

NEWSLETTER

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Representation of the company in proceedings concerning a resolution to change the composition of the board

In this newsletter we would like to inform you about the position of the Supreme Court relating to representation of the company with limited liability in the case of proceedings for securing in the proceedings for annulment, or to repeal the resolutions of the meeting of shareholders of a limited liability company by withholding the enforceability of a resolution to dismiss the current board member and resolutions on the appointment of a new composition of the board.

In its resolution of December 17, 2015 the Supreme Court, bench of 3 judges, pointed out that the **board can not operate for a limited liability company in the proceedings for awarding a security, the subject of which is the claim of a person who was revoked from the board to repeal or annul the resolutions of the shareholders' meeting on changes in the composition of the board.**

The Supreme Court also held that in this case Article 253 § 2 of the Commercial Companies Code, according to which **the company should be represented by a proxy appointed by a resolution of shareholders or by a trustee appointed by the court**, is applicable.

At the same time, the Supreme Court in this resolution stated that **the award of security for actions for repeal or annulment of the resolutions of the shareholders of a limited liability company concerning changes in the composition of the board by the suspension of enforceability of the resolutions** to be considered - as a rule - acceptable, subject only to the terminological nature - that it is not, in fact, to suspend the enforceability of the contested resolutions, but to cease their effectiveness.

At this point it should be noted that the **resolutions concerning changes in the composition of the board have the legal effect of its adoption**. These **protection will stop the effectiveness of the resolution**. Resolution in the result of awarding security from the moment of its adoption until the cessation of security will be without prejudice to the management board. The person canceled from the board for the duration of security will still have the status of member of the board, and the person called does not receive at the time of this status, with all that implies in terms associated with management of the company and its representation. Moreover, the duration of the security granted, it is impossible to make changes in the composition of the board in the register of entrepreneurs of the National Court Register.

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Furthermore, with regard to the issue of representation of the company, the Supreme Court added that if the correct representation of the parties (including the company) – a party to the dispute, the party to whom the dispute concerns should be treated as properly represented until the lack of proper representation thereof is not finally decided.
