

## Litigation between shareholders and directors



District Court of Luxembourg - Civil judgment No. 2019TALCH20/00009 of 17 October 2019, Docket No. 164577

This judgment affirms certain principles applicable to disputes between the shareholders and directors of a company following breaches of the provisions of the amended Law of 10 August 1915 on commercial companies.

### **Concerning the distinction between the shareholder's individual damages and the company's damages**

According to Article 441-9, paragraph 2, of the amended Law of 10 August 1915 on commercial companies, "directors are jointly and severally liable, both towards the company and towards third parties, for all damages resulting from breaches of this law or of the company's articles of association".

With respect to the analysis of the damages suffered by a shareholder, the Court recalled that "under Luxembourg law, an individual action can only be brought by a shareholder who considers himself to be the victim of a personal damage, independently of any damage suffered by the company, and the reduction of the company's assets cannot constitute the damage suffered personally by the shareholder (cf. CA, 15 January 2009, No. 33.081)".

In addition, the Court pointed out that "[t]he criterion for distinguishing company damages from reparable individual damages is that the latter will directly affect the value of the securities or the shareholder's assets without the company's assets having been affected. Reparable individual loss is the loss that directly affects the shareholder's assets without at the same time implying a loss or impoverishment of the shareholder's assets. The individual loss must not constitute a mere repercussion of the company loss and must therefore be disconnected from a loss that would affect the company's assets (cf. *Frederic Danos, La réparation du préjudice individuel de l'actionnaire*, n° 13, RJDA 5/08, p. 471)".

In the present case, the Court held that the loss of capital invested by the plaintiff company as a shareholder and following the decisions taken by the directors constituted a mere repercussion of the company's damages which was not disconnected from the loss affecting the corporate assets. As a result, the plaintiff company did not establish a separate and personal injury and its claim for damages against the directors were declared inadmissible.

### **Concerning the unenforceability of internal limitations against third parties**

The Court also recalled that a contract validly signed by the company's representatives cannot be cancelled because of irregularities in the company's internal process.

In accordance with the principle of the unenforceability of statutory limitations against third parties, third parties may not invoke statutory limitations to obtain the cancellation of a transaction authorized by the directors. In the present case, the transaction contested by a company considered to be a third party had been approved by the Board of Directors whereas it should have been decided by the general meeting. The Court confirmed that "[b]y law, the corporate bodies validly represent the company in any legal transaction; the limitations have a purely internal effect. A third party cannot therefore rely on the irregularity of the commitment entered into (cf. Ch. Resteau, *Traité des sociétés anonymes*, 3e édition, Tome II, 1982, p. 138)".