

Minority Shareholders' Rights

Madrid, May 2014

The Spanish government approved last Friday May, 23 to send to the Parliament a bill reforming several aspects of the Spanish Companies Act (SCA), including minority shareholders' rights.

Below is a comparison between the current regime of mandatory minority rights in limited liability companies (*sociedades limitadas* or *SLs* and *sociedades anónimas* or *SAs*) and that included in the bill. No reference is made to rights attached to shareholders as such, i.e. regardless of the percentage of the share capital they own.

Bear in mind that decisions at the general shareholders meeting are approved by simple majority, although the SCA requires reinforced majorities in certain cases and the bylaws can also provide for reinforced majorities for almost any type of decision, provided that unanimity or a majority amounting in practice to unanimity is not required

Share capital	Right	Section	Proposed amendment
1‰	Attendance to the shareholders meeting (should the bylaws limit this right requiring the holding of a minimum number of shares)	179.2	Bylaws of listed companies may not require the holding of more than 1,000 shares to attend the meeting. New section 521 bis.
			Challenge corporate resolutions (listed companies only). New section 495.2.b.
1%	Request the presence of a public notary at the shareholders meeting for the drafting of the minutes. In SLs the percentage is 5%	203.1	
			Challenge corporate resolutions. New section 206.1.
3%			Obtain the data of the current shareholders of the company for the sole purposes of facilitating their contact for the exercise of their corporate rights (listed companies only). New section 497.2.
5%	Request the appointment of an independent expert –when directors have not done so- for the valuation of certain contributions in kind to be made in exchange of capital (SAs only)	69.b	Percentage reduced to 3% in listed companies. New section 495.2.a.

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Share capital	Right	Section	Proposed amendment
5%	Bring legal actions against shareholders or directors for the existence and valuation of contributions in kind made in exchange of capital (SLs only)	74.2	
	Call for a shareholders meeting, indicating the matters to be discussed –including to decide on the initiation of a corporate legal action against directors (as well as against the auditors)-	168 and 239.1	Percentage reduced to 3% in listed companies. New section 495.2.a.
	Request additional matters to be included in the shareholders meeting agenda (SAs only). In listed companies, this right is restricted to the ordinary shareholders meeting	172.1 and 519.1	Percentage reduced to 3% in listed companies. New section 519.1.
	Make proposals of decisions regarding matters included –or to be included- in the agenda of the shareholders meeting (listed companies only)	519.2	Percentage reduced to 3%. New section 519.3.
	Oppose to the settlement or waiver by the shareholders meeting in relation to a corporate legal action against directors (or the auditors)	238.2 and 271	Percentage reduced to 3% in listed companies. New section 495.2.a.
	Bring corporate legal actions against directors (or the auditors) when (i) the directors fail to call the shareholders meeting -having been requested to decide on such matter-, or (ii) the company fails to initiate the judicial proceedings itself, or (iii) the shareholders meeting decides not to bring such action	239.2 and 271	In addition to current rights: Bring corporate legal actions against directors without the need of the prior approval of the shareholders meeting, when based on breach of their duty of loyalty Percentage reduced to 3% in listed companies. New section 495.2.a.
	Challenge board decisions	251.1	Percentage reduced to 1%. New sections 251.1.
	Request the interim suspension of any board or shareholders meeting decisions until the court decides on the challenge brought against them. In listed companies the percentage is 1%	207.1 ¹	

¹ This right is set out in section 727.10 of the Spanish Civil Procedural Act, to which section 207 of the SCA refers.

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Share capital	Right	Section	Proposed amendment
5%	Request the appointment of an independent auditor when the company has no obligation to submit its financial statements to independent verification	265.2	
	Review the documentation supporting the financial statements before the shareholders meeting (SLs only)	272.3	
20%	Bring legal actions seeking the dismissal of the liquidator by the court (SAs only)	380	
	Request the court the appointment of a controller to the liquidation process (SAs only)	381.1	
25%	Request information regarding issues included in the shareholders meeting agenda without directors or the chairman having the possibility to oppose In listed companies, information requests may also refer to public (i) data provided to the Spanish regulator, or (ii) the auditors' report	196.3, 197.4 and 520.1	
	Request the adjournment of the shareholders meeting	195.2	
	Not to be excluded from the company until the decision of the shareholders meeting in that respect has been confirmed by a final judicial decision	352.2	
N/A	Appoint board members in proportion to the share capital they own (including through syndication with other shareholders) provided the latter is higher than the total share capital divided by the number of board seats	243.1	