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A SHA requiring a reinforced majority to approve "reserved matters" which *de facto* gives a minority shareholder a veto is valid

Madrid, January 2026

The Spanish Supreme Court (SC) has ruled on the scope and limits of art. 200 of the Spanish Companies Act (SCA) -under which the bylaws may require a higher majority of votes than the statutory threshold for passing corporate resolutions "without reaching unanimity"- in relation to a shareholders' agreement (SHA) granting a minority shareholder *de facto* veto power[1].

When it acquired a 15% stake in Eyewear, Trade and the existing shareholders entered into a SHA requiring a 90% vote to approve certain "reserved matters", including amendments to the bylaws, dividend distributions and amendments to the business plan, the budget or the executive managers' compensation.

Some years later, certain shareholders brought proceedings against Trade, seeking a judicial declaration that the SHA was null and void because it breached art. 200 SCA and amounted to an abuse of rights. Both the court of first instance and the Barcelona Court of Appeal dismissed the claim, as did the Supreme Court.

The SC held that art. 200 SCA is a mandatory provision that, like any such provision, limits contractual freedom not only in companies' bylaws but also in SHAs; however, it dismissed the nullity claim because the SHA clause at issue did not require unanimity but only a reinforced 90% majority, which had been consented to by the claimants, who were fully aware that Trade's consent would be required to pass certain resolutions.

The SC noted that clauses requiring reinforced majorities are valid even where, given the specific distribution of the share capital, the consent of all shareholders is necessary.

However, in our view, the judgment does not clarify why, despite the prohibition of unanimity being a mandatory rule (i.e. one that cannot be waived by the shareholders) that applies to any SHA, shareholders can agree to a majority threshold that in practice amounts to unanimity from the very moment the SHA is signed, rather than as a result of a supervening change in the shareholding structure.

The interaction of the CA and companies' bylaws with SHAs remains a matter of debate among scholars, and case law is far from clear and consistent, as courts seem to pursue what, in the specific circumstances of each case, they consider *equitable justice*, even where that outcome is not fully consistent with the mandatory nature of provisions they themselves regard as imperative.

[1] Judgment 1713/2025 of 26 November.
On the same topic, see our August 2025 note.