Kozieł (Warszawa: Wydawnictwo C. H. Beck, 2019), 38-50.

4 See more: Grounds for the draft Act, 5-6.

circumstances that affect the efficiency of inheritance procedures. This problem also affects third parties: contractors, consumers, employees of the deceased entrepreneur, who must await the final determination of the circle of heirs and the settlement of formalities in order to seek their claims, exercise their rights or engage in further cooperation[5].

The primary purpose of the regulation was to ensure that entrepreneurs, being natural persons, are able to ensure business continuation after their death, taking into account that the enterprise should be seen as a legal good of economic and business value but also of social value.

The additional purpose of the regulation was to reinforce the protection of third-party rights related to running the enterprise, including, in particular, employees, contractors, consumers and other entities cooperating with the entrepreneur. Under the legislation applicable prior to the entry into force of the Act of 5 July 2018 on succession management of a natural person's enterprise, even though third parties were formally entitled to claims or powers relating to the entrepreneur after the death of the entrepreneur, the possibility of their exercise was put off for some time or even became illusory. This is because the group of persons against whom claims can be raised (e.g. under the statutory warranty or guarantee) or to whom representations can be submitted, was not defined for a long time.

By continuing to operate a business that will continue to generate profits, jobs will be preserved, consumers will be able to exercise their rights more easily, obligations towards contractors and public-law obligations will be settled, and the continuation will enhance the chances of further development of the enterprise, sometimes built by personal endeavour of the entrepreneur and his family members for many years[6].

2. Succession manager as a civil-law substitute of the enterprise owner. Legal nature of the substitution by succession manager

The legal status and powers of succession manager arises from the Act of 5 July 2018 on succession management of a natural person's enterprise, namely the provisions of Chapters 2, 4, 5, 6 of this Act, i.e. Articles 6 to 12 and Articles 17 to 35 of the SMNPE.

Succession manager is the indirect substitute[7] of the owner of an enterprise in succession, acting in his/her own behalf and for the owner (Article

5 Ibidem, 6-7.

6 Ibidem, 8.

7 On the structure and types of indirect and direct representation wider see in particular Mieczysław Piekarski, [in:] *Kodeks cywilny. Komentarz*, ed. Józef Ignacy Bielski, Janusz Pietrzykowski, Zbigniew Resich, Vol. I (Warszawa: Wydawnictwo Prawnicze, 1972), 231; Katarzyna Kopaczyńska-Pieczniak, [in:] *Kodeks cywilny. Komentarz*, Vol. I, *Część*

21 par. 1 of the SMNPE)[8]. This applies both to private (civil) substantive law and to civil, administrative (including fiscal) and judicial-administrative procedural law (Article 21 par. 2 of the SMNPE) – succession manager may sue and be sued in matters arising from the business carried out by the entrepreneur or running the enterprise in succession and to participate in proceedings with this regard. This distinguishes the nature of the substitution of succession manager from the legal nature of the substitution of direct substitutes, i.e. legal representatives (Article 95 of the Act of 23 April 1964 – Civil Code[9]), attorneys-in-fact (Article 98 of the CC) or holders of a commercial power of attorney (Article 109(1) of the CC) who act on behalf of and for the substituted person.

The owner of an enterprise in a succession, within the meaning of Article 3 of the SMNPE, is: 1) a person who, in accordance with a final judicial decision on the determination of the acquisition of a succession, a registered act of certificate of succession or a European inheritance certificate, has acquired the tangible and intangible assets referred to in Article 2 par. 1 of the SMNPE (as the so-called enterprise in succession – tangible and intangible assets intended for the pursuit of economic activity by the entrepreneur, constituting the property of the entrepreneur as of the moment of his death), on the basis of statutory inheritance of under a testament, or where the person acquired the enterprise or share therein based on a specific bequest; 2) the spouse of the entrepreneur in the case referred to in Article 2 par. 2 of the SMNPE, entitled to the share in the enterprise in succession (if, at the time of the entrepreneur's death, the enterprise within the meaning of Article 55(1) of the CC was wholly owned by the entrepreneur and his spouse); 3) a person who has acquired the enterprise in succession or a share in the enterprise in succession directly from the person referred to in points 1 or 2 above, including a legal person (i.e., a company – limited liability company, simple joint

ogólna, ed. Andrzej Kidyba (Warszawa: Wolters Kluwer Polska, 2012), 595 i n.

8 Similarly: Katarzyna Kopaczyńska-Pieczniak („Status prawny zarządcy sukcesyjnego" *Przegląd Prawa Handlowego,* No. 12 (2018): 4-11), in whose opinion the succession manager is *sui generis* indirect substitute of the owner (owners) of the enterprise in succession; Joanna Derlatka, „Udział i status zarządcy sukcesyjnego w sądowym postępowaniu egzekucyjnym" *Przegląd Prawa Egzekucyjnego*, No. 5 (2019): 5-31, which includes the succession manager in the group of managers of succesion property and states that the subject scope of this board is strictly defined and limited to the enterprise in succesion; Konrad Kopystyński, „Zarządca sukcesyjny jako przedsiębiorca" *Przegląd Ustawodawstwa Gospodarczego*, No. 6 (2019): 18-24.

9 Journal of Laws of 2019, item 1145, hereinafter: CC.

stock company, or a joint-stock company) or the organisational unit referred to in Article 33(1) § 1 of the CC (i.e., in particular, a commercial partnership: general partnership, professional partnership, limited partnership, limited joint-stock partnership), to which the enterprise was brought in as a contribution, where, after the death of the entrepreneur, that enterprise or share therein has been disposed of (through an action *inter vivos* – done between the living)[10].

As an indirect substitute, succession manager, for the matters arising from running an enterprise in succession, uses the business name of the entrepreneur with the addition "in succession" – Article 17 of the SMNPE (that is to say, he/she operates under the business name of the person being substituted, unlike a typical indirect substitute, who acts in his own for the

10 According to art. Article 2 par. 3 of the SMNPE, the enterprise in succession shall also include tangible and intangible assets intended for the pursuit of economic activities acquired by the succession manager or on the basis of the activities referred to in Article 13 of the SMNPE (i.e. maintenance activities), in the period from the time of the entrepreneur's death until the date of expiry of the succession management or the expiry of the power to appoint a succession manager; more broadly on the concept of „enterprise in succession", see Jerzy Bieluk, *Ustawa o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej. Komentarz* (Warszawa: Wydawnictwo C. H. Beck, 2019), 11-15; on the general, civil-law category of enterprise and the meanings thereof, see: Andrzej Kidyba, *Prawo handlowe* (Warszawa: Wydawnictwo C. H. Beck, 2016), 35-36; Renata Świrgoń-Skok, [in:] *Kodeks cywilny. Komentarz*, ed. Mariusz Załucki (Warszawa: Wydawnictwo C. H. Beck, 2019), 159-161. Maintenance activities are, in turn, the activities taken from the moment of the entrepreneur's death until the day of establishment of the succession management, and where the succession management has not been established – until the date of expiry of the right to appoint a succession manager, activities necessary to preserve the assets or the possibility of running the enterprise in succession, consisting in particular of: 1) satisfying due claims or receiving receivables that arise from the entrepreneur's obligations related to the conduct of business that arose before his death; 2) disposing of tangible current assets within the meaning of Article 3 par. 1 19 of the Accounting Act of 29 September 1994 (consolidated text: Journal of Laws of 2019, item 351). The category of maintenance activities also includes activities of ordinary management in the field of business run by the entrepreneur before his death, if the continuity of this activity is necessary to preserve the possibility of its continuation or to avoid serious damage (Article 13 par. 2 of the SMNPE).

person being substituted, and also unlike a typical direct substitute, who acts in the name and on behalf of the person being substituted). It should be noted here that the business name of an entrepreneur who is a natural person is in accordance with Art. 43(4) of the CC his/her forename and surname, e.g. Jan Kowalski. This business name may of course contain – in addition to the body of the name thus defined – also optional elements (additions), whose basic function is to make the entrepreneur's business name more specific, in particular by indicating features relating to the entrepreneur (pseudonym)[11] or the area of his/her business, the place of business or other terms freely chosen[12], e.g. kitchen furniture factory, elegant shoe retailer, etc. In matters arising from running the enterprise in succession, the succession manager may, for example, use the business name: Kitchen furniture factory Jan Kowalski „in succession", in which the term „in succession" is a special obligatory addition. Operating under the current business name of the entrepreneur – a natural person, is therefore an element of substitution by the successor manager, characteristic of direct substitution, whose typical example under Polish law is, as mentioned above, representation, power of attorney or general commercial power of attorney (prokura). This can lead to a conclusion of a mixed nature of this substitution or to the conclusion that it is an indirect (as a rule) substitution with elements of direct substitution.

3. The features of the succession manager as an indirect civil-law substitute of an entrepreneur similar to the features of a holder of general commercial power of attorney (prokurent) as a civil-law direct substitute of the entrepreneur and the resulting scope of power of attorney of the succession manager

The scope of the succession manager's powers includes the obligation to run the enterprise in succession and the power for court and non-court acts with regard to running the enterprise in succession (Article 18 of the SMNPE). A succession manager may independently undertake acts of ordinary management in matters arising from running an enterprise in succession, while acts exceeding the scope of ordinary management in this area may be undertaken with the consent of all the owners of the enterprise in succession, and in the absence of such consent – with the court's permission (Articles 22 par. 1 and 2 of the SMNPE). It must also be kept in mind that guardianship court restricts the succession management of assets of a person who has no capacity to perform acts in law or whose capacity to perform acts

11 With this respect, see the remarks by Piotr Zaporowski, „Pseudonim w firmie" *Przegląd Prawa Handlowego*, No. 6 (2006): 46.

12 See especially: Wojciech Popiołek, [in:] *Kodeks cywilny. Komentarz*, Vol. I, ed. Krzysztof Pietrzykowski (Warszawa: Wydawnictwo C. H. Beck, 2008), 226 i n.

in law is limited if it is necessary to ensure the correct management of that person's assets. Guardianship court shall determine which acts in respect of the management of assets of a person with no capacity to perform acts in law or whose capacity to perform acts in law is limited may not be undertaken by the succession manager without the permission of the court or imposes on the succession manager other restrictions that may be imposed on a guardian (Article 23 of the SMNPE). The subjective scope of the general commercial power of attorney (prokura) includes all judicial and extra-judicial activities related to running an enterprise (Article 109 (1) par. 1 of the CC), including – unlike in the case of succession management – also activities exceeding the scope of ordinary management, with some clearly defined exceptions. The legislature listed among these exceptions, in Article 109 (3) of the CC, the sale of the enterprise, a legal action based on which it was granted for temporary use, or the sale or encumbrance of real estate. Actions covered by the aforementioned exceptions may be made by a holder of the general commercial power of attorney only if a special power of attorney (for a particular action) has been granted to him.

In view of the above, a succession manager may, as part of the succession management of an enterprise in succession, perform in particular the following: 1) undertake acts of ordinary management; 2) to the extent beyond ordinary management – undertake acts having obtained the consent of the owners of the enterprise in succession, who at the moment of performing the act are entitled to a share in the enterprise in succession, and in the absence of such consent – with the permission of the court; 3) assume liabilities that are related to running the enterprise in succession; 4) undertake legal and factual acts related to employment in the enterprise, including he pays amounts due to the personnel; 5) conclude, perform and terminate contracts, including contracts concluded before the entrepreneur's death unless these expired; 6) settle private-law and public-law obligations related to the functioning of the enterprise; 7) appear in civil, administrative and tax proceedings, before administrative courts and in out-of-court proceedings in matters concerning the enterprise – according to the principles described below; 8) use the entrepreneur's bank account used for running the enterprise.

Similarly to the general commercial power of attorney (see Article 109(6) of the CC), also succession management may not be transferred to another person (Article 19 par. 1 of the SMNPE), there is so-called prohibition of substitution, and exceptionally, as in the case of a general commercial power of attorney, a succession manager may appoint an attorney-in-fact for a particular activity (grant a special power of attorney – Article 19 par. 2 of the SMNPE).

Likewise (with one exception) in the case of the general commercial power of attorney (see Article 109 (1) par. 2 of the CC in conjunction with Article 109 (5) of the CC), the succession management may not be limited

with legal effect to third parties (Article 20 of the SMNPE), however, unlike in the case of general commercial power of attorney, the succession management may not be only limited to matters related to the operations of a branch of the enterprise (i.e. to appoint a „branch" succession management). Pursuant to Article 109 (5) of the CC the holder of the general commercial power of attorney may be limited to the scope of matters entered in the register of the branch of the enterprise, which is referred to as the so-called „branch" general commercial power of attorney.

Similarly to the general commercial power of attorney (or more precisely – its granting and termination) which must be notified to the Central Register and Information on Economic Activity (CRIEA)[13] or to the business register of the National Court Register (NCR)[14] (Article 109 (8) par. 1 of the CC), the succession management must be notified to and is subject to entry in the CRIEA (Article 6 par. 13 of the SMNPE)[15].

Similarly to the case of the holder of the general commercial power of attorney (Article 109(2) par. 2 of the CC), only a natural person with full capacity to perform acts in law (Article 8 par. 1 of the SMNPE), i.e. an adult whose legal capacity to perform acts in law has not been limited (Article 11 in conjunction with Article 15 and 16 of the Civil Code) may be a succession manager.

The above entails that in the area of features (attributes) of substitution referred to as the so-called prohibition of substitution, the exclusion of the possibility of limitation with legal effect in relation to third parties (with the exception of – in the case of the general commercial power of attorney – the possibility of granting the „branch" general commercial power of attorney), the obligation to notify CRIEA or the business register of the NCR, as well as the subjective ability to be a substitute, succession management is in the construction and legal area, defined in the same way as one of the forms of direct substitution, including representation, i.e. the general commercial power of attorney. Similarly to the attribute of trading under the business name of the deceased entrepreneur with the addition of the word „formerly"

13 Acting (operating) under the Act of 6 March 2018 on Central Business Register and Information and the Entrepreneur Information Point (consolidated text: Journal of Laws of 2019, item 291).

14 Acting (operating) under the Act of 20 August 1997 on the National Court Register (consolidated text: Journal of Laws of 2019, item 1500).

15 More on CRIEA, including the registration with CRIEA of the data related to the appointing the succession management, see Grzegorz Kozieł, [in:] *CEIDG. Rzecznik Małych i Średnich Przedsiębiorców. Przedsiębiorcy zagraniczni w obrocie gospodarczym. Komentarz*, ed. Grzegorz Kozieł (Warszawa: Wydawnictwo C. H. Beck, 2019), 2-11; Adrian Niewęgłowski, [in:] ibidem, 15-68.

(and not under the succession manager's own business name), this may lead to a conclusion of a mixed character of the succession management as a substitution or to the conclusion that it is an indirect (as a rule) substitution with elements of direct substitution.

4. The liability of succession manager for damage resulting from improper performance of the management. The waiver of the liability of the succession manager for liabilities assumed on account of the owner of the enterprise in succession

Succession manager is liable for a damage caused as a result of improper performance of obligations (Article 33 par. 2 of the SMNPE). However, the liability for a damage caused by a succession manager, appointed in violation of Article 12 of the SMNPE (referring to the principles of appointing a succession manager) is borne jointly and severally with the succession manager by a person who in bad faith has appointed the succession manager or consented to it, even though he/she was not entitled to this (Article 33 par. 3 of the SMNPE).

An appointment of a succession manager in violation of Article 12 of the SMNPE may consist in particular of his appointment by an unauthorized person in the light of Article 12 par. 1-2 of the SMNPE, i.e. in breach of the requirements for locus standi specified in these provisions, appointment without expressing the consent provided for in Article 12 par. 3 of the SMNPE, appointment combined with incorrect determination of the size of shares in the enterprise in succession (Article 12 par. 4 of the SMNPE), appointment without submission or related to submission in a wrong manner, in a wrong form of declarations or notifications provided for in Article 12 par. 6-9 of the SMNPE, or appointment in violation of other requirements provided for in Article 12 of the SMNPE.

In accordance with Article 12 par. 1 of the SMNPE, if the succession management is not established at the moment of the entrepreneur's death, the succession manager may be appointed by the entrepreneur's death by: 1) the spouse of the entrepreneur, entitled to a share in the enterprise in succession, or 2) the statutory heir of the entrepreneur who accepted the inheritance, or 3) the testamentary heir of the entrepreneur who accepted the inheritance, or the specific bequest recipient who has received the specific bequest, if according to the announced testament the recipient is entitled to share in the enterprise in succession. However, it should be borne in mind that once the decision on the acquisition of an inheritance becomes final, or the inheritance certificate or a European inheritance certificate are registered, the succession manager can only be appointed by the owner of the enterprise in succession (Article 12 par. 2 of the SMNPE). To appoint a succession manager in the case referred to in points 1 or 2, a consent is required from persons who jointly are entitled to a share in the enterprise in succession greater than 85/100

(Article 12 par. 3 of the SMNPE). In accordance with Article 12 par. 4 of the SMNPE, if no final decision on the inheritance acquisition is issued, or if the inheritance certificate or the European inheritance certificate is not registered, the size of the shares in the enterprise in succession is shall be defined taking into account all persons known to the person appointing the succession manager who at the time of appointment of the succession manager are entitled to participate in the enterprise in succession.

The aforementioned person referred to in Article 12 par. 1 or 2 of the SMNPE shall make a statement to the notary about his/her participation in the enterprise in succession and other persons known to him/her who are entitled to participate in the inheritance, and the person referred to in Article 12 par. 1 of the SMNPE, and also statements on: 1) whether there are or there are no persons who would exclude the known heirs from the inheritance or who would inherit along with them, 2) known testator's wills or no such wills – under pain of criminal liability for making a false statement (Article 12 par. 6 of the SMNPE). The appointment of a succession manager in the case referred to in Article 12 par. 1 or 2 of the SMNPE, and the consent of each of the persons referred to in Article 12 par. 3 of the SMNPE require the form of a notarial deed (Article 12 par. 7 of the SMNPE).

A person appointed as a succession manager submits to the notary a statement that he or she is not subject to prohibitions finally imposed on him/her, referred to in Article 8 par. 2 of the SMNPE (i.e. bans on performing the function of succession manager), otherwise shall be subject to criminal liability for submitting a false statement (Article 12 par. 8 of the SMNPE). The notary shall notify the CRIEA immediately on the appointment of a succession manager in the case referred to in Article 12 par. 1 or 2 of the SMNPE, however not later than on the next business day after the day of appointment of the succession manager.

In accordance with Article 12 par. 10 of the SMNPE, the right to appoint a succession manager expires two months after the entrepreneur's death. If the entrepreneur's death certificate does not contain the date of death or the moment of death of the entrepreneur was identified in the decision confirming the death, this period runs from the date of finding the entrepreneur's corpse or when the decision confirming death has become final. The succession manager appointed in the case referred to in Article 12 par. 1 or 2 of the SMNPE, performs the function from the moment of being registered with CRIEA (Article 12 par 11 of the SMNPE).

Where the succession manager was appointed in violation of Article 12 of the SMNPE, the provisions of the CC on the conduct of someone else's affairs without a mandate shall apply accordingly to running an enterprise in succession by a succession manager (Article 34 of the SMNPE).

In the event where the succession manager is appointed in breach of Article 12 of the SMNPE, the provisions of the Civil Code on negotiorum

gestio – on the conduct of someone else's affairs without a mandate, i.e. especially the provisions of 752-755 and Article 757 of the CC shall apply accordingly to running an enterprise in succession by a succession manager (Article 34 of the SMNPE). This means, in particular, that in such a situation, a „*quasi* – succession manager" (as a *negotiorum gestor*) should act for the benefit of the person whose enterprise in succession he runs, and in accordance with its likely will, and he is obliged to keep due diligence when conducting the enterprise in succession (Article 752 of the CC in conjunction with Article 34 of the SMNPE). He should, as possible, notify the owner (owners) of the inheritance and, as appropriate, either expect his (their) orders, or run the enterprise in succession until the owner(s) can himself (themselves) take care of it. The *quasi* –succession manager (as a so-called *negotiorum gestor*) should submit a report of his operations and release everything he has obtainedwhile running the enterprise in succession for the owner (owners) of the inheritance. If he acted in accordance with his duties, he may demand the reimbursement of reasonable costs and expenses together with statutory interest, and be exempt from the obligations he incurred when running the enterprise in succession (Article 753 of the CC in conjunction with Article 34 of the SMNPE). However, if the *quasi*-succession manager (as a so-called *negotiorum gestor*) runs the enterprise in succession against the will of the owner (owners) of the inheritance and he is aware of it, he cannot demand reimbursement of expenses incurred and is responsible for damage, unless the will of the owner (owners) of the inheritance is contrary to the statute or principles of social coexistence (Article 754 of the CC in conjunction with Article 34 of the SMNPE). Where the *quasi* – succession manager (as a so-called *negotiorum gestor*) has made changes to the property forming part of the enterprise in succession without any clear need or benefit for the owner (owners) of the inheritance or against his (their) will, he is obliged to reinstate the previous condition, and if it is not possible, remedy the damage. He may take back the expenses, provided that he can do it without damaging the item (Article 755 of the CC in conjunction with Article 34 of the SMNPE). It seems that Article 756 of the CC would not apply to the succession manager (as a so-called *negotiorum gestor*), due to the adoption by the legislature, in Article 12 of the SMNPE, of a strict procedure for appointing a succession manager. This means that the confirmation by the owner (owners) of the inheritance of the running of the enterprise in succession business by the *quasi*-succession manager (as a so-called *negotiorum gestor*) should not have the effects provided for in this provision, i.e. the effect of the appointed (established) running of the enterprise in succession. However, Article 757 of the CC may apply *mutatis mutandis*. Pursuant to this provision, whoever (i.e. for example the *quasi*-succession manager as a so-called *negotiorum gestor*), to avert the danger threatening the other (in this case the owner or owners of the estate), saves his asset (which is part of the enterprise in succession), may demand from him (in this case

the owner or owners of the estate) the reimbursement of reasonable expenses, even though his (i.e. for example the *quasi*-successor manager as a so-called *negotiorum gestora*) action proved to be ineffective, and shall only be liable for wilful misconduct or gross negligence.

Succession manager is not liable for liabilities assumed on account of the owner of the enterprise in succession, unless separate regulations provide for otherwise (Article 33 par. 1 of the SMNPE). The liabilities related to running the enterprise are to be borne by owners of an enterprise in succession (Article 32 of the SMNPE). However, the owner of an enterprise in succession who did not participate in the appointment of the succession manager due to violation of Article 12 of the SMNPE, is liable for liabilities related to running the enterprise in succession up to the value of the enterprise's assets of succession attributable to his/her participation, as of the day on which he/she learned about the appointment of the succession management. In order to determine the assets of succession of an enterprise in succession, the provisions on determining the assets of succession shall apply accordingly (Article 35 par. 1 of the SMNPE). This limitation does not apply to liabilities that have arisen after the day when the owner of the enterprise found out about the succession management, unless he promptly dismissed the succession manager, and if he/she was not entitled to dismiss the succession manager – he/re demanded the succession manager to be dismissed by authorised persons (Article 35 par. 2 of the SMNPE).

The above-mentioned regulations regarding the liability of the succession manager contained in Articles 33-35 of the SMNPE „approximate" this substitution in the scope of attribution of liability for damage caused as a result of improper performance of obligations (Article 33 par. 2 of the SMNPE) – to the structure of indirect substitution, whereas in the area of the waiver of liability for obligations incurred on the account of the owner of the enterprise in succession (Article 33 par. 1 of the SMNPE – to the concept of direct substitution. As in the case of the elements of succession management mentioned above, this may lead to the conclusion about the mixed nature of the succession management as a substitution or to the conclusion that it is an indirect (in principle) substitution with elements of direct substitution.

5. Conclusions

The Polish model of succession management, including the legal status and legal nature of power of attorney of this manager, should be assessed as quite complex (mixed).

A rather inconsistent concept was adopted for it, under which the succession manager acts on his own behalf (for the benefit of the deceased entrepreneur), which is an attribute (feature) of indirect substitution, but still under the entrepreneur's previous business name with the addition of the expression „in succession". Furthermore, all but one basic features of the succession

manager as a substitution (except for the method of determining the scope of powr of attorney) – its basic attributes, i.e. prohibition of substitution, exclusion of the possibility of limitation with legal effect in relation to third parties (with the exception of – in the case of the general commercial power of attorney – the possibility of granting a „branch" general commercial power of attorney), the obligation of notification to CRIEA or the business register of the NCR, as well as the scope of the subject's capacity to be a substitute, are in structural and legal terms identical or very similar to one of the forms of direct substitution – representation, characteristic of (dedicated for) operation in business transactions by entrepreneurs, i.e to the general commercial power of attorney. The regulations regarding the liability of the succession manager – in particular under Article 33-35 of the SMNPE are characterized, on the one hand, by the similarity of this substitution in the scope of attribution of liability for damage caused as a result of improper performance of obligations (Article 33 par. 2 of the SMNPE – to the concept of indirect substitution, while on the other hand in the area of the waiver of liability for obligations incurred on the account of the owner of the enterprise in succession (Article 33 par. 1 of the SMNPE – to the concept of direct substitution. The above may lead to the conclusion about the mixed (combined) nature of succession management as a civil-law substitution, or to the conclusion that it is an indirect (as a rule) substitution with (quite numerous) elements of direct substitution.

In the context of the genesis and the purpose of regulation of the institution of succession management, which constituted a kind of „regulatory background" for it, it seems that the model of direct substitution based on statutory representation or general commercial power of attorney, consistently used and thus more clear, would be more appropriate for succession management.

Bearing in mind the origins, purposes of the regulation and the advantages of succession management, it seems that one can postulate the introduction of a uniform EU law in this area based on the structure adopted in Polish law, however, taking into account the modifications resulting from the summary hereof.

Bibliography

Bieluk Jerzy, *Ustawa o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej. Komentarz* (Warszawa: C. H. Beck, 2019).

Derlatka Joanna, „Udział i status zarządcy sukcesyjnego w sądowym postępowaniu egzekucyjnym" *Przegląd Prawa Egzekucyjnego*, No. 5 (2019).

Kidyba Andrzej, *Prawo handlowe* (Warszawa: o C. H. Beck, 2016).

Kopaczyńska-Pieczniak Katarzyna, [in:] *Kodeks cywilny. Komentarz*, Vol. I, *Część ogólna*, ed. Andrzej Kidyba. Warszawa: Wolters Kluwer Polska, 2012.

Kopaczyńska-Pieczniak Katarzyna, „Status prawny zarządcy sukcesyjnego" Przegląd Prawa Handlowego, No. 12 (2018).

Kopystyński Konrad, „Zarządca sukcesyjny jako przedsiębiorca" *Przegląd Ustawodawstwa Gospodarczego*, No. 6 (2019).

Kozieł Grzegorz, [in:] *CEIDG. Rzecznik Małych i Średnich Przedsiębiorców. Przedsiębiorcy zagraniczni w obrocie gospodarczym. Komentarz*, ed. G. Kozieł. Warszawa: C. H. Beck, 2019.

Kozieł Grzegorz, [in:] *Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji Biznesu. Komentarz*, ed. Grzegorz Kozieł. Warszawa: C. H. Beck, 2019.

Niewęgłowski Adrian, [in:] *CEIDG. Rzecznik Małych i Średnich Przedsiębiorców. Przedsiębiorcy zagraniczni w obrocie gospodarczym. Komentarz*, ed. Grzegorz Kozieł. Warszawa: C. H. Beck, 2019.

Piekarski Mieczysław, [in:] *Kodeks cywilny. Komentarz*, ed. Józef Ignacy Bielski, Janusz Pietrzykowski, Zbigniew Resich, Vol. I. Warszawa: Wydawnictwo Prawnicze, 1972.

Popiołek Wojciech, [in:] *Kodek cywilny. Komentarz*, Vol. I, ed. Krzysztof Pietrzykowski. Warszawa: C. H. Beck, 2008.

Świrgoń-Skok Renata, [in:] *Kodeks cywilny. Komentarz*, ed. Mariusz Załucki. Warszawa: C. H. Beck, 2019.

Zaporowski Piotr, „Pseudonim w firmie" *Przegląd Prawa Handlowego*, No. 6 (2006).