

News Flash

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Changes regarding commercial proxy in Poland

Registering joint improper commercial proxy in National Court Register no longer possible

On January 30th, 2015 the Supreme Court issued a resolution (case file III CZP 34/14), which settled the legal issue raised by the First President of the Supreme Court concerning the possibility of registering joint improper commercial proxy in NCR

What is joint improper commercial proxy

Joint improper commercial proxy (prokura łączna niewłaściwa), is a legal institution which raised many doubts and discussions in Polish jurisprudence. It is based on a presumption that a joint commercial proxy may act on behalf of the company only together with a member of the management board.

Resolution of Supreme Court

In the resolution of the seven justices dated January 30th, 2015 (case file III CZP 34/14), the Supreme Court established that registering joint improper commercial proxy in the National Court Register that would be allowed to act only with a member of the management board is inadmissible.

The abovementioned resolution ends the discussion and discrepancies in the judicial decisions of the common courts of law. So far some courts agreed to register joint commercial proxy with additional limitation of signing capacity with a management board member, while other deemed it inadmissible as lacking legal basis.

With the resolution of January 30th, 2015 the Supreme Court changed its previous decision,

taken by the 3 justices on May 27th, 2001 (case file III CZP 6/01- published at OSNIC 2001/10/148). The previous resolution stated that “granting a commercial proxy to a person, with the provision that they may only act together with a member of the management board or another commercial proxy is admissible.” Please note that the previous resolution was issued based on now-waived Commercial Code.

Effects of resolution

The Supreme Court noted, the interpretation of the law presented in the resolution is binding only for the future cases and should not be used retroactively to proxies already registered. One can expect, that since the date of adoption of the resolution the registry courts will unanimously refuse to register joint improper commercial proxies. It is still an open issue, how the courts will regard the companies, in which joint improper commercial proxies have been already established. If the representations done by commercial proxies established with the breach of proxy regulations are going to be recognized, if the companies are going to be called to fix the proxy registration – it is still unknown.

If your company granted a joint improper commercial proxy we strongly suggest changing the rules of representation. We can offer our advice and support in regard to that matter.

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