

NEWSLETTER

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Limitation of claims for the dividend payment

We would like to kindly inform you about the resolution of the Supreme Court, which has been subjected to analysis:

- 1) the legal nature of dividend distributed to shareholders of companies with limited liability and the related limitation period for a claim for dividend payment and
- 2) the impact of the liquidation procedure of the company with limited liability on the opportunity to take into account by the court claims of a shareholder on dividend payment resulting from the resolution of the shareholders' meeting taken before the liquidation (resolution of the Supreme Court of 18 June 2015. III CZP 31/15).

I.

With regard to the first issue, the Supreme Court pointed out that **the claim of a shareholder for dividend payment arise in a given year and is dependent on whether the relevant resolution will be taken on the distribution of profit for the previous financial year and dividend payment.** Accordingly, the Court drew attention to the fact that the claim was not repeated at regular intervals, so that there are no grounds to recognize the claim as a claim for the periodical payment.

Considering the above, in the opinion of the Supreme Court, **claim of shareholder for dividend payment is subject to a general 10-year-old limitation period** provided for in Art. 118 of the Civil Code.

The Supreme Court pointed out that such an assumption is not contrary neither to the essence of which is the provision of cash dividend payment nor the nature of a capital company whose issue of limitation claim for the dividend payment is contrasted. In addition, the Supreme Court pointed out that there is no reason to assume that a claim for dividend payment is covered by a 3-year limitation period in connection with conducting economic activity by the business partner equated with participation in the company.

II.

In analyzing the issue of ability to pay dividend to shareholders during the period of liquidation of the company with limited liability, until the repayment of its liabilities, when the resolution on profit distribution was made before the opening of the liquidation, the Supreme Court pointed out that **payment shall be prohibited in accordance with Art. 275 § 2 of the Code of Commercial Companies.**

As part of the justification for the aforementioned position, the Supreme Court lifted that the purpose of the prohibition, described in Art. 275 § 2 of the Code of Commercial Companies, is to protect creditors of the company in the period of liquidation against insolvency. Moreover, the Court pointed out that through introduction of Art. 275 § 2 of the Code of Commercial Companies the legislature wanted to prevent that shareholders, unlike other creditors, having the possibility of direct (eg. by taking a resolution on distribution of profit) and indirect (eg. by obligation to comply with shareholders' resolutions by the liquidators in internal relations) shaping their property rights arising from membership in the company yet obtained the privilege of payments to themselves of profit sharing adopted by them at a time when the company was in liquidation.

Thus, to carry out the distribution of the remaining assets and satisfaction of the claims of the shareholders on the dividend payment payable to them will be possible only after satisfying other creditors.
