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The Cour de Cassation recognises the right of a minority shareholder to join proceedings as a civil party before the investigating judge in respect of the losses suffered by the company

The *Cour de Cassation* has just delivered a completely unprecedented decision. On 4 June 2026, it recognised the admissibility of a minority shareholder joining proceedings as a civil party before the investigating judge on the basis of Article 444-2 of the amended Law of 10 August 1915 on commercial companies.

Since a reform in 2016, this specific provision of the company law allows, under certain conditions, a minority shareholder holding at least 10% of the shares to bring legal proceedings for the losses suffered by the company in which it holds shares. The mechanism is intended, in particular, to address situations where another shareholder (often the majority shareholder) seeks to prevent an action by the company for liability against the directors it has appointed, or where the company's directors refuse or fail to act. Since then, the minority action is used on a regular basis before the civil courts; however, the question of whether such an action could also be exercised before the criminal courts had not yet been addressed in Luxembourg.

The case brought before the *Cour de Cassation* dates back to 2017. In view of the inaction of the company's provisional administrator, a minority shareholder had filed a criminal complaint with civil party on behalf of the company, on the grounds that its former directors had misappropriated the company's funds and assets for personal purposes. After several years of investigation, the investigating judge suddenly decided to declare the civil party inadmissible. The *Chambre du conseil* of the Court of Appeal upheld that order of inadmissibility on the ground that the shareholder in question could not act as a civil party in respect of the losses suffered by the company. The *Cour de Cassation* set aside and annulled that decision of the *Chambre du conseil* of the Court of Appeal, emphasising that the action provided for in Article 444 2 of the amended Law of 10 August 1915 on commercial companies is also applicable in criminal matters, and that, consequently, a minority shareholder is admissible to join proceedings as a civil party on behalf of the company, the losses being, of course, to be assessed on behalf of the company.

It should also be noted in passing that, even though it was not directly seized of this issue, the *Cour de Cassation* endorsed the possibility for a shareholder holding an equal stake (i.e. 50% of the shares or equity interests) to exercise the minority action provided for in Article 444 2 of the amended Law of 10 August 1915 on commercial companies. This principle had already been recognised in a decision of the Court of Appeal in 2021, but the *Cour de Cassation* had not yet had the opportunity to rule on this question. It has now done so.

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