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THE SERIAL STORY ON DELEGATIONS OF POWERS WITHIN FRENCH SOCIÉTÉS PAR ACTIONS SIMPLIFIÉES

October 01, 2010

Nowadays, managing a business requires so many particular and complex skills and competences that no one would challenge the necessity to authorize a corporate manager to delegate part of his powers and authority to officers vested with specific responsibilities.

To be valid, a delegation of powers must meet certain requirements that have been progressively defined by an established and constantly evolving abundant case law: such requirements concern the delegatee (competence, authority and means made available to exercise the delegated powers), the delegator (the company must be large enough to justify the implementation of such an organization) and the delegation of powers itself (it must be unambiguous, its duration and its scope must be limited, etc.).

The Second Chamber of the Paris Court of Appeals, ruling on the validity of dismissals in two labor cases, recently added an unexpected requirement for French Sociétés par Actions Simplifiées ("SAS"): the delegation of powers must have been authorized pursuant to the company's by-laws.

According to the Paris Court of Appeals, this obligation stems from Article L.227-6 of the French Commercial Code that stipulates that in its dealings with third parties, the SAS is represented by a President whose powers may be delegated to a general manager or to a delegated general manager when so provided in the by-laws.

Other courts, numerous legal authors and the Minister of Justice herself in a ministerial response condemned these decisions and argued that they made a confusion between two distinct notions: legal representation and delegation of powers, such a distinction having never posed any concern in companies of other legal forms.

Everyone is now holding his breath, awaiting the decision of the Cour de Cassation (French Supreme Court) that should rule on this issue on November 5.

Few authors mentioned that the Cour de Cassation's decision will not only impact the conditions of validity of a dismissal ordered by a human resources director. In fact, it will impact all delegations of powers granted within SAS if such delegations have not been authorized pursuant to the by-laws

As the SAS is the preferred corporate form for corporate groups, notably foreign groups investing in France, the whole system of management of powers within the French subsidiaries of such groups will be jeopardized in the event the Cour de Cassation upheld the judgments of the Second Chamber of the Paris Court of Appeals.

In other word: how to give foreign investors, already discouraged by the ludicrous complexities of our labor law, the image of an unstable country where legal certain is never guaranteed.

Next episode of this serial story on delegations of powers within SAS in the next issue of our e-newsletter...

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Article authored by

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