

Arbitration clauses in shareholders' agreements

Madrid, February 2020

The Barcelona Court of Appeals (BCA) has very recently ruled¹ on the effects of an arbitration clause included in a shareholders' agreement entered into by all of the shareholders of a company.

The general shareholders' meeting decided to set a certain annual compensation for the company's directors. A minority shareholder challenged this decision before the commercial first instance court on the grounds of an alleged infringement of (i) the shareholders' agreement provisions on directors' remuneration and (ii) the Spanish Companies Act (SCA) provisions relating to the corporate benefit.

The company then challenged the court's jurisdiction, submitting that the arbitration clause contained in the shareholders' agreement referred to any dispute arising out of it. The commercial court upheld this argument and, accordingly, declared its lack of jurisdiction.

The claimant appealed this decision before the BCA on the following grounds: (i) according to the Spanish Arbitration Act (SAA), corporate disputes may only be subject to arbitration if expressly provided for in the company's by-laws; (ii) the arbitration clause invoked by the company only covered disputes relating to the shareholders' agreement and, hence, the challenge of corporate resolutions fell out of its scope; (iii) the challenge was grounded on the breach of not only the shareholders' agreement, but also the SCA.

The BCA found that the arbitration clause of the shareholders' agreement did encompass the claim filed by the shareholder and, therefore, turned down the appeal and confirmed the first instance judgment. The key points of its decision are:

- (i) The SAA refers to arbitration clauses included in the companies' by-laws, but does not prevent that a shareholders' agreement contains an arbitration clause applicable to corporate disputes between the contracting shareholders. If the agreement is entered into by all the shareholders, as was the case, it binds not only them but the company².
- (ii) Even though the arbitration clause at hand only applied to conflicts arising out of the shareholders' agreement, the latter obviously may be breached through corporate resolutions passed by the majority shareholders –as the claimant in fact alleged– and, therefore, the arbitration clause must apply to the challenge of those resolutions.
- (iii) The claim was mainly grounded on the infringement of the shareholders' agreement. The claimant also argued that the corporate resolution damaged the corporate interest and, thus, breached the SCA, but the alleged damage “*essentially consists in not complying with*” the shareholders' agreement.

¹ Decision of the Barcelona Court of Appeals nº 6/2020, dated 13 January 2020.

² See also the judgment of the Valladolid Court of Appeals nº 251/2017, dated 28 June 2017.