

## RECHTSPRECHUNG / JURISPRUDENCE

### **Request for the Inspection of the Accounting Books by a Shareholder and a Quota Holder Judgment of the Supreme Court, 1 July 2004**

*Hiroshi Oda*

Article 293-6 of the Commercial Code provides for one of the rights of minority shareholders – the right to inspect and copy accounting books and financial documents. Shareholders with more than 3% of the issued shares are eligible. Article 293-7 which follows sets out grounds on which the company is entitled to refuse the request of the shareholder. The case law requires that the reason for the request be specific and the document to be inspected be specified (Judgment of the Takamatsu High Court, September 29, 1986, subsequently upheld by the judgment of the Supreme Court, November 9, 2000).<sup>1</sup> The Law on Limited Liability Companies has similar provisions (a quota of 10% or more is required).

Since allowing access to these documents may entail serious consequences for the company, the court had to strike a balance between the protection of the minority shareholders' rights and the protection of the interests of the company. The court tended to be fairly strict in allowing inspections. The above-mentioned case law is a good example of such an approach. At the lower court level, there have been cases where the request of a shareholder was rejected on the ground that it was not made in order to conduct an investigation for securing and exercising shareholders' rights, or it was made by a shareholder who was simultaneously involved in concurrent business which are the statutory grounds for rejection of the request by the company (Art. 293-7, paras. 1 and 2).

This is the first case where the Supreme Court ruled in detail on the requirements for the request of a shareholder (quota holder) to inspect and copy accounting books (the above-cited Supreme Court judgment of 2000 merely upheld the high court judgment in several lines) and ruled in favour of the shareholder (and the quota holder).

In the present case, the plaintiff (the *jokoku* appellant) inherited shares of several companies (4 joint stock companies and a limited liability company – the defendants and *jokoku* appellees) held by the deceased. The deceased had held between 21% and 46% of the shares of the joint stock companies and 38.4% of the equity of the limited liability company. The shares are now held by the inheritance estate; the plaintiff is

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1 For the comments on this case, see S. IWAHARA, in: *Jurisuto* No.1056 (1994) 155-158.

entitled to 25% of the estate by statutory inheritance. The joint stock companies are closed companies in which the transfer of shares is subject to the approval of the board.

The plaintiff brought an action against these companies, requesting the inspection of the accounting books on the following reasons:

- a. A company not involved in this case received unsecured loans from the defendant companies totalling around 50 billion yen. However, this company came into financial difficulties after lending more than 7 billion yen to a director of one of the defendant companies without taking a security. The recovery of the 50 billion yen loan became uncertain. It was the view of the plaintiff that the 50 billion yen loan by these companies was unlawful and inappropriate and needed investigation;
- b. The plaintiff, with the prospect of splitting the inheritance estate with other heirs and the payment of inheritance tax, needed to determine the current value of the shares and the quota of the defendant companies;
- c. One of the defendant companies owned 15 billion yen, and another company 5 billion yen worth in book value of art works and have entrusted them to a foundation which was part of the company group. The acquisition of such highly valuable art works for non-profit purposes excessively reduced the assets of the companies and was highly likely to cause irreversible harm to the company, shareholders and employees and this warranted an investigation;
- d. One of the defendant companies assigned shares of another company to a director of a group company at an inappropriately low price and this also required an investigation.

The original instance court dismissed the claim of the plaintiff on the ground that in order for a shareholder of a joint stock company or a quota holder of a limited liability company to request the inspection and copying of accounting books and financial documents, they need to specify the reasons for the request in a concrete manner which is sufficient to identify the accounting books which need to be inspected or copied. The court also added that the facts which substantiate these reasons should be objectively present. However, in the view of the court, reasons a, c, and d were not substantiated by objectively existing facts, and therefore, fall within the category of the grounds for the rejection of the request of shareholders as provided in Article 293-7 of the Commercial Code. Paragraph 1 of this provision lists an instance where a shareholder makes a request that is not for the purpose of conducting an investigation in order to ensure the exercise of shareholders' rights. Concerning the ground b, this was found to be a purely personal request which has nothing to do with the status of the shareholder, and was found to be impermissible.

The Supreme Court quashed this judgment and remanded the case to the original instance court on the following grounds:

Although the Commercial Code and the Law on Limited Liability Companies provide that the request for the inspection and copying of the accounting books needs to be in writing and that the ground for the request need to be indicated, there is no legal basis which requires that the facts which serve as a basis of the claim objectively exist. Reasons a, c, and d, put forward by the plaintiff are specific enough. There is no ground for the rejection of the request.

Concerning point b, this is also specific enough. Then, whether there is a ground for rejecting this request or not needs to be examined. In a closed company, if a shareholder intends to assign shares to a third party, there is a procedure set out by the Commercial Code in which the shareholder is entitled to request the company to approve the assignment of shares to a specific purchaser, and if the company does not approve it, it is required to designate an alternative buyer. If the purchase price cannot be agreed between the shareholder and the designated buyer, the shareholder is entitled to ask the court to determine the price. The same applies to limited liability companies. In order for the shareholder or a quota holder to exercise these rights, it is necessary to determine the appropriate value of the shares or the quota. For this purpose, it is indispensable for them be able to inspect the accounting books which reflect the financial state of the company. The request for the inspection and copying of the accounting books for the purpose of determining the appropriate value of the shares and the quota should be regarded to be for the investigation relevant to the ensuring and the exercise of shareholder' rights as provided in Article 293-7, para.1. The Supreme Court denied the existence of 'special circumstances' in this present case, and found reason b to be justifiable as well.

It should be added that on the last point, there is a Tokyo High Court decision which allowed inspection in a similar situation where the shareholder had jointly inherited shares of a company and requested an inspection of the accounting books (Decision of the Tokyo High Court, September 3, 2001).

Although the lower courts have been fairly cautious in granting access to the accounting books, in the present case, the original instance court may have gone too far by asking the shareholder to substantiate the facts supporting the request in the absence of an explicit statutory basis. The case law had already added the requirement by interpretation that the reason be specific in order to prevent ungrounded actions by shareholders. The present judgment is significant in that it has slightly adjusted the scale which had been tilting in favour of the company in the past.