WIERZBICKI
ADWOKACI I RADCOWIE PRAWNI

NEWSLETTER

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Repeal of resolution of the shareholders of a limited liability company

We would like to kindly inform you about a new resolution of the Supreme Court which deals with the possibility of bringing an action on the repeal resolution of the shareholders of a limited liability company in the event of a conflict of above resolution with the articles of the association.

In that resolution, the Supreme Court stated that the **conflict between resolution of the shareholders of the limited liability company with the articles of association is not stand alone premise justifying the inclusion of an action for annulment of that resolution** (the Supreme Court bench of 3 judges from March 10, 2016, file no. III CZP 1/16).

It is worth recalling that in accordance with applicable laws, shareholder's resolution contrary to the articles of association or good practices and harming the interests of the company or aimed at harming a shareholder may be challenged in an action brought against a company action for annulment of the resolution (Art. 249 § 1 of the Code of Commercial Companies).

Whereas cited the Supreme Court's resolution and the regulations of the Code of Commercial Companies, it should be noted that **the submission of a claim for annulment of the resolution was justified, is not sufficient to say that the resolution is contrary to the articles of association or morality - such a resolution must also reconcile the interests of the company or have to harm a partner.**

At this point it should be noted that in doctrine and case law recognizes that the resolution, which violates the interests of the company, eg. if threatens the functioning and existence of the company, leads to a reduction in net worth, limited profit, hits the good name of its organs, protects the interests of third parties at the expense of the interests of the company.

With respect to the **requirement of creditor's victimization** should explain that the most frequent cases of recognition of resolutions for creditor's victimization s are resolutions taken in the interest of the majority shareholders while inflicting harm or deprivation of benefits of a minority shareholder - by way of example shall be given for the adoption of resolutions on the granting of bonuses to board members (who are also majority shareholders) paid from the profit of the company in place of the resolutions on the payment of dividend payable to shareholders - such a situation leads to a situation

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in which the majority shareholders received actual dividend in the form of bonuses, and the minority shareholders did not receive such dividends (such position taken in the judgment of the March 26, 2009 Court of Appeals in Katowice, file no. V ACA 49/09, OSA 2010 No. 7, pos. 19).

Considering the premise of creditor's victimization should also bear in mind the position of the Supreme Court, which in one of the judgments stated that the resolution (shareholders' meeting) can be considered unjust shareholder (partner) both when the target of victimization existed at the time of making resolution, as and when the content of the resolution meant that its implementation has led to victimization (Supreme Court ruling of April 16, 2004, I CK 537/03, OSNC 2004 No. 12, item 204).

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