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A court-appointed provisional administrator cannot evade the rules and legal obligations applicable to companies

New case law

Corporate and Finance litigation

After two referrals to the Court of Cassation, the Court of Appeal has now confirmed, in a judgment dated 29 April 2026, that a provisional administrator of companies may not act outside the law, but is likewise subject to the legal provisions governing commercial companies and their directors. In Luxembourg, this clarification had been awaited for a long time, as case law had until now remained rather unclear on this issue, despite its fundamental importance.

The Court of Appeal was called upon to rule on the merits of a request for the replacement of a provisional administrator brought by a shareholder who, inter alia, criticised the administrator's failure to comply with company law provisions. For years, the provisional administrator had argued that, as a court-appointed officer, he was not subject to company law in the same way as an ordinary director. The Court of Appeal rejected this argument, emphasising that, where entrusted with a general mission of management and administration, the provisional administrator must comply with the legal rules governing the operation of companies, including the legal obligations applicable to all corporate officers, save for those incompatible with his mandate.

From now on, no provisional administrator will be able to rely on his status as a court-appointed officer to avoid the legal obligations applicable to companies. Like any corporate officer, he will be required to prepare, present and submit annual accounts to the shareholders, produce management reports, arrange for audit reports in the context of the statutory audit of the accounts, convene and hold general meetings as required by law, respond to shareholders' questions regarding management operations, etc., this list obviously not being exhaustive. The only limitation identified by the Court of Appeal concerns rules that are incompatible with the appointment or mission of a provisional administrator, such as for example his appointment by the court rather than by a general meeting of shareholders. This is a matter of common sense.

In the summary proceedings at hand, the Court of Appeal did unfortunately not draw all the consequences from its own decision, as it held that the breaches of company law committed by the provisional administrator were not, in themselves, sufficient to justify the replacement of the provisional administrator. This may be regrettable, but what matters here is that the principle has finally been settled: a court-appointed provisional administrator cannot evade the rules and legal obligations applicable to companies.

It remains to be seen how trial courts will apply this principle when ruling on liability actions brought against provisional administrators, and how criminal courts will apply the same principle established by the Court of Appeal, knowing that in company law matters, certain criminal offences are by nature purely material.

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