

# ***NEWSLETTER***

January 2016

## **Shareholder's Meeting does not have to appoint a member of the management board indicated by the shareholder - a few words about the judgment of the Supreme Court**

We would like to draw your attention to the recently released, particularly important judgment of the Supreme Court, in which the Supreme Court leaned over the question of the appointment for members of the management board in a limited liability company the candidates nominated by shareholders.<sup>1</sup>

- I. In the ensuing dispute, a lawsuit for revoking resolution of the extraordinary shareholders' meeting was filed, in which was decided not to appoint a person designated by the plaintiff to the position of member of the management board.
- II. The reason of appeal against the resolution was a refusal to appoint the person indicated by the plaintiff (the partner) for a member of the management board, who according to the articles of association, was entitled to nominate one candidate to the management board.
- III. The Court of first instance upheld the lawsuit and revoked resolution of the shareholders' meeting of the defendant company indicating that the exercise by the plaintiff (the partner) of right under the articles of association to nominate one candidate for a member of the management board was binding for other shareholders and should result in adoption of a resolution to appoint a board member designated by the plaintiff.
- IV. Consequently, the Court of first instance accepted that the adoption of a rejecting resolution was contrary to the articles of association, and the resolution was intended to harm the plaintiff as a shareholder. This position, in essence, was upheld by the Court of Appeal.
- V. As a result, after a long dispute, the case went to the Supreme Court. In the opinion of the Supreme Court, granting a shareholder of a limited liability company special benefits in the form of entitlement to indicate a candidate for member of the management board is not binding for the shareholders' meeting, which may refuse to appoint designated candidate to the management board.

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<sup>1</sup> Judgment of the Supreme Court dated on July 2, 2016, file no V CSK 657/14

- VI. The Supreme Court took the position that the wording of the articles of association, which confer special privilege to a shareholder, consisting in identifying one candidate for member of the management board, means only that what directly follows from that provision.
- VII. The Court argued that *such specific right can not be qualified as a binding for the shareholders' meeting identification of the candidate for member of the management board who should be appointed to this body by the management board.*
- VIII. In addition, it was stressed that the statutory privilege of the shareholders' meeting according to art. 201 § 4 CCC is *inter alia* appointment of a member of the management board with a resolution of shareholders and deprivation or restriction of the abovementioned authority of the limited liability company of a right to freely adopt the resolution on this matter would require clear contractual provisions in the articles of association.
- IX. In the opinion of the Supreme Court, the articles of association did not prove that the right of the shareholders' meeting to appoint member of the management board is limited for this authority to appoint only a person designated as a candidate by the plaintiff.
- X. **In summary, the Supreme Court held that the provision in the articles of association a special privilege to indicate a candidate for the member of the management board does not bind the shareholders' meeting for the appointment of this person as a member of the management board. In the opinion of the Court, privilege binding the shareholders' meeting to appoint a designated person on member of the management board must result from an express contractual provision.** Thus, if in the articles of association is recorded that the shareholder is entitled to indicate the 'candidate' as a member of the management board, and not to appoint a 'member' of the management board, then this indication is not binding for the shareholders' meeting.
- XI. Commented judgment is of great practical importance. When drafting articles of association of a limited liability company, partners must take into account the conclusions of the Supreme Court of this judgment, especially if they intend to grant certain powers to appoint members of the management board other than the shareholders' meeting's entity.

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