

# ***NEWSLETTER***

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## **Is invalid joint procuration valid ? The Supreme Court decided**

We would like to inform you about a revolutionary resolution of the Supreme Court dated on the 30<sup>th</sup> of January 2015, in which the Supreme Court issued an opinion on the very important question of the admissibility of invalid joint procuration in corporate transactions, a concept that has thus far caused great divergence in case law and legal doctrine.

- I. Up until now, invalid joint procuration was used regularly as a solution in business practice. It was a form of procuration with a condition that the procurator can only act jointly with another person, who is not a procurator (usually a member of the corporate board).
- II. The Supreme Court dispelled any discrepancies with respect to invalid joint procuration in the current opinion. It pointed out that **‘it is unacceptable to have in the register of entrepreneurs in the National Court Register an entry of one procurator with a condition that he or she can operate only in conjunction with a member of the board.’**
- III. The Supreme Court took the position that a literal interpretation of the provisions related to procuration indicates that the legislature has established three types of procuration: singular procuration (one or more procurators acting alone), joint procuration (two or more procurators acting jointly), and branch procuration (which can be used only in connection with issues memorialized in the company register). **There is no legal basis to construct a new type of procuration, i.e.; the invalid joint procuration.** According to the Court, invalid joint procuration is not in fact a joint procuration, but a singular procuration, in which the effectiveness of procurator depends on his or her interaction with a member of the board.
- IV. **The Supreme Court subsequently argued that invalid joint procuration distorts the overall statutory model of procuration,** because it makes the actions of a procurator dependant on actions of a non-procurator. Meanwhile, critically, a procurator is supposed to be a special representative capable of independent representation of the company (or, possibly, of joint representation, but with another procurator).
- V. In additon, the Court noted that the establishment of invalid procuration is a one-sided, or a unilateral, act. **The Polish legal system provides *numerus clausus* for such unilateral acts, meaning the legislature has allowed only**

for the establishment of a 'classic' joint procuration, thus eliminating the possibility of establishing the invalid joint procuration altogether.

- VI. **Importantly, the Court indicated that there is no basis for the corresponding application of the provisions of the Commercial Companies Code relating to mixed representation, which in the model assumption involve the representation of the company by two members of the board or a board member together with a procurator.** It follows from the above that the procurators, thus far limited by the requirement to obtain 'countersignature' of a board member, now gain *de facto* a greater degree of freedom of action than the individual members of the board bound by the duty of joint procuration. Until now, the purpose of invalid joint procuration was to limit the powers of the procurator in such a way that the procurator did not have more freedom in terms of representation than the members of the board.
- VII. However, the Supreme Court allowed the possibility of establishing a joint mixed procuration in a situation where such is permitted by agreement of the board or by corporate by-laws. The Court stated that **'it should be permitted under art. 38 of the Civil Code to honor such modes of representation of the company as are specified in the corporate by-law, even if such modes allow for the joint action of a procurator and a non-procurator member of the board.'**
- VIII. **The resolution indicates that any entries in the National Court Register of a singular procuration referred to as a joint procuration with a member of the board should be removed.**
- IX. **It is important to note that the adopted interpretation of the provisions of procuration will not affect the legal actions undertaken by procurators that did not act in accordance therewith,** which *expressis verbis* was confirmed by the Supreme Court in the resolution.

In conclusion, the resolution adopted by the Supreme Court is of great importance. It clarifies any previous discrepancies in this area and allows for a more uniform application of court procedures, which should be viewed positively. Needless to say, because to date invalid procuration has played a positive role in the legal system, the resolution has at the same time faced quite a bit of criticism.

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