

Minority shareholders' right to information about group's subsidiaries

Madrid, October 2019

The Madrid Court of Appeals (MCA) has recently issued a judgment¹ on the scope of minority shareholders' right to information which is particularly interesting in what it says on the right to information about group's subsidiaries.

The case may be summarised as follows:

- (i) Qipert was the holding company of a group in which one of the wholly owned subsidiaries, UGH, carried out around 97% of the group's business.
- (ii) UGH provided management and consultancy services in the field of real estate. It subcontracted the provision of these services to several companies throughout Spain, most of which were related to Qipert's directors.
- (iii) A general shareholders' meeting (GSM) of Qipert was called to approve its annual financial statements and those of its group and to pass other corporate resolutions.
- (iv) Prior to the GSM, a shareholder with a 2.62% in Qipert requested its directors to provide him with certain information on Qipert and its subsidiaries, including UGH. He asked information, among other things, on the amount invoiced to UGH by the services providers related to Qipert's directors. Qipert argued that such information concerned another company (UGH) and, on that basis, refused to disclose it.

The minority shareholder challenged the corporate resolutions passed by Qipert's GSM on the grounds that his right to information had been breached. A commercial first instance court of Madrid considered that Qipert should have provided the requested information about UGH and declared Qipert's corporate resolutions null and void. Qipert appealed the decision, but the MCA turned down the appeal and confirmed the first instance judgment.

The MCA referred to a judgment² in which the Spanish Supreme Court (SC) ruled that minority shareholders with a joint stake in the parent company of almost 49% were entitled to obtain information regarding wholly owned subsidiaries, there being no objective reason to conclude that the disclosure of such information could be detrimental to the company's interest.

The MCA applied this SC's doctrine despite the fact that the minority shareholder only had a 2.62% in Qipert, because UGH (a) was a wholly owned subsidiary and (b)

¹ Judgment of the Madrid Court of Appeals nº 381/2019, dated 19 July 2019.

² Judgment of the Supreme Court nº 406/2015, dated 15 July 2015.

carried out most of the group's business. These two circumstances justified the minority shareholder's right to information about the subsidiary.

The MCA highlighted that a refusal to provide the minority shareholder with information about UGH would deprive him of all knowledge about the business of Qipert (mainly performed through UGH) and of the possibility of monitoring the group's financial statements.

The MCA added that the request of information about UGH could not be deemed abusive, for the minority shareholder had the right to check whether the company's directors were taking advantage of their condition for the benefit of the services provider companies related to them.

This judgment is a reminder that information about subsidiaries that play a significant role within the group's business falls within right to information of the parent company's shareholders and, therefore, consolidated financial statements do not escape from the scrutiny of minority shareholders.