

Joint commercial proxy solely with a management board member is finally unequivocally permissible

On 1 January 2017, amendments to the Civil Code entered into force, which for the first time expressly permit the establishment of the so-called improper joint commercial proxy, i.e. the commercial proxy's authorisation to represent a company jointly with a management board member.

The permissibility of the establishment of the so-called improper joint commercial proxy, i.e. the commercial proxy's authorisation to represent a company jointly with a management board member, has long been the source of controversies among legal academics and in case-law. However, the majority of the courts had been permitting such form of commercial proxy for long. Nevertheless, after years of such practice, the Supreme Court adjudicated on 30 January 2015 (in a panel extended to seven judges) that "it is not permissible to enter in the business register in the National Court Register one commercial proxy with a stipulation that he/she may act only jointly with a management board member." The Supreme Court also acknowledged in this decision that the registry courts should ex officio delete improper joint commercial proxies entered in the register.

Although the resolution of the Supreme Court did not mean that management board members could not sign documents on behalf of the company jointly with commercial proxies, it did prohibit the application of the restriction in the scope of signing with respect to the commercial proxy. Due to the position of commercial proxies in their organisations, this situation was difficult to accept by many companies. Now, the legislator has addressed this issue and for the first time has expressly permitted the granting of such commercial proxy.

Pursuant to the new Art. 109⁴ § 1¹ of the Civil Code: "A commercial proxy may include the authorisation to perform actions also or only jointly with a member of the management body or a partner authorised to represent a commercial partnership." Several technical changes connected with the amendments were also made to other provisions.

The introduction of the express possibility to authorise a commercial proxy to represent the company only (or also) jointly with a management board member must be assessed positively. This solution addresses the needs of economic turnover, abolishing the restrictions, which had no practical justification, and also eliminates the legal uncertainty which has existed for years in this respect.

Companies should now consider whether or not to revoke the existing commercial proxies and whether to grant new ones in the wording which is now permissible.

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