Remuneration scheme for directors

This ruling concerned the nullity of a resolution to amend the bylaws of a Spanish corporation with reference to directors' remuneration within the framework of litigation between a textile company and two shareholders who challenged a corporate resolution, on the grounds that the article being amended does not establish a compensation system for directors in breach of Art. 217 of the Corporate Enterprises Law.

Articles in question

Article 217.2 of the Corporate Enterprises Law states that "the compensation system established will determine the item(s) of the remuneration to be received by directors in their capacity as such (...)". Article 28 of the corporate bylaws, to which this ruling refers, says that "[t]he board shall be remunerated, said remuneration comprising a fixed amount of money for services rendered, to be determined each year by the General Meeting of shareholders. "

First and second instance

The hearings at first and second instance upheld the application, deeming that Art. 28 of the bylaws violated Article 217 of the Corporate Enterprises Law, as it did not stipulate a specific compensation system and that the reference to the annual determination by the General Meeting was "vague" and "inaccurate".

Civil Chamber of the Supreme Court

The Civil Chamber of the Supreme Court first examined the purpose of the obligation to establish a system of remuneration provided in the Art. 217 of the law. It established that the main purpose is to encourage corporations to give as much information as possible to shareholders in order to help them monitor the actions of directors and prevent those directors' economic interests differing from the interests of the corporation.

It rules that the Corporate Enterprises Law and the latest doctrinal arguments provide ample freedom to establish the remuneration system in the bylaws. It therefore states that although the precept in the bylaws could have been more specific, there is no doubt that a system of compensation is established, as it states that it comprises "a fixed amount of money", and also contains specific procedures for establishing such amount "by a General Meeting resolution each year". It thus allows the appeal and declares the rulings at first and second instance to be null and void.

Modifications of the remuneration system

Law 3/2014, 3rd December, amending the Corporate Enterprises Law for the improvement of corporate governance introduced important developments regarding directors' remuneration.

The Law provides that the remuneration system must be fair and in line with the economic situation of companies as well as the duties assigned to the directors. Such remuneration should strive to promote corporate profitability and sustainability in the long term.

It also states that the corporate bylaws will set forth a system remunerating directors for their management and decision-making duties. The General Meeting is competent to establish the maximum amount of their annual remuneration, while the Board of Directors has powers to establish the remuneration of each director, thus ensuring that the General Meeting has the final say over such remuneration.

Moreover, the Law obliges listed companies to seek approval from the General Meeting for a remuneration policy that specifies the maximum amount of remuneration. This policy must be adopted and ratified every three years.