

Court of Appeal rules on procedural standing of shareholders to challenge corporate decisions

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Basing its reasoning on French and Belgian case law, the Court of Appeal recently ruled that shareholders have a right to seek an annulment of decisions made by their company's board of directors. In the absence of a specific statutory provision in Luxembourg law, the court reverted to the general civil procedure to set the rules pertaining to the existence of title and interest to initiate proceedings relating to the nullity of corporate decisions. In particular, the court stated that title should be assessed when a claim is introduced. In other words, a person must have obtained the status of shareholder prior to introducing a claim. However, shareholders can seek to annul corporate decisions that pre-date them becoming shareholders and retain this right until they transfer their shares. The court also specified that any proceedings that have already been initiated may be continued after a shareholder loses its status as such.

This decision is notable, as it has clarified which parties have title to seek the nullity of board decisions. The Law of 10 August 1915 on commercial companies (the Companies Law), as amended, is silent on this point and deals only with the nullity of general meeting decisions (Article 100-22). Previously, scholars had only speculated that Article 100-22 also applied by default to board decisions. The present case seems to have confirmed these scholars' opinion, which is incidentally also the position of French case law.

Further, some scholars had speculated that all shareholders could seek an annulment, including those who had transferred their shares and were therefore no longer shareholders. Former shareholders arguably still have an interest in decisions which were passed while they had the status of shareholder, notably because they can derive material or moral benefit from the outcome of such legal action. However, the present case has determined that once shareholders have transferred their shares (ie, once they have lost title), they are precluded from initiating new proceedings. The court's reasoning in this regard suggests that the ability to derive benefit from a legal action is a necessary, albeit insufficient, condition.

Notwithstanding the above issue, the scope of this decision is twofold:

- First, it sets a precedent for challenging board decisions on the grounds of Article 100-22 of the Companies Law, thereby increasing legal certainty by filling the gaps left by the law.
- However, it also marginally limits the scope of such challenges by excluding former shareholders from initiating new proceedings (although they can continue proceedings that they initiated before transferring their shares).

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