

Luxembourg District Court rules on prescription periods for invalidating shareholder decisions

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Introduction

In Luxembourg, several time limits apply with regard to prescription periods. Notably, the inclusion of specific prescription periods in the Law of 10 August 1915 on Commercial Companies does not preclude the application of prescription periods as provided for in the Civil Code.

On 27 June 2018 the Luxembourg District Court reiterated this position in a judgment regarding prescription periods for invalidating shareholder decisions (2018TALCH15/918).

Facts

A public limited liability company was incorporated. The shares representing the company's share capital were fully subscribed, but only 30% were paid up. A few years later, on 11 March 2011, the company's general shareholders' meeting decided to:

- reduce its capital by lowering the nominal value of the shares; and
- exempt the shareholders from paying up their shares.

Three months after the general shareholders' meeting, the company filed for bankruptcy and a trustee was appointed.

The trustee summoned the bankrupt company's shareholders to have the 11 March 2011 decision annulled under Article 445 of the Commercial Code, which provides for the nullity of acts concluded during a company's suspect period in order to reconstitute the share capital and protect creditors' interests.

The defendant shareholders claimed that the trustee's request was inadmissible as the prescription period for nullity had passed. According to the shareholders, the trustee should have acted within six months of becoming opposed to or learning of the disputed decision in accordance with Articles 1400-6 and 100-22 of the Law on Commercial Companies.

Article 100-22 lists five grounds for nullifying a decision taken at a shareholders' general meeting – namely, where:

- irregularities have occurred which affect the decision;
- the meeting rules have been violated;
- the decision has been tainted by an excess or misuse of power;
- voting rights have been suspended by law; or
- "any other cause provided for in the law" applies.

The defendants used this last ground as a basis for their defence. The trustee based his action on Article 445 of the Commercial Code, which permitted him to request the nullity of:

any deeds transferring movable or immovable property free of charge, as well as any deeds, transactions or contracts commutative or for consideration, if the value of what has been given by the bankrupt significantly exceeds that of what he received in return.

Decision

The Luxembourg District Court granted the trustee's request.

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The court held that the provisions governing the nullity of contracts – whether for general reasons (eg, consent, capacity or fraud) or reasons which are specific to a contract (eg, prohibition of leonine clauses) – which were referred to in the Civil Code but not the Law on Commercial Companies could not be recognised on the ground of Article 100-22(5) of the latter law.

According to the court, the six-month prescription period in which commercial company deliberations can be invalidated applies only to the actions referred to in Article 100-22 of the Law on Commercial Companies. However, the action for nullity referred to in Article 445 of the Commercial Code does not fall within the scope of Article 100-22. The nature of a disputed act – namely, a social deliberation governed by the Law on Commercial Companies – should not be confused with the cause of the act, which must derive from the Commercial Code. Consequently, and absent further details, the ordinary law rule applies to the annulment action referred to in Article 445.

This reasoning was likely a way for the court to highlight the essence of the Civil Code, according to which partners are liable for sums that they have promised to contribute to a company. This was a windfall for the trustee, as the creditors' pledge base was subsequently broadened.

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