

**MANDAT**

07.11.2018

**GLEISS LUTZ OBTAINS LANDMARK DECISION ON “ACTING IN CONCERT” BEFORE THE FEDERAL COURT OF JUSTICE**

The second Civil Panel of the Federal Court of Justice was called on to rule on the fundamental issue of whether a one-time coordination between two shareholders for the purpose of replacing all of the supervisory board members in order to achieve a corporate realignment of the issuer meets the attribution criteria for “acting in concert”.

Gleiss Lutz represented a major shareholder of a listed stock corporation on this question in an avoidance action.

The second Civil Panel of the Federal Court of Justice found that such a one-time coordination between two shareholders comprises a coordination in a single case, and thus does not lead to a reciprocal attribution of the voting rights of the shareholders pursuant to section 34(2) sentence 1, 2nd half-sentence of the Securities Trading Act (WpHG).

With this ruling, the Federal Court of Justice has for the first time explicitly taken a so-called “formal approach”, according to which a coordination in an individual case is present if its implementation only requires a one-time action by the shareholders. This does not depend on the qualitative weight or significance of the measure, in the view of the Federal Court of Justice.

In the proceedings on the main issue, the Gleiss Lutz team consisted of Dr. Eike Bicker (partner, lead, corporate) and Dr. Marcus Reischl (corporate, both Frankfurt), joined in the appellate proceeding by the Federal Court of Justice attorney Dr. Reiner Hall.

Federal Court of Justice, judgment of 25 September 2018 - II ZR 190/17

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