

Valuation of shares. Expert determination and minority discount

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The Spanish Companies Act (SCA) provides that, absent an agreement between the parties, the “reasonable value” of the shares of a minority shareholder exiting the company or being expelled from it shall be determined by an independent expert appointed by the Commercial Registry¹.

The Barcelona Court of Appeal (BCA) has recently handed down a ruling² finding that the expert’s valuation may be *judicially reviewed* in certain circumstances, including when, like in the case at hand, the expert applied a discount because the exiting shareholder’s stake did not allow it to exercise control over the company.

The BCA found that the expert’s determination may be *judicially reviewed* when it is “unreasonable and arbitrary, contradicting the *lex artis*” or there is a “relevant mistake” regarding the information considered or the valuation method.

The BCA concluded that the expert should not have applied a discount based on the fact that the exiting minority shareholder’s stake was incapable of providing control, for, in accordance with the Spanish Supreme Court’s doctrine, in transactions not voluntarily carried out within the market, but pursuant to the SCA provisions, such a discount would entail a violation of the principle of shareholders’ equal treatment.

¹ Article 353 of the SCA.

² Judgment of the Barcelona Court of Appeal 1107/2022 dated 4 July 2022.