Read this post online

Corporate groups: The termination of employment within the parent company does not automatically entail the termination of corporate mandates held in subsidiaries

Holding several corporate mandates is a common practice in corporate groups. In general, it is assuredly useful to ensure a coherent management of the various group entities, in line with the group's global policy.

Yet, when the relevant corporate officer no longer fits the bill and when the group wishes to terminate him/her, the situation is all the more complex if he/she has varied and diversified duties/mandates within the group. Indeed, the termination of employment within the parent company for whatever reason does not necessarily entail the termination of the mandates held in subsidiaries. This principle was recently recalled in a decision handed down by the Court of Appeals of Paris.

Mr. A was hired in 2009 by Company B and appointed as legal representative of Company C, a subsidiary of company B. In 2010, Mr. A was also appointed as legal representative of Company D, another subsidiary of the corporate group to which Company C and Company B belonged.

In 2013, Mr. A was dismissed for serious misconduct by Company B, and then his corporate mandates in Company C and Company D were terminated.

In 2014, Mr. A initiated proceedings before the Commercial Court of Paris against Company C and Company D, and sought damages for the loss he claimed to have suffered as a result of the sudden and vexatious

termination of his corporate mandate as President of said companies.

By judgment dated November 9, 2015, the Commercial Court of Paris dismissed all of the claims brought by Mr. A.

On November 17, 2015, Mr. A lodged an appeal against the judgment, claiming that Company C and Company D had breached their obligation of loyalty at the time his corporate mandates were terminated because he had not been given the reasons for such termination and had not been provided with the opportunity to present his observations.

Company C and Company D argued in response that the termination of Mr. A's mandates was the consequence of his dismissal because he had been combining an employment contract within Company B and corporate mandates in Company C and Company D, and that he was aware of the reasons for the termination of his corporate mandates since he had been perfectly informed of the reasons for his dismissal.

On December 6, 2016, the Court of Appeals of Paris reversed the judgment handed down on November 9, 2015 by the Commercial Court of Paris and held that *"[Mr. A] has not been given the opportunity to express himself before the corporate bodies of Company C and Company D, and the two latter have therefore breached the audi alteram partem rule when they exercised their right of termination, which means that such termination is fraught with abuse, the fact that there existed a unity of duties of [M. A] as director of business development and general safety [of Company B] and President of the companies [C and D] did not relieve the two latter from informing [Mr. A] of the consequence that the termination of his employment contract was to have on his corporate mandates and hearing his observations on his termination beforehand, irrespective of whether such termination could be implemented, as per the provisions set forth in the by-laws, without it being necessary to provide a reason therefor"*.

This decision mirrors a quite similar judgment issued on November 10, 1975 by the Court of Appeals of Reims that had considered that the termination of a corporate mandate held in a parent company, as legitimate as it might be, may not in itself be a ground for termination of the corporate mandate held in the subsidiary.