

A judgment on one of the remedies available for false statements by a publicly traded company

Madrid, August 2024

Following the April 2023 Spanish Supreme Court judgment that declared a well-known accounting firm liable for the damages caused to four shareholders of Let's Gowex S.A. (Gowex) for failing to prevent this listed company to publish certain information that was later found to be false¹, in May this year the Madrid Court of Appeal (MCA) handed down another ruling ordering the same firm to pay over EUR 3 million to 130 shareholders for the same reason².

Gowex traded on the BME Growth (previously, the *Mercado Alternativo Bursátil*) between March 2010 and July 2014. Its "registered advisor" had the legal obligation to assist the company to prepare the financial and business information to be published, ensuring that no relevant information was concealed and that the information provided was not misleading.

The registered advisor assisted Gowex with the IPO and the subsequent capital increases and certified that the information published by Gowex did not "omit any relevant data or mislead investors".

In July 2014 Gotham City Research LLC (Gotham) published a report submitting that Gowex had misrepresented its assets, business activity and financial situation. This caused the share price to plummet, the suspension of trading and, ultimately, severe losses for shareholders. Gowex's chairman eventually acknowledged that the information provided was false and the company was declared insolvent.

Some investors then brought damages actions against, *inter alia*, Gowex's registered advisor, one of which has now been upheld by the MCA on the following grounds:

- It is undisputed that the information provided to the BME Growth on Gowex's assets, business activity and financial situation was "completely false".
- Gowex's registered advisor complied negligently its legal obligation to verify the "truthfulness and accuracy" of the information published by Gowex.
- This caused the share price to be "artificially" high until the Gotham report, when it dramatically dropped, thus causing a "serious harm" to the shareholders, as they had acquired the shares for a "totally unrealistic and fictitious price".

The MCA concluded that the compensation payable by the registered advisor was the price paid by the shareholders less the "gross return" they had obtained.

¹ Judgment 539/2023 of 19 April 2023.

² Judgment 220/2024 of 23 May 2024.