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The International Comparative Legal Guide to:

Corporate Governance 2012

5th Edition

A practical cross-border insight into corporate governance

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EDITORIAL

Welcome to the fifth edition of *The International Comparative Legal Guide to: Corporate Governance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

It is divided into two main sections:

One general chapter. This chapter outlines the directors' duties in the "Zone of Insolvency".

Country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 34 jurisdictions.

All chapters are written by leading corporate governance lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Bruce Hanton of Ashurst LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

Although corporate governance is relevant to all types of companies, this article mainly refers to listed public limited companies and listed companies of securities admitted for trading on secondary markets.

1.2 What are the main legislative, regulatory and other corporate governance sources?

With regards to Spanish public limited companies and limited companies, the primary corporate legislation is contained within the Royal Legislative Decree 1/2010 of July 2nd regarding the approval of the contained text of the Company's Act Law, ("*Real Decreto Legislativo de 2 de Julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*" ["**LSC**"]).

Every company has Articles of Association ["**AoA**"] prescribing the terms and conditions for the functioning of the company. These reflect the contract and relationship between shareholders and contain the rules for the company including rules on, for example, shareholder meetings, powers and duties of directors and many other aspects related to governance. In case of conflict, legal provisions normally prevail over AoA.

Other mandatory regulations on corporate governance in Spain are:

- Law 24/1988 of July 28th, on the Securities Market ("*Ley 24/1988 del 28 de Julio, del Mercado de Valores*" ["**LMV**"]).
- Law 3/2009 of April 3rd, on Structural Modifications ("*Ley 3/2009 del 3 de Abril de Modificaciones Estructurales*" ["**LME**"]).
- Law 25/2001 of August 1st, on partial modifications of the Company's Act Law ("*Ley 25/2011, de 1 de agosto, de reforma parcial de la Ley de Sociedades de Capital y de incorporación de la Directiva 2007/36/CE, del Parlamento Europeo y del Consejo, de 11 de julio, sobre el ejercicio de determinados derechos de los accionistas de sociedades cotizadas*").
- Royal Decree-Law of March 16th ("*Real Decreto-ley 9/2012, de 16 de marzo, de simplificación de las obligaciones de información y documentación de fusiones y escisiones de sociedades de capital*").
- Royal Decree-Law on Sustainable Economy 2/2011 of March 4th ("*Real Decreto Ley 2/2011 de 4 de Marzo, de Economía Sostenible"* ["**LES**"]).
- Royal Decree of July 19th of Mercantile Registry Regulation ("*Real Decreto 1784/1996, de 19 de julio, por el que se aprueba el Reglamento del Registro Mercantil*").
- Law 19/1988 of July 12th, of Audit Accounts ("*Ley 19/1988, de 12 de Julio, de Auditoría de Cuentas*").
- Law 26/2003 of July 17th, that modifies the Law 24/1998 on the Securities Market and the Public Limited Company Law for boosting transparency of listed companies ("*Ley 26/2003, de 17 de Julio, por la que se modifican la Ley 24/1988, de 28 de Julio, del Mercado de Valores, y el texto refundido de la Ley de Sociedades Anónimas, aprobado por el Real Decreto Legislativo 1564/1989, de 22 de diciembre, con el fin de reforzar la transparencia de las sociedades anónimas cotizadas*").
- Royal Decree 1362/2007 of October 19th, regarding transparency requirements in relation to information about the issuers whose securities are listed in an official secondary market ("*Real Decreto 1362/2007, de 19 de Octubre, por el que se desarrolla la Ley 24/1988, de 28 de Julio, del Mercado de Valores, en relación con los requisitos de transparencia relativos a la información sobre los emisores cuyos valores estén admitidos a negociación en un mercado secundario oficial o en otro mercado regulado de la Unión Europea*").
- Royal Decree 1333/2005 of November 11th, developing the LMV regarding market abuse ("*Real Decreto 1333/2005, de 11 de Noviembre, por el que se desarrolla la Ley 24/1988, de 28 de Julio, del Mercado de Valores, en materia de abuso de mercado*").
- Order EHA/3050/2004 of September 15th, on Related Parties Transactions ("*Orden EHA/3050/2004 del 15 de Septiembre, sobre la Información de Operaciones Vinculadas que deben suministrar las sociedades emisoras de valores admitidos a negociación en mercados secundarios oficiales*").
- Ministerial Order ECO/354/2004 of February 17th, on the Annual Corporate Governance Report issued by Saving Banks ("*Orden Ministerial ECO/354/2004 del 17 de Febrero, sobre el informe anual del gobierno corporativo y otra información de las Cajas de Ahorro que emitan valores admitidos a negociación en Mercados Oficiales de Valores*").
- Ministerial Order ECO/3722/2003 of December 26th, on the Annual Corporate Governance Report issued by public limited liability companies ("*Orden Ministerial ECO/3722/2003 del 26 de Diciembre sobre el informe anual de gobierno corporativo y otros instrumentos de información de las sociedades anónimas cotizadas y otras entidades*"); so-called the "Aldama Report".
- Circular 4/2007 of December 27th, from the Spanish Security Exchange Commission by virtue of which the sample of Annual Corporate Governance Report is modified (*Circular 4/2007 del 27 de Diciembre de la "Comisión Nacional del Mercado de Valores*" ["**CNMV**"] *por la que se modifica el modelo de informe anual de gobierno corporativo de las sociedades anónimas cotizadas*).

- Circular 2/2005 of April 21st, from CNMV on the Annual Corporate Governance Report to be issued by Saving Banks ("*Circular 2/2005 del 21 de Abril de 2005 de la CNMV sobre el informe anual de gobierno corporativo y otra información de las Cajas de Ahorro que emitan valores admitidos a negociación en Mercados Oficiales de Valores*").
- Circular 1/2004 of March 17th, from CNMV on the Annual Corporate Governance Report to be issued by public limited companies ("*Circular 1/2004 del 17 de Marzo de 2004 de la CNMV sobre el informe anual de gobierno corporativo de las sociedades anónimas cotizadas y otras entidades emisoras de valores admitidos a negociación en mercados secundarios oficiales de valores, y otros instrumentos de información de las sociedades anónimas cotizadas*").

Soft Law:

- Code of Corporate Governance of listed companies ("*Unified Code of Corporate Governance" or "Código Unificado de Buen Gobierno*"), approved in May 2006 by the CNMV, which sets out recommendations under the principle of "comply or explain".

1.3 What are the current topical issues, developments and trends in corporate governance?

Corporate governance is gaining relevance and importance with regards to the compliance of companies. Even though the Code of Corporate Governance set certain standards in relation to corporate governance, companies are creating and adopting their own corporate governance policies.

Recently, the LES introduced new legal provisions following the European Union legislation regarding corporate governance addressed the issues of making companies more transparent and strengthening corporate governance standards. Among others, this includes the obligation to disclose more information in the Annual Corporate Governance Report (i.e. information regarding securities issued by companies not admitted for trading on secondary markets, agreements affected by any change of control resulting from a takeover bid or restrictions to the assignment of shares or other securities).

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Every shareholder has at least the following rights: **(i)** to take part in the allocation of the benefits and in the liquidation quota; **(ii)** pre-emptive rights for new shares; **(iii)** to attend and to vote in the General Shareholders' Meeting; **(iv)** to challenge the corporate agreements; and **(v)** to information [explained in question 2.6 below].

In relation to operations and management of the company, the most important points are the last three abovementioned, in addition to the right to call a General Shareholders' Meeting [explained in question 2.6 below] and the right to seek enforcement action against members of the Management Body [explained in question 2.4 below].

Attending and voting in the Shareholders' Meeting enables the shareholder to intervene in the management of the company: (i) approving the annual accounts, the distribution of profits (or allocation of losses) and the management of the company; (ii) appointing and ceasing directors, auditors and liquidators (if the case); and (iii) modifying the AoA and the transformation, merge, spin off, global assignment or change of domicile.

By challenging Management Body agreements that infringe the law, the AoA and/or those that jeopardise the corporate interests in favour of shareholders and/or third parties, the shareholder is monitoring and controlling the operations and management of the company.

2.2 Can shareholders be liable for acts or omissions of the corporate entity/entities?

As a general rule, in both limited companies and public limited companies, shareholders' liability is limited to the amount of their capital contribution. Therefore, they do not have direct personal liability for the acts or omissions of the company.

2.3 Can shareholders be disenfranchised?

As per Spanish legislation in force, shareholders of companies can be disenfranchised only in very limited situations, for instance in case of requirements in the AoA to hold a minimum number of shares in order to have the right to attend General Meetings, acquisition of companies' own shares or squeeze out of minority shareholders in some successful takeover bids.

Additionally, and as a penalty, shareholders may be disenfranchised and suspended from their right to vote in the Shareholders' Meeting when disbursement of capital is pending and due, and the shareholder has not complied with the disbursement at the time of holding the meeting.

In a listed public limited company there cannot be a limit to the number of votes which can be issued by a shareholder or a company belonging to the same group. In the case that the AoA state the contrary, that clause will be considered null and the company must adapt them to the legal provisions.

2.4 Can shareholders seek enforcement action against members of the management body?

The shareholders, as well as the company and creditors, can seek enforcement action against members of the Management Body. There are different liability actions against directors:

(i) Company's Action: the company can bring a liability action against directors, subject to the existence of a previous resolution from the Shareholders' Meeting which is adopted by ordinary majority; at any time the Shareholders' Meeting may settle or renounce the exercise of the action, provided that there is no opposition by the 5% of share capital. Bringing the action will provoke the cessation of the affected directors.

(ii) Individual Action: shareholders and third parties have an individual liability action against directors if their interests were damaged due to the acts of the director.

(iii) Subsidiary Action: creditors can exercise the company's liability action against directors when it has not been exercised either by shareholders or by the company, subject to the condition that the shareholders' equity is not enough to satisfy their credits.

Therefore, the Management Body will be liable before the company, shareholders and the company's creditors for any of damage caused as a result of acts or omissions contrary to law, the AoA or in the case of negligence.

2.5 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

The general rule is that there is not a limitation or disclosure

required in relation to interests in securities held by shareholders in the company; nevertheless, in listed companies shareholders who in a direct or indirect form acquire or transfer shares of a listed company exceeding or diminishing from the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 60%, 70%, 75%, 80% and 90% that includes voting rights, must inform the company and the CNMV within four stock market days from the day it become aware of the transaction.

2.6 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

Shareholders' Meetings:

A. From the agenda point of view, the Shareholders' Meetings may be held as (i) an ordinary, or (ii) an extraordinary meeting.

(i) *Ordinary Shareholders' Meeting*:

An ordinary meeting will be held during the first six months of each business year, in order to approve:

- The annual accounts of the previous business year.
- The allocation of the results of the previous business year.
- The management of the company of the previous business year.

The Ordinary Shareholders' Meeting will be valid even though it has been called or held after the first six months from the end of the business year that the annual accounts are referred to.

(ii) *Extraordinary Shareholders' Meeting*:

The Extraordinary Shareholders' Meeting is any meeting with a different agenda from the one of the Ordinary Shareholders' Meeting.

B. By way of conveyance, the Shareholders' Meeting can be (i) universal, or (ii) called.

(i) *Universal Shareholders' Meeting:*

A Shareholders' Meeting shall be "*universal*" when no conveyance exists, and when each and every shareholder is present or represented, and it is unanimously agreed that the meting constitutes a Universal Shareholders' Meeting with a specific agenda.

(ii) *Called Shareholders' Meeting:*

The General Shareholders' Meeting will be called by the members of the Management Body. As well as the call for the Ordinary Shareholders' Meeting, calls from directors can be made at any time when necessary in relation to the social interest and the AoA.

Shareholders' Rights:

(i) Right to request the Management Body to call the Shareholders' Meeting.

Members of the Management Body will call a meeting when requested in writing by one or more shareholders, whose participation in the share capital represents at least the 5%; the written request must contain the points on the agenda to discuss.

From the time of notice of that request through notary, the meeting must be called within the following two months; that call must include in the agenda the points to be discussed, as mentioned in the written request.

If there were not a call for the meetings within the relevant time period, a Mercantile Court would call the meeting once the directors were heard by request of any shareholder. The Court will deliver its resolution, which is not appealable, within one month.

(ii) Right to include additional points in the agenda.

In a public limited company, shareholders representing at least 5% of share capital may request the publication of an addition to the agenda, once it has already been published. This request must be done through reliable notice that has to be received by the company's domicile within five days from the publication of the call.

The addition to the agenda should be published at least fifteen days before the date of the meeting, otherwise the meeting will be void.

(iii) Right to information:

- In limited companies:

  Shareholders may request in writing information about the points included in the agenda before the Shareholders' Meeting and during its holding they have the right to request it orally.

  The Management Body is obliged to provide the answers to this request from the shareholders, unless the disclosure of such information could jeopardise the company's interest. This exception is superseded when the request is made by at least 25% of the share capital.

- In public limited companies:

  Shareholders of a public limited company have the same right to be informed about the agenda of the Shareholders' Meeting; nevertheless, the request in writing has to be submitted seven days before holding the Shareholders' Meeting. Additionally, shareholders are entitled to orally request clarifications, explanations and information about the agenda.

  The Management Body is obliged to provide the answers to this request from the shareholders, unless the disclosure of such information could jeopardise the company's interest. This exception is superseded when the request is made by at least one fourth of the share capital.

  In the event the Management Body could not comply with the request during the meeting, such request has to be complied with within seven days from holding the meeting.

- In listed companies:

  Shareholders of listed companies, as well as the general right to information to be exercised as explained above, have the right to request in writing (to be submitted seven days before holding the Shareholders' Meeting) information and clarifications and to draw questions regarding publicly disclosed information sent by the company to the CNMV from the holding of the very last Shareholders' Meeting.

- Place:

  Regarding the place, the General Shareholders' Meeting will be held in the city where the company has its domicile; however the AoA might establish the contrary. Usually, General Shareholders' Meetings are held in the company's domicile.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Management Body:

The company is managed by the Management Body, as well as being represented by it. The Management Body of the company is composed of different forms, such as:

(i) a Sole Director;

(ii) various members acting jointly and severally, or jointly; or

(iii) a Board of Directors.

LSC states that the AoA might establish different ways of organising the management of the company, such as granting the

Shareholders' Meeting the faculty to choose any form between those foreseen without AoA modification.

Regarding the Board of Directors:

When the AoA only establish a minimum and maximum number of members, the Shareholders' Meeting will have faculties enough to determine the specific number of members which will compose the Management Body.

The Board of Directors will be composed of at least three members. The AoA will determine the number of members of the Board, or the minimum and maximum number within the legal provisions.

In a limited company's Management Body, the number of members will not exceed twelve.

The Code of Corporate Governance establishes the ideal size for the Board of Directors of listed companies as between 5 and 15 members. It also establishes the categories of Executive Director, Proprietary Director and Independent Director.

Who can be appointed?

There is no prohibition regarding the nature of the member; therefore, either an individual or a company can be appointed as a member of the Management Body.

The LSC allows individuals and/or corporations that are not partners or shareholders to be appointed as members of the Board; nevertheless, the AoA may establish the contrary.

Delegation – Committees:

The Board of Directors may delegate part of its management and representation powers to one or more directors (Chief Executive Officers) and/or to Executive Committees.

3.2 How are members of the management body appointed and removed?

Appointment:

The Management Body will be appointed by the Shareholders' Meeting. This latter may determine or not the duty of the directors' to grant a guaranty, as established in article 214 of the LSC. The members of the Management Body will be individuals or companies. If a company is appointed as member of the Management Body, it shall then designate an individual to develop the functions of the post.

Since the moment the post is accepted by the appointed directors, the appointment is in full effect. Once the acceptance is granted, it must be filed before the Mercantile Registry during the next ten days for its recording in the official records of the company.

The Shareholders' Meeting may also appoint "substitute directors" in order to cover any vacancy for any cause in the Management Body. Likewise, the appointment and acceptance of the "substitute director" must be registered before the Mercantile Registry.

The LSC, for public limited companies, foresees special procedures for the appointment of directors. These are:

(i) Proportional Representation: As stated in article 243 LSC, shareholders might form groups and appoint a number of members according to the percentage of share capital that belongs to each group.

(ii) Cooptation: The Board of Directors may appoint a shareholder as a director to cover a supervening vacancy, or when no "substitute director" has been appointed, until the next Shareholders' Meeting (article 244 LSC).

The Code of Corporate Governance recommends that the proposal for the appointment and renewal of members that the Management Body submits to the Shareholders' Meeting should be approved by the Management Body on the proposal of the Nomination Committee (in the case of independent directors) or subject to a report from the Nomination Committee in other cases.

Removal:

The members of the Management Body can be removed from their post at any time by resolution from the Shareholders' Meeting, which is entitled to remove any director from its post without specifying the reason or without previously including such removal in the agenda.

In a limited company, for passing the removal resolution, in some cases the AoA might request the favourable vote of the partners representing two thirds of the share capital.

In a public limited company, any member of the Management Body should be removed, at the request of a shareholder, provided that he/she:

(i) falls within any of the legal prohibitions; or

(ii) has interest contrary to the ones of the company.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

- Articles 217 up to 219 of the LSC foresee the rules for the remuneration of members of the Management Body.
- The Code of Corporate Governance in recommendations number 35 to 41.
- The LES in article 27 determines the creation of a report regarding remuneration that must be available to the shareholders and it will be approved by the General Shareholders' Meeting.
- Article 61 *bis* of the LMV that details the content of the Annual Corporate Governance Report. One of the points is precisely the identity and remuneration of the members of the Management Body.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

The limitations on, and the required disclosure in relation to the interests in securities held by members of the Management Body in a listed company is the duty to inform the CNMV, regarding:

(i) Shares they hold in the company at the time of appointment and removal.

(ii) Shares they might purchase or dispose of during their term as directors.

(iii) Stock option plans related to the company shares of which they may be beneficiaries.

All transactions made by directors or related parties in relation to shares of the company must be communicated.

3.5 What is the process for meetings of members of the management body?

The process for meetings of directors of the Management Body is, as per LSC, that the Chairman has the faculty to call a meeting.

- Quorum:

The quorum for validly held by the Management Body Meeting is majority; thus, the majority of its members should attend the meeting personally or duly represented.

- Voting:

For passing resolutions, the favourable vote of the majority of the

members attending the meeting (either personally or represented) is requested.

Qualified majorities are needed for certain agreements, for example the favourable vote of two thirds of the members of the Management Body is necessary when appointing a Chief Executive Officer in a public limited company.

Finally, the AoA can also provide the Chairman a casting vote in the event of a tie.

- Meeting in writing and without session ("*Consejo por escrito y sin sesión*"):

There is a special way of holding a Management Body meeting that has to be foreseen by the AoA, and unanimously agreed by the members of the Management Body in order to be valid; this is the meeting held in writing and without session.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The LSC establishes a set of duties that must be taken into account and that the Management Body must comply with:

- Diligent management:

  Each member of the Management Body will carry out his task with the diligence of a business man; and must diligently be informed concerning the running of the business of the company.

- Loyalty:

  Each member of the Management Body will carry out his task in the interest of the company, complying with duties established by the AoA and the legislation.

- Prohibition of using the company's name or referring to "the member of the Management Body" condition in order to perform own acts for himself or for related parties.

- Prohibition of business opportunities regarding investments or activities affecting the company' assets:

  No member of the Management Body is allowed to take advantage of business opportunities affecting the company when that investment or activity was known by the member as a consequence of being a member, or when it was offered to the company, or the company had an interest in it.

- Duty to notify conflict of interests:

  Members of the Management Body must notify remaining members – or in case of a sole director, the Shareholders' Meeting – of any direct or indirect conflictive situation that might arise and cause damage in relation to the interests of the company.

  Members must inform, as stated above, of such situation, as well as of any relationship that they or any related parties (defined by article 231 of the LSC) may have with competitors in the market; they must also communicate the tasks or faculties performed in those companies. Such information must be published in the Annual Report.

- Prohibition of competition:

  Members of the Management Body are not allowed to perform by themselves or through participation in the company, an equal, analogous or complementary set of activities that conflict the corporate objective of another company, unless they have express authorisation from the Shareholders' Meeting.

- Secrecy:

  Members of the Management Body, even after the cessation of their posts, must keep a duty of secrecy in relation to confidential information known due to their posts, unless legal provisions authorised them to release such information.

  In the event that the director is a company, the duty of secrecy has to be observed by its legal representative.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

Some of the main specific corporate governance functions of the members of the Management Body are contained in the Code of Corporate Governance. The members of the Management Body should assume the main following functions: (i) to approve the company's strategy and the necessary media to follow it; and (ii) to monitor and control how the executives and officers achieve the detailed target and observe the corporate purpose and the company's interests. Those persons who have a specific post in the Management Body also have specific functions:

- Chairman:

  Besides dealing with calling the meeting, establishing the agenda and conducting the meetings, the Chairman will also ensure that the members of the Management Body receive necessary information enabling them to participate in an active way in the Board deliberations.

- Secretary:

  The Secretary must facilitate the running of the meetings of the Management Body, as well as take care to supply directors the information and advice they need. The Secretary must also keep minutes of the Board meetings and certify resolutions.

  Also, the Secretary will ensure that the proceedings and acts of the Board of Directors comply with the legal and material form contained within its own rules of corporate governance.

- Members of the Board of Directors:

  Every member of the Board has to responsibly and actively take part in all deliberations and decisions.

3.8 What public disclosures concerning management body practices are required?

Additionally, in terms of the disclosures of information regarding the practices of the Management Body that have to be detailed in the Annual Corporate Governance Report and in the listed company webpage, the Code of Corporate Governance recommends:

(i) To establish some mechanism to scrutinise the function and performance of the Management Body and that of its committees with regularity; it is also recommended to have an appraisal of each director individually.

(ii) To lay down rules for the selection and appointment of a director and disclosure of their particulars; also to keep updated personal and professional information of the members of the Management Body.

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

In relation to indemnities or insurances permitted to members of the Management Body, there are insurance policies known as "D&O", which stands for "Directors and Officers". This type of insurance will cover Directors and Officers' civil liabilities that arise out from their posts.

4 Corporate Social Responsibility

4.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Within the Spanish legal system, there is no specific law or regulation on corporate social responsibility, except for the Royal Decree 221/2008 by virtue of which the Corporate Social Responsibility Council is incorporated ("*Real Decreto 221/2008, de 15 de febrero, por el que se crea y regula el Consejo Estatal de Responsabilidad Social de las Empresas*"). Additionally, there are some instruments that foresee several provisions in this matter, such as:

(i) The Code of Corporate Governance: it contains recommendations about the corporate social responsibility.

(ii) LME: it states the duty of filing a report with the legal and economical implications for the members, regarding the structural modifications.

(iii) LES: Article 39.3 enables the public limited companies to annually disclose in a report their policies and objectives regarding corporate social responsibility. In the case of companies with more than one thousand employees, this annual report must be given to the Corporate Social Responsibility Council. Likewise, those companies that wish to be honoured as a socially responsible company could ask for such honour according to the terms and conditions detailed by the abovementioned Council.

4.2 What, if any, is the role of employees in corporate governance?

Nowadays, Spain is trying to include employees into corporate governance. Nevertheless there is not a *specific* legislation yet, apart form the LME that grants employees a right to information similar to that of shareholders in the structural modifications, especially when the employment situation may suffer a change.

From the point of view of the "soft law" and in relation to the tasks of the Audit Committee, the Code of Corporate Governance took inspiration from the European Commission *Recommendation* dated 15 February 2005 for supervising the internal audit function and reviewing the risk management system. The Audit Committee could be entrusted with the creation and monitoring of special channels for employees to report irregularities in such areas ("whistle blowing").

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

Regarding listed companies, article 35 *ter* of the LMV establishes that the company and its directors are responsible for information disclosed. Thus, in a listed company the Board of Directors must adopt an active position in this regard: the Board must ensure the information about the company's activities and results provided to the market are accurate and faithful.

In this sense, the Olivencia Report contained several recommendations emphasising the responsibility of the Board of Directors for being especially agile, careful and precise on transmitting the information, especially regarding relevant issues that could affect the prices of the market. Such recommendations are included in the Code of Corporate Governance.

5.2 What corporate governance related disclosures are required?

In relation to corporate governance and its provisions, listed companies are subject to the duty to disclose to the market the following information and documents:

1. An annual financial report within the first four months following the closing of the business year. This financial report should comprise the annual accounts (as per established in LSC, those are compound by the balance sheet, the profit and loss account, statement of changes in equity, cash-flow statement and the annual report) and the management report (including the corporate governance report) revised by auditors, as well as its contents liability declarations.
2. A biannual interim financial report that should include the resumed annual accounts, an intermediate management report and its contents liability declarations.
3. A quarterly interim management report to be issued within the first and second six-month period of the business year that should have the following minimum content: (i) an explanation of the significant events and transactions that took place in the relevant period and their impact on the financial situation of the listed company and its controlled companies; and (ii) a general description of the financial situation and the results of the listed company and its controlled companies within the relevant period.
4. Any change in the rights of the securities or information about new debt issuances.
5. Any project to modify the incorporations documents or the AoA.
6. Information regarding significant holdings and regarding transactions of listed companies with their own shares.
7. Information in relation to the transactions carried out over the company's securities by its directors, officers and their family/arm's length ties.
8. Price sensitive information, that is to say, information that could reasonably have an impact on the securities listing within the market and thus affect the investors (i.e. non-statutory shareholders' agreements, essential modifications in the management rules).
9. The Annual Report on Corporate Governance which should be published as "Price sensitive information" must contain at least the following information regarding the company: (i) ownership structure; (ii) management and administrative structure; (iii) related-parties transaction between the company and its shareholders and directors and officers as well as intra-group transactions; (iv) risk control system; (v) functioning about the Shareholders' Meeting; (vi) explanation about the compliance of the corporate governance recommendations and about the reasons for non-compliance; and (vii) a description of the main aspects of the risk monitoring and internal management system in relation to the transmission of financial information.

5.3 What is the role of audit and auditors in such disclosures?

The role of the auditors is one of the touchstones within the control system of a company.

As stated in the LSC and in the Law 19/1988 of Audit Accounts, the role of audit and auditors in such disclosures is the revision and verification of the accounting documents to decide whether or not such data reflects the accurate and faithful image of the company.

The report issued by the auditors may affect third parties, and

therefore, they have the duty to be independent when developing their activities and tasks and the Board of Directors is obliged to adopt the necessary measures to ensure auditors duly perform their work.

Auditors will be hired for an initial period of no less of three years and up to nine years; auditors could be hired for maximum periods of three years once the initial period has ended.

In the case a period of seven years has passed from the initial contract and the company is subject to public supervision, or its net turnover is higher than 50 million Euros, there must be a rotation of the accounts auditor responsible for the tasks and all the members of the team.

5.4 What corporate governance information should be published on websites?

Every shareholder has the right to information according to the LSC. Additionally, there are specific provisions for shareholders of listed companies mainly foreseen by LSC, by the Ministerial Order ECO/3722/2003 of December 26th, by the Annual Corporate Governance report issued by public limited liability companies and by the CNMV Circular 1/2004 of March 17th on the Annual Corporate Governance report to be issued by public limited companies.

Since 2004, listed companies ought to have a website to comply with the shareholders' right to information and to disclose relevant information. The minimum content of the webpage should be the following:

- Articles of Association.
- Internal regulations of the Shareholders' Meeting, the Board of Directors and – should it be the case – of the Board of Directors Committees.
- Annual reports and internal regulations.
- Corporate governance reports.
- Documents regarding the Shareholders' Meetings with information in relation to the agenda, the proposals made by the Board of Directors, as well as relevant information for the shareholders to issue their vote.
- Information about the sessions of the Shareholders' Meetings held.
- The existing channels between the company and the shareholders that enables shareholders to exercise their right to information detailing the contact address and email.
- The ways of conferring representation and delegating the vote for the Shareholders' Meeting and for remote voting. Official forms evidencing representation and voting online.
- Price sensitive information.

Directors are responsible for keeping the content of the webpage up to date, as well as coordinating such information with that reflected in the documents deposited and recorded before public registries.

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GOÑI Y CAJIGAS
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The Law Firm Goñi y Cajigas Abogados, S.L., formed by a solid and expert professional team, is mainly focused in Corporate Law, Contractual Law - both national and international - and mergers and acquisitions. Moreover, we have lawyers who have broad experience regarding additional areas of practice such as Administrative Law, Litigation, Real Estate, Employment & Labour Law, Data Protection, Insolvency Proceedings and Company Tax Law, giving us the opportunity to render a global legal advice to companies. This law firm began its professional activity in 2006. The collaboration and association with the law firm Goñi & Co., incorporated in 1964, gives us the opportunity of tendering the best services regarding legal advice on litigation, mainly relating to transport law and claims which have arisen from breach of contracts. The purpose of this law firm is rendering legal advice services to companies seeking an easy and practical resolution for controversies and disputes, seeking client satisfaction thanks to a personal and constant attention and, making managers feel more comfortable with their additional responsibilities. Our clients are industrial corporations, medium companies and finance institutions, which have a deep knowledge of the legal services market and therefore require a highly specialised legal advice and full personal assistance to their business. Our law firm and our lawyers are highly qualified to provide prompt and effective solutions within the scope of transactions of a high technical complexity. The partners of our law firm are involved in every business since we are aware that their background, their criteria and their experience are an outstanding asset to our clients. On the other hand, our dynamic and balanced structure gives us the opportunity to transfer to our clients the advantages of competitive fees.

Goñi y Cajigas Abogados has been selected as a "leading Spanish firm" in the area of Corporate/M&A in the Chambers European Guide 2009, 2010 and 2011 editions. We also have been recommended in the Legal 500 Guide 2012 edition.

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