

NEWSLETTER

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Representation of a limited partnership v. art. 210 Code of Commercial Companies

In this newsletter we would like to raise the issue of the **representation of a limited partnership in a contract concluded with a member of the board of a limited liability company (LLC), which is the general partner of the above limited partnership.**

The above scheme whereby a limited liability company is the general partner of a limited partnership is a solution often encountered in practice. Moreover, it may happen that the limited partnership will conclude a contract with a member of the board of LLC, which is the general partner - as in such cases should look like representation of the limited partnership and its general partner? Are these companies may be represented by the management of LLC? Will Article 210 § 1 of the Commercial Companies Code (relating to limited liability companies) apply in such situation, according to which, in the contract between the company and a member of the board and in a dispute with him, the company should be represented by a proxy appointed by a resolution of shareholders or board of directors?

This issue was considered by the Supreme Court - on December 11, 2015 the Supreme Court issued a judgment in which it argued that there **were no obstacles to the contract between the limited partnership and a member of the board of LLC which is the general partner, the LLC was represented by the board and at the same time, this company (represented by the Board) represented a limited partnership as the general partner** (the judgment of the Supreme Court of December 11, 2015, file no. III CSK 12/15).

The Supreme Court stated that in this situation invoked Article 210 § 1 of the Code of Commercial Companies did not find justification.

As part of the justification in the first place, the Supreme Court pointed out that each of the companies (limited partnership and LLC) are governed by the Code of Commercial Companies separately - according to the Supreme Court, there is no reason to use to the limited partnership by analogy the provisions relating to the LLC – it is only allowed to use in matters not covered in the section relating to the limited partnership respectively provisions on registered partnership.

Moreover, the Supreme Court stated the Article 210 § 1 of the Code of Commercial Companies is to prevent that any of both sides of the legal action, which the party is LLC do not attend the same person or the closely cooperating remaining members

of the board of such a company. In the present situation, the parties to the contract are the limited partnership and a natural person who is a board member of LLC.

The Supreme Court also added that Article 210 of the Code of Commercial Companies is an exceptional provision, which extended interpretation (according to which that provision should be applied to the present case) is in principle inadmissible.

In conclusion, the Supreme Court confirmed that **in the case of a contract concluded by a limited partnership with a member of the board of LLC, which is her general partner, the two companies may be represented by the management of a LLC and the contract shall be valid and effective.**
