

A foreign judicial authority cannot supplant the will of a Spanish company's shareholders

(DG for Legal Certainty and Certification Decision of 16 April 2025)

The will of a Spanish company's shareholders in general meeting may not be supplanted by a judge or court clerk, even if the latter is part of another State's judicature and is acting within the framework of foreign proceedings and in accordance with applicable procedural law.

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The Directorate-General for Legal Certainty and Certification (hereinafter the 'DG'), in its Decision of 16 April 2025 (Official Journal of Spain no. 122, of 21 May), rejects the appeal and affirms the registrar decision refusing the registration of a deed, executed in Madrid, in which the company Leadman Trade España, S.L., formalised a transfer of real estate in lieu of payment of debt to another

Spanish company. C.A.A. appeared on behalf of both companies, acting in his capacity as sole director of the transferee company and as attorney-in-fact of the transferor company for the purposes of the transfer by resolution passed by the latter's shareholders in general meeting.

The minutes of the above-mentioned meeting, written in Spanish and attached to the deed

in question, revealed that the shareholders in general meeting had unanimously agreed to authorise the transfer of essential assets from Leadman Trade España, S.L. to Ficrea, SOFIPO or any third parties designated by the latter as recipients, as well as to authorise C.A.A. to take all necessary steps to implement the resolutions passed. The minutes were signed by the Clerk of the Court of the Miami-Dade County Court as the shareholders' will to convene the meeting, approve the agenda and pass the resolutions had been supplanted by said Clerk in accordance with the county court decision. The court rulings that gave rise to this situation were also included in the deed.

The registrar's decision to suspend registration was based, insofar as is relevant here, on the lack of proof of the enforceability in Spain of the foreign rulings and of the formal and substantive validity and enforceability of general meeting resolutions passed and formalised abroad in execution of one such ruling (a final judgment).

The DG first analyses the minutes recording the resolutions passed by Leadman Trade España, S.L.'s shareholders in general meeting and concludes that, since this is a Spanish company, it is governed by the provisions of the Spanish Companies Act. Article 202(2) of this act provides that "the minutes must be approved by the shareholders at the end of the meeting or, failing that, within fifteen days, by the chair of the general meeting and two observer shareholders, one representing the majority and the other representing the minority", and Article 99 of the Registry of Companies' Rules provides as follows: "1. The minutes of meetings shall be approved in the manner provided by law or, failing that, by the deed of incorporation. In the absence of specific

provisions, the minutes shall be approved by the body itself at the end of the meeting [...]. 3. Once the approval has been recorded in the minutes, these shall be signed by the secretary of the body or of the meeting, with the approval of the person who acted as chair [...]".

None of these provisions provides for the possibility of the minutes being signed by persons other than those specified, such as judges or court clerks, with the result that these officials do not have the power to approve the minutes of a general meeting of shareholders, especially when, as in the present case, the signatories do not form part of the Spanish judicature.

With regard to the county court decision, the instrument whose registration is sought is the deed of transfer and not the foreign judgments incorporated therein. When the judgment imposes, as in the present case, an obligation to do something, it is not the judgment itself that is directly registrable in the Registry, but the acts carried out in its execution, such as, in this case, the deed executed. However, the DG analyses the judgments because both the registrar and the appellant base their positions on them.

The instrument submitted for registration in a Spanish registry must meet the requirements laid down in Spanish registry legislation, as set out in Article 10(1) of the Civil Code. In this case, the International Legal Cooperation (Civil Matters) Act is applicable, since the rulings originate from a non-EU State with which Spain has not signed any international agreement on the matter. This act requires the *exequatur* as a prerequisite for the enforcement of foreign rulings (Articles 42(1), 50 and 51), so that, without it, those rulings cannot have any effect beyond proving the existence

of the judgment itself and cannot be registered in the Land Registry.

The DG also affirms the registrar's decision with regard to the power of attorney pursuant to which the representative of Leadman Trade España, S.L. acts, deeming it not valid, since a) the shareholders in general meeting cannot grant powers because the competent body

for doing so is the governing body; b) the documents provided do not meet the requirements of Article 98 of Act 24/2001, in relation to the assessment of the sufficiency of the representation; c) there is no evidence of consent of the principal, who did not intervene in any way in the court proceedings and settlements conducted abroad that gave rise to the transfer.