Shareholders, the focal point

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The board of directors of listed companies must be guided by social interest, this being understood to be the achievement of a profitable and sustainable business in the long term, which promotes its continuity and the maximisation of its economic value. And in the search for social interest, in addition to adherence to laws and regulations, and behaviour based on good faith, ethics and respect for good practices, the board of directors must attempt to reconcile social interest with the legitimate interests of employees, suppliers, clients and other stakeholders that may be affected, as well as taking into account the impact of the company's activities on the community as a whole and on the environment."

This is somewhat lengthy, but it cannot be denied that it sounds good. Slightly simplified is the text of one of the recommendations of the prevailing good governance code of listed companies, which was approved by the CNMV in 2015 on the basis of the work carried out by a group of experts, in which the actual listed companies were represented. It should be clarified, for unlisted companies, that when the good governance code or our Corporate Companies Act mention social interest, they do no refer to the common good or the general interests of Spanish society, but to the objectives or interest of the company concerned in each case.

The issue has to do with the ongoing international debate on the objective that must be pursued by companies, in particular large companies; on what their purpose should be, to use an imported term which is also becoming popular among us. Social interest is the equivalent technical term that is used in corporate law.

An issue that is not new and which evokes traditional discussions among legal experts, and which, in general, has been resolved in our country, as well as at the case law level, in favour of what is known as contractarianism theory – the corporate entity, the company, as a contract between partners or shareholders - versus the institutionalist or corporatist vision. The former identifies social interest with the common interest of shareholders, or as has also been stated, with the interest of common shareholders. The latter, of German origin, considers that corporate entities have a life of their own, separable from that of their shareholders, which is due both to them and to their employees, their suppliers, their clients, and the districts or municipalities where their premises or offices are located, and even society in general.

In August 2019, an association called Business Roundtable, which comprises chief executive officers of leading North American companies, issued a statement that attracted a lot of attention as it placed the creation of shareholder value on the same plane as the objectives of "delivering value to our clients, investing in our employees, dealing fairly and ethically with our suppliers and supporting the communities in which we work". The statement, which was issued at a time of particular sensitivity due to values such as sustainability and equality, had a resounding impact. Just one week after this, The Economist published the front page news article "What are companies for?", and in mid-September the Financial Times also made special reference to the issue on a yellow front page with the headline "Capitalism, time for a reset". However, there were others who downplayed the importance of the statement and considered it as a rhetorical or strategic tool.

The aim of this article is to uphold recommendation 12 of the aforementioned 2015 good governance code, which in my opinion, represents a balanced and fair way of addressing the issue. The recommendation places in the foreground the creation of shareholder value as the objective to be pursued by companies' management, although it states that it must be a long-term sustainable value and simply highlights the need to respect and to reconcile this with the other relevant interests mentioned in the Business Roundtable statement.

I also consider that these other interests are going to be maintained at a non-discreet but different level. Apart from the fact that it is also good for companies to endeavour to be efficient, in particular, thus contributing to their general well-being and prosperity, there is a concern in terms of requirements and accountability, from both a political and purely business point of view. On the one hand, the promotion of general interests seems to be more characteristic of politicians, who we all choose and we may decide not to re-elect, than of chief executive officers of leading companies. On the other hand, the performance of directors and management must be measurable, and it would be difficult to do so in respect of different criteria which are based on non-quantitative aspects; the economic value of a company is something that is much easier to measure and compare.

In any case, the aforementioned recommendation 12 contains a purely indicative criterion, on the basis of which each listed company must issue its statements in terms of "comply or explain". There is nothing to prevent a company - not just its directors - from opting to place, in a transparent manner, all the aforementioned objectives on the same plane. In view of the increasing demand for information on the degree of sustainability of company activities and the increasing interest of investors in considering environmental and social factors, in some cases this may even lead to greater efficiency. However, I still believe that it makes absolute sense to consider the creation of shareholder value positively, and as a basis for comparing companies. In this regard, I would like to remind you that most of these shareholders are ultimately small investors who entrust their savings to fund management companies, including pension fund management companies.

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