

COMPANY LAW

February 2008

A shareholders' agreement entered into for a term during which the parties shall remain shareholders in the company is an open-term agreement

(French Court of Cassation (Commercial Chamber) ruling on 6 November 2007, Société Compagnie Générale de Tourisme et d'Hôtellerie v. Société Compagnie Méridionale de Participation)

Applying a principle which is used in contract law, the French Court of Cassation recently ruled that a shareholders' agreement that is not assigned any term – not even an uncertain term – is entered into for an open term. In the case under review shareholders' agreement provided that the agreement would apply for as long as the parties or their substitutes continue together to be shareholders in the company.

Under the terms of a ruling handed down on 6 November 2007, the supreme jurisdiction held that the loss of shareholder capacity by either of the parties to a shareholders' agreement was an event whose occurrence was uncertain, even though either of the parties could at any time transfer its shares.

The Court of Cassation concluded that the agreement in question was not assigned any term and was therefore entered into for an open term. It could consequently have been terminated at any time at the unilateral choosing of either of the parties.

We remind you that in contract law, an agreement is deemed to be a fixed-term agreement only when the term thereof is defined by means of an event which is certain to occur.

The date on which the event occurs may be unknown, but must, under all circumstances, be outside the control of the parties.¹

Thus, determination of the certain or uncertain nature of the event which triggers the lapsing of an agreement is of great importance as regards contracts insofar as an open-term understanding may be terminated at will by one of the parties thereto, subject to compliance with notice terms.

¹ French Court of Cassation (Labour and Employment Law Chamber) ruling, 28 October 1992, no. 89-45.500

AREAS OF LEGAL PRACTICE

• MERGERS & ACQUISITIONS

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

• CAPITAL INVESTMENTS AND LBOS

Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

• COMPANY LAW

"Long-term capital" transactions, capital increases, issuance of composite securities (convertible or repayable in shares, investment certificates, priority dividend shares etc.), stock option agreements, company founder share plans, temporary business combinations, management fees and cash management agreements, changes to charter/by-laws and legal secretariat services.

• SECURITIES LAW

IPOs and preparatory work, drafting of prospectuses, legal secretariat services for listed companies, relations with market authorities, securities litigation.

• BANKING AND FINANCE

Advice on loan and financing agreements, warranties/guarantees, syndication, banking regulations, financing of acquisitions and structured asset financing (particularly of real estate).

• COMMERCIAL CONTRACTS / ECONOMIC LAW

Advice and litigation with commercial contracts, i.e. service, sale, distribution, concession, franchise, commercial agent agreements, distributor/supplier relations, general terms of purchase/sale, commercial partnerships, manufacturing and subcontracting agreements, business sale agreements, management leases, consumer law, public and private procurement contracts.

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• REAL ESTATE LAW

Advice and litigation work in connection with commercial leases, real estate due diligences, purchase/sale of property and of preponderantly real estate companies, financing of real estate acquisitions.

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• COMPETITION LAW (FRENCH AND EU)

Advice and litigation work in respect of industrial cooperation agreements and structuring of distribution networks. Advice and representation before the competition authorities and courts in cartel, anti-competitive practices, abuse of a dominant position and unfair competition cases. Advice on the control of concentrations (conduct of feasibility studies, preparation of notification files, negotiation with the national and Community control authorities) and on State aids/subsidies.

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• INTELLECTUAL PROPERTY

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• TELECOM

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• COLLECTIVE PROCEDURES

Alert, restructuring and reorganisation procedures, conciliation and ad hoc representation procedures. Court-ordered reorganisation, preparation of reorganisation plans, sale and recovery plans, liquidation. Representation and assistance of creditors, company officers (action to make good the shortfall in assets, extension procedures, etc.).

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The Firm was the first Paris law firm to obtain ISO 9001 certification back in 1998.

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