



## Change in jurisprudence on the exclusion of partners in limited liability companies

The understanding of the Judiciary on the flexibility of the exclusion of minority partners from limited liability companies due to simple disagreements with other partners has faced changes with decisions that have established the reinclusion of partners who have proven the inexistence of relevant errors causing the exclusion.

Pursuant to article 1,085 of the Civil Code, when partners representing more than half of the corporate capital decide that one or more partners are endangering the continuity of the company, due to acts of undeniable gravity, they may exclude them from the company.

In the previous interpretation of said provision, the simple breach of *affectio societatis* (subjective element involved in the incorporation of a company which entails the partners' intention to enter into a partnership between them) was used as argument for exclusion of a partner. Disagreements between partners were enough to justify said decision. However, recent judgments of the São Paulo State Court of Justice (proceedings No. 1000422-16.2021.8.26.0068, No. 1018472-86.2019.8.26.0577 and No. 1128795-76.2015.8.26.0100) and even of

the Superior Court of Justice (REsp 1.129.222-PR) have been rendered in a contrary manner, in view of the inexistence of a serious fault that would justify the exclusion of the partner.

This change in jurisprudence supports the guarantee of freedom of expression by minority partners, who previously could be subject to the exclusion from the company for expressing an idea contrary to the other partners. Thus, recent decisions aim to reduce abuses by majority partners in limited liability companies. According to minister Nancy Andrighi, in order to judicially exclude a partner, it is not enough to allege a breach of the *affectio societatis*, but rather to demonstrate just cause, that is, the reasons that caused such a breach (REsp 1.129.222-PR).

Therefore, the new jurisprudential interpretation of article 1,085 of the Civil Code, traces a new path, which aims to ensure the best interests of the company by demanding proof of acts of undeniable gravity to allow the exclusion of a partner.