

NEWSLETTER

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Minority shareholder of a limited liability company is not always in a weaker position

The first association with the term ‘minority shareholder’? Probably the narrow range of powers, inferior position in comparison with the partner holding the majority of shares in the share capital of the company. It is possible different form of the position of a minority shareholder and providing it with a greater impact on the functioning of the company, but in this situation it is necessary to fulfil several prerequisites.

Firstly, it should be noted that the Code of Commercial Companies (hereinafter referred to as ‘CCC’) in art. 20 requires equal treatment of shareholders in the same circumstances. On the other hand, art. 174 § 1 of the CCC states that unless the contract or statute provides otherwise, the partners have equal rights and responsibilities in the company. How to ensure minority shareholder a greater scope of rights in light of the above provisions in an effective way?

The rights granted to the minority shareholder can be extended in two ways: by granting additional rights associated with the shares held by the shareholder concerned or by granting additional rights to be associated exclusively with the person of the shareholder concerned.

RIGHTS RELATED TO SHARES

To the category of **rights attached to shares** (ie. the powers entitled to the each time buyer of the shares data) according to the Art. 174 § 3 of the CCC scored example **preference in terms of voting rights, dividend rights or how to participate in the division of assets in case of liquidation of the company.**

Catalog of above rights is a directory open, thus it is possible to grant powers other than the above mentioned. By way of example should **give the right to appoint and dismiss the company's governing bodies, the right of priority (preemption) shares being sold by another shareholder, the priority right to subscribe for shares in the increased share capital of the company or a priority right of redemption of shares.**

RIGHTS RELATING TO THE SHAREHOLDER

The position of a minority shareholder may be enhanced also by **granting him powers that will be associated only with his person (non-transferable, inheritable, which shall expire upon the loss of a person's status shareholder** - on the margins should be added that the re-gain the status of a partner by a person not engaged to automatically restore

the previously vested rights - a position taken by the Supreme Court in its judgment of January 21, 2005, I CK 528/04) - so called *personal rights*.

You can meet the position represented in the doctrine, according to which personal rights can not be the same as the rights associated with the shares, which were mentioned above. However, generally there is a **possibility of granting 'permission mixed', ie. personal rights including additional rights which were considered as related to the shares** referred to in Art. 174 § 3 of the CCC eg. by granting Mr. Jan Kowalski, minority shareholder, permission of increasing the amount of votes attached to the shares.

For personal rights to be allocated in an efficient manner, it is necessary to quantify them precisely in the company's deed - in order to avoid any future doubts and litigation it is recommended to specify in the company's deed not only rights but also identification (preferably by name) of partner, whom permissions were granted.

PREFERENCE v. THE NATURE OF THE COMPANY AND PRINCIPLE OF EQUAL TREATMENT

Increasing the powers conferred on a minority shareholder can not take place on a voluntary basis - **a modification of the position of a minority shareholder should be consistent with the nature of a limited liability company, can not reconcile the good manners and also should be consistent with the principle of equal treatment of shareholders** in the same circumstances.

CONSENT REQUIREMENT TO OBTAIN OTHER CONTRIBUTORS

The privilege of a minority shareholder should take place not only in accordance with the requirements described above, but **also with the consent of other shareholders**. Raise the fact must be that preference for one partner is associated automatically with the weakening of the position of other shareholders. The legislator allows for the depletion of the powers subject to the shareholder by such shareholder approval of the above mechanism. But we must remember that such consent will not be valid if the privileging of one partner would lead to serious, contrary to the nature of the company and the applicable regulations deterioration of privileged partner.

APPEARANCES ARE DECEPTIVE

Contrary to appearances, a minority shareholder of a limited liability company does not have to automatically be in a weaker position - through appropriate negotiations associated with taking up shares in the shareholder can provide a significant impact on the operations of the company and the rights to the benefits associated with their shares.
