

# Some remarks on executing the right to vote after amending the Code of Commerce

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■ The amendment of the Commercial Code which came into force on Aug. 3, 2009, aimed to, above all, implement in Polish law the provisions of EC Directive 36/2007 of the European Parliament and the Council of July 11, 2007, on executing some rights of shareholders of companies which are listed on the stock exchange. The objective is to improve corporate governance in the European Union.

The essential regulation seems to be the one setting out the organization of the Annual General Meeting as well as the shareholders' rights such as terms and ways of convening the meeting, minority shareholders' entitlements, the new entitlements of a Public Limited Company's bodies, participation in ADM via electronic communication devices and the execution of the right to vote.

The principal change in the way of executing voting rights was introduced by Article 411<sup>3</sup> of the Code by allowing the shareholder to vote with each of the possessed shares. So far in the Polish doctrine



there has dominated the view of prohibition of split voting, in accordance with which the shareholder was able to vote exclusively in a homogenous way, while voting "for" and "against" in the same matter or abstaining from voting was considered irrational. The voting right is attached to the shares owned, which means that the shareholder is obliged neither to execute the right to vote nor to vote in a specified way. Moreover, from the legal point of view, whether and how the shareholder executes the voting right bears no legal meaning for the PLC. What really matters is the content of the voted resolution and its impact on the com-

pany and other shareholders. There are also many rational reasons for justifying homogenous voting attached to shares. To mention but a few there can be, for example, the shareholder's binding contract commitments or internal company policy to hold a neutral position towards supporters or opponents of a given resolution. It also seems justified when the voting right is executed with a part of shares by the shareholder himself and with another, by proxy.

It seems that the introduction of Article 411<sup>3</sup> into the Commercial Code will contribute towards guaranteeing shareholders freedom of expressing their will while making use of their voting right.

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