

New case law on shareholders' information right

Madrid, October 2018

Breach of shareholder's information right is one of the most common grounds for challenge of corporate resolutions by minority shareholders. The questions that are typically discussed in this sort of challenges are whether the shareholder exercised its right lawfully or abusively, whether it was entitled to the concrete information requested and whether the information actually provided by the directors was complete and correct for the shareholder to be able to properly exercise its *participation rights*.

The dividing line between the sorts of information that shareholders may and may not legitimately request is oftentimes blurred. We refer to our note of January 2018 on the requirements to challenge resolutions on this basis and the alternatives shareholders have.

The Madrid Court of Appeals has recently reminded some practical criteria on this matter:

- (i) In the context of the annual GSM in particular minority shareholders are entitled to request not only *numbers* but also other information supporting the accounts or reasonably necessary to control the management of the company by its directors and whether or not they have complied with their duties of diligence and loyalty¹.
- (ii) Companies usually keep accounting books and records in addition to those required by law, and if they do so they are relevant information that the company must produce. The non-mandatory character of these records is not a valid excuse not to provide them².
- (iii) When a company decides to consolidate its accounts with those of other related companies despite having no obligation to do so, shareholders have no right to ask for the consolidated statements, but are entitled to request information about the consolidated entries or items contained in the company's own financial statements³.
- (iv) The *strategic* nature of the information requested is not *per se* a valid reason to deny it; directors have to justify why disclosing such information may, given the specific circumstances of the case at hand, harm the corporate interest⁴.
- (v) When a shareholder is willing to sell its shareholding and files a request for information, the latter cannot be considered as an abuse or an inappropriate pressure on the company or the other shareholders, for it is perfectly reasonable that the former tries to obtain a complete picture of the company's financial situation and the way it is being managed, as this information may affect the valuation of its shareholding⁵.

¹ Judgment num. 322/2018, 8 June.

² Judgment num.290/2018, 18 May.

³ Judgment num. 307/2018, 25 May.

⁴ Judgment num. 290/2018, 18 May and judgment num. 363/2018, 29 June.

⁵ Judgment num. 322/2018, 8 June.