Beware of Conflicts of Interest

On June 14 2006 the Supreme Court ruled that where a third party enters into an agreement with a company and has reason to suspect that there may be a conflict of interest between the managing director and the company, it can be reasonably expected that the third party will conduct an investigation into the possible lack of authority of the director.

Background

Article 2(256) of the Civil Code provides that unless the articles of association provide otherwise, the company will be represented by its supervisory directors should there be a conflict of interest with one or more of its managing directors. This article also provides that the general meeting of shareholders is at all times entitled to appoint one or more other persons to represent the company.

On September 11 1998 the Supreme Court ruled that a company can invoke the lack of authority of its managing director against a third party where the conflict of interest between the company and the relevant managing director was known or should have been known by the third party when entering into the agreement with the company.

On July 9 2004 the Supreme Court ruled that in case of a conflict of interest between the managing director and the company, an explicit resolution of the general meeting of shareholders is required in order to appoint a representative of the company. An implicit resolution does not suffice.

Decision

On June 14 2006 the Supreme Court ruled that where a third party has reason to suspect that there may be a conflict of interest, the third party may be required to conduct an investigation into the possible lack of authority of the managing director of the company due to the potential conflict of interest. The way in which the investigation should be carried out and the extent of such investigation will depend on the specific circumstances of the case.

Comment

Where there is reason to suspect that there is a conflict of interest between the managing director and the company, a third party entering into an agreement with that company must determine whether there really is a conflict of interest; if this is the case, the third party should apply for a resolution of the general meeting of shareholders appointing a person (who may be the managing director) to represent the company in this matter.

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