



Minority shareholder's right to information: scope and limits to the request of "accounting documents, in a broad sense"

Judgment of the Plenary of the Supreme Court, Civil First Chamber, of 19 September 2013, on shareholder's right to information

A minority shareholder of a stock company, holding 25% of its shares, demanded, before the shareholders board was held, exhaustive information about the annual accounts that such company pretended to approve. The company did not offer all the information that he requested and therefore, after the rest of the shareholders approved the accounts, he decided to challenge the adopted agreement arguing that his right to information as a shareholder had been violated. His complaint was accepted in first instance but the company appealed against such ruling, which was revoked by the Provincial Court. The minority shareholder appealed before the Supreme Court (SC), which now finally rules in his favor.

Requirements for the right to information

The SC reminds the four essential requirements necessary for the right to information: (i) the request must be related to the agenda of a meeting convened (ii) such request must be made in good time and in an appropriate manner; (iii) the information that is provided for such purpose to the shareholder must not be detrimental to the social interests; and (iv) this right to information must not be unlawfully exercised. According to the SC, the latter requires the consideration of multiple elements depending on the circumstances of the case, among which: the "closed" nature of the company; the relation of the documentation with "especially relevant matters"; the existence of "reasonable evidence of irregular acts"; or the disruption of the activity of the administration

body or of the administrative structure of the company.

About the extent of the information

In a review of the existing doctrine, the SC makes an extensive interpretation of the concept "accounting documents", considering that "the request of documents consisting in accounting support, bank and tax documentation..., in a broad sense, falls within the scope of the right to information". According to the SC, the list of documentation to be provided to the shareholder under the law complements but does not replace his right to information. He is entitled to request the information or clarifications that he deems appropriate as well as to request details of the entries. Therefore, the SC considers that such request of information cannot be denied by the company, as long as the four requirements referred above are respected. Additionally, the Supreme Court specifies that "it is not necessary that the shareholder is convinced... only that he is reasonably informed... and that the information is not objectively false or fundamentally inaccurate or incomplete."

It is still to be seen how this criterion is developed in subsequent rulings, and if the courts apply it to those cases that, although similar, are not identical. Think, for instance, of cases in which the shareholder has less than 25% of the shares, or of limited liability companies, in which this right to information is not reinforced.