Appointment of an independent expert on the fair value of shares: the registrar must only verify whether the conditions for such an appointment are met

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1. Facts

Prior to a registrar of companies' appointment of an independent expert, at the request of the minority shareholders of a public limited company, to examine the company's annual accounts for the 2016 financial year, these are approved at an ordinary general meeting of shareholders. After the resolution is passed to

allocate the profits for the financial year to reserves, to which the minority shareholders had voted against, the latter notifies the company of their exercise of the right of exit for non-payment of dividends and requests the appointment of a new independent expert to value their shares.

The registrar of companies appoints a chartered (certified public) accountant to review the annual accounts that had already been approved. Significant errors in the accounts are identified by this expert, leading to their restatement and reapproval three months later, with the result that losses are recorded for the financial year.

Once the annual accounts have been restated and before a new approval thereof, the registrar of companies appoints a chartered accountant — as requested by the minority shareholders — to determine the fair value of the shares in the exercise of the right of exit by those shareholders.

The company requests the registrar to revoke the appointment of the expert to value the shares, on the grounds that the minority shareholders lack standing, as the restated accounts show losses for the financial year.

The registrar argues that he cannot modify or revoke his own decisions and refers the case to the Directorate-General of Registries and Notaries (now the Directorate-General for Legal Certainty and Certification), which revokes the appointment of the expert on the grounds that it should have been suspended until the situation of the accounts conditioning the right of exit had been clarified by means of an audit. In the absence of profit, the material basis for the exit under Article 348 *bis* of the Companies Act disappears.

The decision of the Directorate-General of Registries and Notaries is appealed by the minority shareholders. The Companies Court upholds the appeal, quashes the Directorate-General's decision and rules that the appointment of the independent expert to value the shares is valid. However, the Madrid Provincial Court upholds the appeal lodged by the company and reverses the first instance ruling. Lastly, the minority shareholders lodge an appeal on the grounds of a breach of the provisions governing the determination of a dispute ('cassation' appeal), but the Supreme Court rejects it and affirms the Provincial Court's judgment.

2. Supreme Court Judgment no. 4686/2025 of 31 October 2025

In the court's opinion, it is not the purpose of the proceedings (and this is made clear in the Provincial Court's judgment) to decide on the substance of the matter, i.e. whether minority shareholders can exercise a right of exit for non-payment of dividends.

The Provincial Court's judgment, under appeal, does not rule on the exercise of the right of exit by minority shareholders, as judicial examination is rightly limited exclusively to determining whether the registrar acted correctly in appointing a chartered accountant to value the shares.

The Supreme Court confirms that under no circumstances may the registrar enter into

the merits of the case — that is, whether or not the right of exit is applicable — limiting its function, in the case of the appointment of an independent expert, to verifying whether the conditions for such an appointment are met (although this does not prevent the registrar, upon finding that these conditions are met, having to analyse the actual existence of the right of exit invoked and its proper exercise).

However, this examination by the registrar is purely formal, with the grounds for objection that the company may claim against the appointment of the expert being limited to those provided in Article 354(2) of the Registry of Companies' Rules (applicable by reference to Article 363(1) of the same rules): the inappropriateness of the appointment or the lack of standing of the applicant.

The registrar must analyse the circumstances of each case. In the matter under discussion, it must be taken into account that the request for the appointment of the expert was made by certain shareholders within the framework of the right of exit for non-payment of dividends and that the same shareholders had previously requested the Registry of Companies to appoint a chartered accountant to examine the annual accounts to be used to determine the loss or profit for the financial year; precisely as a result of that audit, the annual accounts were restated to show losses and approved anew.

The Supreme Court concluded that, in the present case, the appointment of an expert to value the shares was not appropriate, as the minority shareholders requesting it lacked standing, since the prerequisite for exercising the right of exit for non-payment of dividends is the existence of distributable profits in the annual accounts, but the restated annual accounts show losses.

That being the case, the registrar should have stayed the appointment of the independent expert to value the shares until the other proceedings concerning the appointment of a chartered accountant had been resolved, since, if the latter were appointed, his report could have an impact on the annual accounts, as was ultimately the case.