

Shareholder dispute: conditions for a joint venture's court-ordered dissolution

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Introduction

On 13 March 2019 the Luxembourg District Court ruled in a dispute between two joint venture partners that had arisen in relation to a serious disagreement on the management of a hotel group, including its Luxembourg holding vehicle, in the context of a large-scale bank refinancing.

The management of the holding vehicle was initially entrusted to four managers, who were equally divided among two categories (ie, two Class A managers and two Class B managers). The managers in one category were nominated by one joint venture partner and the managers in the other category were nominated by the other joint venture partner. This process was introduced to ensure the common control of the joint venture partners and their representatives over the management of the holding vehicle. The dispute arose when three of the managers resigned, leaving one sole manager.

Due to a serious disagreement between the joint venture partners, each of which owned 50% of the company's share capital, one partner requested that the court order the dissolution of the company.

The decision provides interesting insight into:

- the duty of resigning managers;
- the rules governing the convening of shareholders' meetings and the consequences of their breach; and
- the conditions for obtaining a court-ordered dissolution of a joint venture company due to a serious disagreement among its partners.

Duty of resigning managers

The court confirmed that the resigning managers had to continue to manage the company's affairs (including convening shareholders' meetings) until the general meeting provided for their replacement.

Rules governing convening of shareholders' meetings

Following the managers' resignation, the sole remaining manager convened a shareholders' meeting by his sole signature, despite the fact that the articles of association provided that shareholders' meetings could be convened only by the board of managers.

The court decided that the fact that three managers had resigned and one sole manager remained did not justify modifying the rules for convening meetings set out by law or the articles of association.

The court subsequently referred to traditional case law concerning the regularity of a meeting notice, according to which a meeting notice issued by a single director, even the chair of the board of directors, is invalid. The chair may simply be entrusted with the material execution of the formalities once the decision to convene has been taken by the entire board.

In the present case, the court ruled that in the absence of a board of managers or any other body provided for by law, the convening notice was defective.

Consequences of defective notice on validity of shareholders' resolutions

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The court then applied the new provisions provided for by Article 100-22 of the Companies Law, which concerns the nullity of shareholders' resolutions.

According to these provisions, a decision taken by a shareholders' meeting will be null and void if it is vitiated by an irregularity of form and the applicant proves that such irregularity may have influenced the decision.

Referring to the prevailing doctrine, the court stated that:

- the convening of a shareholders' meeting will not be null due to an irregularity if all of the shareholders were present or represented; and
- if shareholders are improperly prevented from attending a shareholders' meeting, the judge must consider the influence that their arguments would have had on the decision of those who were unaware of them.

The court considered that even though the claiming shareholder had criticised the validity of the convening process during the meeting, the shareholder was represented and not precluded from voting at the meeting.

As a consequence, the court ruled that the claimant had not provided evidence that the irregularity of the convening notice may have influenced the outcome of the votes at the general meeting and refused to cancel the resolutions on this ground.

Conditions for court-ordered dissolution

The court referred to the two cumulative conditions to grant a dissolution for just cause in case of a shareholders' dispute.

According to case law, a disagreement among shareholders must be serious and persisting and, as a result, definitively compromise the normal functioning and existence of the company.

After acknowledging the seriousness of the disagreement between the shareholders, the court analysed whether there had been an impediment at the management body level. This analysis was conducted in two steps.

First step

First, the court analysed whether, further to the resignation of the three managers, the company had been prevented from recomposing the board of managers.

The company's articles of association provided – as customary for joint venture companies – that each of the joint venture partners had the right to designate two candidates to be appointed by the shareholders' meeting as a manager in their specific category.

As regards the application of this type of clause, the court stated that it must be ensured that the lists of candidates submitted to the shareholders' meeting contains a sufficient number of people and a sufficiently diverse range of people to enable the meeting to make an effective choice.

The claimant had nominated two candidates for appointment by the shareholders' meeting, but the other partner had rejected their appointments on several grounds, including their inexperience in the hotel business.

Based on the above, the court considered that it had not been established that, following the criticism put forward by the defendant and the claimant's proposal of other candidates, that a sufficient number of candidates had been submitted to leave the choice to the shareholders' meeting. In addition, it had not been established that the defendant had systematically opposed any person proposed by the claimant in view of their appointment to the board of managers.

Thus, the court ruled that the company had not been prevented from recomposing the board of managers.

Second step

Second, the court analysed whether the functioning of the board of managers had been impeded due to the fact that the sole remaining manager was conducting the management of the company, despite the joint management principle having been entrusted to two separate categories of manager, as provided for in the company's articles of association.

The court considered that:

- the resigning managers were still obliged to manage the company's affairs until they were replaced; and
- despite the joint management principle, the articles of association also provided that the company could be represented by its sole manager.

Therefore, the court ruled that there was no impediment and rejected the application.

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