

An unusual shareholders' agreement

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The Asturias Court of Appeal (ACA) has ruled that when a company's resolution is passed in breach of a shareholders' agreement the appropriate remedy is compensation for damages by the defaulting shareholders¹.

The three shareholders of a private limited company (S.L.), each holding a 33.33% stake, held a general shareholders' meeting (GSM) in which they unanimously agreed that the approval of any capital increase would require unanimity. This agreement was not incorporated into the company's bylaws or documented in a formal shareholders' agreement.

About eight months later, another GSM resolved by a 66.66% majority to increase the share capital by offsetting certain claims of the two shareholders that voted in favour (the dissenting shareholder refused to convert his claims into equity).

The third shareholder brought legal action seeking that the other two be ordered to adopt all necessary resolutions to reverse the capital increase and, alternatively, to compensate him for the harm caused by their breach of the "shareholders' agreement" requiring unanimity.

The claim was dismissed in the first instance on the grounds that (i) there was no shareholders' agreement, but rather a company's resolution that, as such, could be "amended" at another GSM and, (ii) regardless of whether there was a company's resolution or a shareholders' agreement, requiring unanimity is contrary to company law.

The ACA, however, held that (i) the agreement requiring unanimity was indeed a shareholders' agreement, not a company's resolution, because it had not been included in the by-laws and (ii) a shareholders' agreement cannot be rendered null and void merely for contravening company's law provisions, but only if it violates core principles of the legal system. The ACA found that the shareholders' agreement did not infringe any such principles or corporate public policy.

Nevertheless, despite acknowledging a clear breach of the agreement, the ACA dismissed both the claim for specific performance (reversal of the capital increase) and the claim for damages; the former because the "natural consequence" of breaching a shareholder's agreement is compensation for damages, while the latter because the claimant had failed to prove the alleged harm.

The dismissal of the claim for specific performance is consistent with the case law, according to which, as a rule, companies' decisions cannot be set aside for contravening shareholders' agreements².

¹ Judgment 197/2025 of 7 April.

² Judgment of the Supreme Court 300/2022 of 7 April.

Interestingly, courts tend to adopt a different approach where a party to a shareholders' agreement challenges a company's resolution not for breaching a shareholders' agreement, but for complying with it while allegedly violating the by-laws. The Supreme Court³ and the Madrid Court of Appeal⁴ have dismissed this type of claims in certain cases on the grounds of bad faith or abuse of rights by the claimant

The ACA's refusal to award damages serves as a reminder of the importance of including penalty clauses in shareholders' agreements, given the inherent difficulties in proving damage in these contexts.

³ Judgment 103/2016 of 25 February.

⁴ Judgment 341/2024 of 25 October.