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## A court action for dissolution of a company for just cause is an action reserved to the company's shareholders

By a decision rendered on 2 March 2022, the 7th Chamber of the Court of appeal has now clarified that the persons having the right to apply for the dissolution of a company for just cause based on the provisions of article 480-1 of the law dated 10 August 1915 on commercial companies (LSC) shall be identical to those entitled to make such application based on article 1871 of the Civil Code.

Dealing with a question of admissibility of a voluntary and accessory intervention by a creditor of the company that was sued for liquidation by one of its shareholders and by one of its directors, the Court of appeal had to consider the question of whether an application for dissolution of a company based on article 480-1 LSC constitutes a so-called *reserved action* ("*action attitrée*") and which persons have standing to bring such action.

The question was not without interest since article 480-1 LSC, unlike article 1871 of the Civil Code, does not contain any restriction as to the persons entitled to make an application to the court. In consideration of Belgian and French legal literature, there was an uncertainty as to whether stakeholders of the company other than shareholders, such as creditors or directors, were admissible to file a request for dissolution of the company on that basis.

Leaning on the classical contractual conception of the company, the Court of appeal considered that the *just cause* for a dissolution as referred to in both article 480-1 LSC and article 1871 of the Civil Code can only mean reasons relating to the functioning of the company as between shareholders, and that absent any involvement of third parties in such functioning, the latter are not admissible to request the dissolution of the company on such grounds.

Therefore, the application in court for the dissolution of a company for just cause is a *reserved action*, and only shareholders are entitled to file such action.

(Court of Appeal, 2 March 2022, decision no. 44/22-VII-COM)

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## EXPERTISE

CORPORATE AND FINANCE LITIGATION

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## KEY CONTACT

**Rosario GRASSO** Senior Partner

**Marc KLEYR** Senior Partner

**Donata GRASSO** Partner

**Emilie WATY** Partner

