

### The Court of appeal defines the frame of the notion of abuse of equality

The Court of Appeal, 7<sup>th</sup> Chamber has ruled on the notion of abuse of equality in a decision n°183/22 rendered on December 21, 2022.

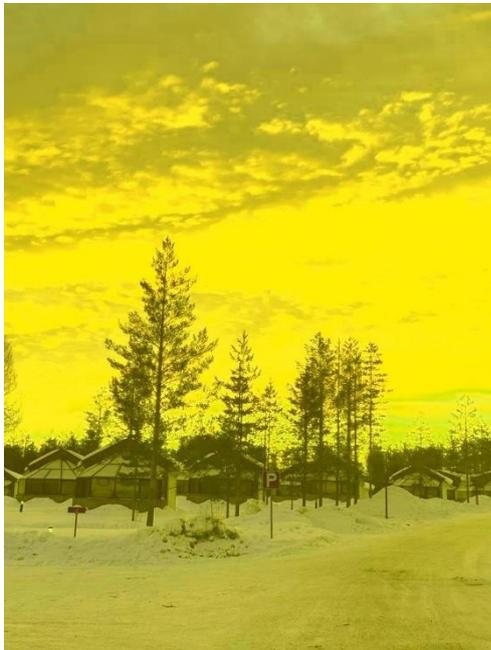
A public limited company (the “**Company**”) is held by two persons, each holding 50 % of the share capital : one is the appellant (the “**Appellant**”) and the second one in one of the respondents (the “**Respondent**”).

The Appellant blames the Respondent, in his capacity of shareholder and director of the Company to block all decision that could be taken in the interest of the Company and requests the appointment of an ad hoc administrator exercising all the Respondent’s voting rights at the general meetings of the shareholders of the Company.

The Respondent is being accused of committing a misuse of power, in order to block all propositions made by the Appellant (or by the provisional administrator, also part of the respondents), for the sole purpose of seeking the liquidation of the Company, which is presented as the only possible outcome.

It is in this context that the Court of Appeal defined the abuse of equality which consists:

- i. for the holder of half of the voting rights ;
- ii. to prevent and obstruct any key decision for the company ;
- iii. by acting in his own and sole interests;
- iv. to the detriment of the company’s and the other shareholder’s interests.



The abuse of minority, as well as the abuse of equality, indeed always implies an abusive or faulty expression of a decision, committed through the exercise of the right to vote at a general meeting or in a statutory body, against the company’s interests, in order to favour one shareholder’s interest against the other shareholders’ interest.

The Court of Appeal insisted on the fact that a difference of opinion, a critical or even negative attitude, the announcement of an opposition to the decisions considered by the majority or equal shareholders, expressed outside of any statutory body decision, are insufficient to characterize an abuse of minority or equality.

The protest of the equal or minor shareholder has to be expressed through a vote.

The abuse of equality committed by a shareholder therefore implies a (i) regular convening to general meeting and a (ii) vote.

In this case, the Court of Appeal confirmed, following the court in first instance, that in the absence of any vote, the Respondent couldn’t be held responsible of any abuse of equality.

Linari Law Firm is of course available should you need any assistance regarding company law or shareholders issues.