La Kanzlei

Exclusion of a shareholder according to the shareholders' agreement in France

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In a decision dated 21 June 2023, the French Court of Cassation ruled on the possibility of excluding a shareholder in a shareholders' agreement. The decision was aimed at clarifying the scope of application of Article L.227-15 of the Commercial Code, which provides that a sale of shares contrary to the statuary provisions is invalid.

The case underlying the decision concerned an **exclusion clause** agreed **in a shareholders' agreement**. According to this shareholders' agreement, the shareholders had mutually committed to provide the ailing company with new financial resources. **In the event that one of the shareholders did not fulfil its obligation, the disputed clause provided that the defaulting shareholder either had to acquire all the shares of the other shareholders or, at their option, transfer their own shares to them.**

The parties' relations deteriorated and a shareholder invoked this clause to redeem the shares of a shareholder who had not fulfilled his financing obligation.

The shareholder affected by the compulsory redemption brought an action against it, relying on Article L.227-15 of the Commercial Code and arguing that the redemption was invalid because it violated Article 2-9 of the bylaws. This article provided that a shareholder could be excluded for violating rules on the functioning of the company.

The Douai Court of Appeal (CA Douai, 16 December 2021, No. 20/01259) had initially ruled that the clause introducing compulsory assignment agreed in the Covenant was invalid under Article L.227-15 of the Commercial Code because it violated Article 2-9 of the bylaws.

However, the Court of Cassation overturned the decision and upheld the compulsory transfer. Article 2-9 of the statuary provisions only concerns the possibility to exclude a shareholder and does not prevent shareholders from committing to tender their shares (and thus their de facto

withdrawal) under certain conditions in the context of a shareholders' agreement. Thus, in the present case, there is no contradiction between the shareholders' agreement and the statuary provisions, so that the clause cannot be excluded pursuant to Art. L.227-15 of the French Commercial Code.

The existence of an exclusion clause in the articles of association thus does not preclude the possibility of agreeing on further grounds in a shareholders' agreement on the basis of which a shareholder contractually commits to transfer his shares and may thus also be de facto excluded from the company.

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This article was written by Dr. Christophe Kühl in collaboration with our intern (Praktikantin) Lili Lamaouche.

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