

Court of Appeal rules on prorogation of general shareholders meetings

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Facts

Decision

Comment

On 28 March 2018 the Court of Appeal ruled on the prorogation of general shareholders meetings.

Facts

Following the convening of a public limited company's ordinary general shareholders meeting, one of the shareholders, who held more than one-tenth of the company's share capital, informed the board of directors of the nullity of the convening notice and, at the same time, requested the prorogation of the meeting in his capacity as shareholder. Subsequently, a board of directors meeting noted that it did not have the quorum needed for a regular board of directors meeting and was thus unable to validly deliberate on the prorogation request. Consequently, the general shareholders meeting was held and not prorogated.

The shareholder who had requested the prorogation sued the other shareholders in order to have all of the decisions taken at the general shareholders meeting declared null and void. The company argued that only the board of directors could prorogate the general meeting and that, although it had met, it had been unable to deliberate on the prorogation because it had not had the required quorum (the plaintiff, who was also a member of the board of directors, had notably been absent).

Under Article 450-1(6) of the Law of 10 August 1915 on Commercial Companies, a board of directors can prorogate a general shareholders meeting for four weeks and must do so at the request of one or more shareholders representing at least one-tenth of the company's share capital. This extension cancels any decision taken by the shareholders.

Decision

The Court of Appeal confirmed the first-instance judgment, which had annulled the disputed general shareholders meeting. The court noted that the right of a shareholder representing at least one-fifth of the company's share capital to request prorogation cannot be denied. As regards the impossibility of achieving the quorum necessary to take a decision, the court noted that the company's articles of association provided that in case of emergency, a director may cast their vote in writing. According to the court, there had been urgency in this case and the plaintiff – who was not only a shareholder, but also a director – had agreed to the meeting's prorogation in a letter. Therefore, the board of directors could have validly taken the decision to prorogate the general meeting.

Comment

Although this decision confirms the existing case law on prorogation, it is notable as it is the first time that a court has ruled that a prorogation request can be made before, and not only during, a shareholders meeting. Ultimately, the decision strengthens the rights of minority shareholders.

For further information on this topic please contact [Mathieu Laurent](#) or [Maurice Goetschy](#) at Luther

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