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Independent law firm

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Shareholder disputes – abuse of equality

In a recent decision dated 21 December 2022, no. 183/22-VII-CIV, the 7th Chamber of the Court of Appeal has confirmed that the abuse of equality (*abus d'égalité)*, consisting for a holder of half of the voting rights of a company to abusively prevent the taking of a resolution against the corporate interest and in his own interest, must have been committed by the exercise of the voting right in a general meeting of shareholders or within the framework of a statutory body of the company.

Following the Belgian legal literature, the Court held that a difference of opinion or the announcement of an opposition expressed outside of any statutory body is insufficient to characterise an abuse of minority (*abus de minorité*) or an abuse of equality.

It is interesting to note that in a previous decision dated 6 December 2022, no. 192/22-IV-COM, the 4th Chamber of the Court of Appeal recalled that in the case of an abuse of majority (*abus de majorité*), the conditions of which are in fact identical, the annulment of the resolution taken at the general meeting of shareholders that is vitiated by the abuse of majority constitutes the natural sanction thereof, and in case the claimant fails to request its annulment, his action is declared inadmissible. We will see in the future whether the Court will apply the same sanction of inadmissibility to an action for alleged abuse of equality or minority, in case of a shareholders' resolution of refusal or rejection where the plaintiff requests an *ad hoc* or alternative measure without formally requesting the annulment of the resolution.

As a reminder, pursuant to Article 1400-6 of the law dated 10 August 1915 on commercial companies, an action for nullity of a decision of a general meeting of shareholders shall be time barred after six months.

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CORPORATE AND FINANCE LITIGATION

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