NEWSLETTER

January 2016

The Supreme Court will respond how to resign effectively

Effective resignation by a member of the management board of the capital company is not a simple matter. For many years, there have been conflicting views in the doctrine and jurisprudence - discrepancies relate to the subject, to which resignation should be submitted by the member of the management board to be effective. Today we would like to inform you that the Supreme Court will lean over the presented issue.

I. The mandate of the member of the management board expires in the event of resignation. In accordance with the regulations of the Commercial Companies Code, the provisions on termination of the order by receiving order should be applied to resignation, and therefore rules 746 et seq. of the Civil Code. They make it clear that receiving order may terminate it at any time. It should be remembered that the statement of intent, which is to be submitted to another person, is composed of the moment, when it came to her so that she could become familiar with its contents.

II. It follows that the member of the management board may resign from his position at any time, the statement of resignation will be effective only if it is submitted to the relevant entity. **The provisions of the Commercial Companies Code provide only that a statement about the resignation of the member of the management board submits to the company - but there is no clear answer to the question to whom, in the absence of a contractual (statutory) provision, resignation needs to be submitted.**

III. These doubts were so significant that the First President of the Supreme Court asked the Supreme Court composed of seven judges to decide on resolution. The Supreme Court will answer the following question 'Is when submitting declaration of intent to resign from his function by a member of the management board, the capital company, in the absence of a contractual (statutory) provision is represented by one member of the management board or a procurator (Art. 205 § 2 and Art. 373 § 2 CCC), the supervisory board or a representative appointed in the resolution of the shareholders' meeting or general meeting of shareholders (Art. 210 § 1 and art. 379 § 1 CCC), by a body authorized to appoint members of the management board, or - in the absence of the supervisory board - by the shareholders' meeting (general meeting)?'

IV. We wish to emphasize that this issue is particularly important because incorrect declaration of resignation from function makes that statement not effective. Submitting such a statement to the wrong recipient makes the member of the management board kind of 'prisoner of the company' - he can not pursue the powers of resignation provided by the Act.

V. **So far, three dominant positions were presented in the jurisprudence.** According to the first one, statement of the member of the management board of a capital company is submitted

to **one of the members of the management board or procurator**. However, the disadvantage of this position are the difficulties that arise when resignation submitted comes from the member of a singular management board or last member of a group management board, and there is no procurator in the company.

VI. According to the second position, member of the management board submits a resignation to supervisory board or a proxy appointed in a resolution of the general meeting of shareholders (the General Meeting). This position is criticized, because provisions of the Code of Civil Procedure provides that the supervisory board represents the company in disputes and contracts, and the resignation does not belong to any of these categories. Furthermore, the problem arises when the company has no supervisory board and the shareholders are not willing to appoint a special representative.

VII. The third view assumes that statement about resignation of the member of the management board should be submitted to the authority entitled to appoint the management board, the so-called 'mirror principle'. The practical application of these structures can also pose a number of problems.

VIII. Beside the presented dominant positions, in practice you can meet other, assuming the possibility to submit a statement to one of the partners (a limited liability company) or sending it to the address of the company.

IX. Without going deeper into the discussion on defects of each of these structures, it needs to be indicated that **resolution taken by the Supreme Court on the effectiveness of submitting a declaration of resignation by the member of the management board (the entity to which this declaration must be submitted) will be of paramount importance in practice.** The resolution is a break for endless doctrinal disputes and jurisprudence concerning the presented problem.

*****