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The International Comparative Legal Guide to:

Corporate Governance 2014

7th Edition

A practical cross-border insight into corporate governance

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The International Comparative Legal Guide to: Corporate Governance 2014

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Spain

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1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

Corporate Governance applies to all types of companies; nevertheless this chapter will mainly refer to listed public companies and companies dealing in securities admitted for trading on secondary markets.

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

With regard to Spanish public limited companies (S.A.) and limited companies (S.L.), the primary corporate legislation is contained within the Royal Legislative Decree 1/2010 of July 2nd regarding the approval of the text contained in the Companies' 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.

The 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 to the Companies' 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*").
- Law 1/2012 of June 22nd ("*Ley 1/2012, de 22 de junio, de simplificación de las obligaciones de información y documentación de fusiones y escisiones de sociedades de capital*").
- Royal Decree-Law 9/2012 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 which 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 Savings 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*"); the so-called "Aldama Report".
- Circular 4/2007 of December 27th, from the Spanish

Security Exchange Commission, by virtue of which the 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 the CNMV, on the Annual Corporate Governance Report to be issued by Savings 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 the 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:

- The 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, trends and challenges in corporate governance?

Over the last few years, corporate governance has been gaining relevance in terms of the functioning of companies. The Code of Corporate Governance sets certain standards that should be followed by companies in their corporate compliance programme. Even though these standards are set by the Code, most companies have created their own policies, adjusting and adapting the Code of Corporate Compliance to their needs and functioning.

The European Union Regulations regarding this subject are intended to make companies more transparent and increase the efficacy of corporate governance programmes.

The regulations try to achieve their objective by establishing responsibilities for the officers and directors of companies in order to strengthen their diligence, efficiency, transparency and commitment to the job and the interests of the company, their shareholders, third parties and society as a whole.

A key challenge is to educate the workers of each of the companies who play a major role in the development of their companies.

2 Shareholders

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

The main rights of shareholders are: (i) to attend the General Shareholders' Meetings of the company and to vote in such meetings; (ii) to receive a quota of the benefits of the company, according to the proportion of the capital shares they own in the company; (iii) to receive a part of the liquidation quota; (iv) pre-emptive rights for new shares; (v) to challenge the corporate agreements; (vi) to receive information; and (vii) to call for a General Meeting of the company (whenever they meet the requirements).

Regarding the operation and management of the company, the voting rights, the right to call a General Meeting and the right to challenge the decisions of the Management Body are the most important rights.

When shareholders attend the General Meeting and use their voting rights, they make decisions regarding the functioning of the company and whether or not they agree with the way the Management Body is directing it. At these meetings shareholders can approve or disapprove the annual accounts, make decisions regarding allocating the royalties of the company, and even decide the way the management bodies will work and who will represent them.

There are certain issues that are also decided during the General Meetings of the companies, such as the transformation of the company, the merger, spin-off or modification of the AoA, the increase or decrease of the capital of the company, and even its dissolution.

During the General Meetings, shareholders will also be able to give directions to the Management Body of the company, or give them instructions regarding specific businesses of the company.

Finally, shareholders also have the right to challenge decisions made by the Management Body of the company whenever these decisions infringe the law, the AoA or jeopardise the company's interests.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

There are no established responsibilities for shareholders regarding corporate governance, nevertheless, the Code of Corporate Governance mentions how important it is to educate the shareholders of the company so that they can get more involved and be more aware of what is going on in the company and the decisions that are made.

As there is no obligation for shareholders to be involved in the company, however, it is unlikely that they will be held responsible in terms of the corporate governance of a company.

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

The Shareholders' Meeting will be held to discuss different issues that require the shareholders' approval. The Shareholders' Meeting will be held in the city where the company has its domicile, unless otherwise stated in the AoA. Usually, General Shareholders' Meetings are held in the company's domicile.

The Shareholders' Meeting can be: (i) ordinary; or (ii) extraordinary.

The Ordinary General Meeting will be held during the first six months of each business year in order to discuss the following subjects:

1. the approval of the annual accounts of the previous business year;
2. the allocation of the results; and
3. the approval of the management of the company during the previous year.

The Ordinary General Meeting will be valid even if it is held after the six-month period mentioned above.

The Extraordinary General Meeting of the company will be held to deal with any business other than the business mentioned above, such as:

1. the appointment of the directors and management body of the company;
2. the modification of the bylaws of the company; or
3. the increase or decrease of the capital of the company, among others.

The General Meeting of a company can also be divided into: (i) Universal Shareholder Meetings; and (ii) Called Shareholder Meetings.

A General Meeting is classified as a Universal General Meeting when each of the shareholders is present or represented by someone who is present and it is unanimously agreed by all the shareholders to convene a Universal Shareholders' Meeting to discuss a specific agenda.

A Called Shareholders' Meeting is one that – as the name implies – has been called by the members of the Management Body. The Called Shareholders' Meeting can be called in order to deal with any situation they consider necessary.

There are three important rights that shareholders have regarding the General Meetings:

(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 proportion of share capital represents at least 5%. The written request must contain a written agenda containing points to discuss.

From the time of notice of that request by means of a notary, the meeting must be called within the following two months; that call must include a written agenda with the points to be discussed.

If there is not a call for the meeting within the relevant time period, a Mercantile Court would call for the meeting upon the 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 already published agenda. This request must be done through reliable notice that has to be received at 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:*

a) In limited companies:

Shareholders may request information in writing about the points included in the agenda before the Shareholders' Meeting and/or orally during the meeting.

The Management Body is obliged to provide the answers to any 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.

b) 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, it has to be a written request and has to be submitted seven days before holding the Shareholders' Meeting. The Management Body should provide shareholders with the information until the day before the meeting. Additionally, shareholders are entitled to orally request clarifications, explanations and information about the agenda during the meeting. Additionally, shareholders are entitled to orally request clarifications, explanations and information about the agenda during the meeting.

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

If the Management Body cannot comply with the request during the meeting, such request has to be complied with within seven days from holding the meeting.

c) In listed companies:

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

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

As a general rule, shareholders are not liable for any act or omission of the corporate entity. Nevertheless, if there were a reason for them to be found liable, they would only be liable for the amount of their capital contribution, so there is no real direct personal liability for them.

2.5 Can shareholders be disenfranchised?

The legislation cites specific cases in which shareholders may be disenfranchised.

In limited companies, shareholders that voluntarily breach their ancillary obligations – including the Managing Shareholder that infringes the non-competition obligation or that has been found guilty and responsible for damages occasioned to the company – can be disenfranchised.

Shareholders of companies can be disenfranchised, for instance if there is a requirement in the AoA of a company to hold a minimum number of shares in order to have the right to attend General Meetings, in the case of 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 at 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. If the AoA state to the contrary, the specific clause will be considered null and the company must adapt the AoA accordingly.

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

The members of the Management Body will be held liable for any

damage caused to the company, shareholders or third parties occasioned by any act or omission contrary to the law, or the bylaws. In case of negligence, the members will be liable even if such acts were approved by the Shareholders' General Meetings.

The actions that may be taken against the members of the managing body are:

- Corporate Liability 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 as members of the Management Body.
- Individual Liability Action – shareholders and third parties have an individual liability action against directors if their interests were damaged due to the acts of the director.
- Subsidiary Action – this action may be exercised by creditors when shareholders and/or the company have not exercised their actions, and the company's equity is not enough to satisfy their credit.

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

There are no limitations in relation to securities or shares that shareholders may own in a corporate entity; nevertheless, when it comes to listed companies, the CNMV establishes that shareholders that acquire or transfer in a direct or indirect way shares of a listed company exceeding the thresholds must inform the company and the CNMV. The thresholds are: 3%; 5%; 10%; 15%; 20%; 25%; 30%; 35%; 40%; 45%; 50%; 60%; 70%; 80%; and 90% of the voting rights in a listed company.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The company is managed by the Management Body. There are several ways in which the Management Body of the company may be composed:

1. a sole director;
2. several members, acting jointly or separately; or
3. a Board of Directors.

In limited companies, the Shareholders' General Meeting may decide the way in which the Management Body of the company is formed and the way it will function.

When the bylaws only establish a minimum and maximum number of members for the Management Body, the Shareholders' General Meeting will determine the specific number of members which will compose the Management Body.

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

The members of a limited company's Board of Directors 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.

Either an individual or a company can be appointed as a member of the Management Body. If a company is appointed as a member of the Management Body, it shall designate an individual to develop the functions of the post.

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. The Shareholders' Meeting determines whether the directors have a duty 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 a 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 following 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 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 of the Shareholders' Meeting. Such resolution can remove any director from its post without specifying the reason or without previously including such removal in the agenda.

In some cases, the bylaws of a limited company might request the favourable vote of the partners representing two thirds of the share capital to approve the removal of a member of the Management Body.

In a S.A., any member of the Management Body may 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.

Recommendations number 35 to 41 of The Code of Corporate Governance in is also a source to determine such remuneration.

In article 27 the LES determines the creation of a report regarding remuneration that must be available to the shareholders and must be approved by the General Shareholders' Meeting.

Article 61 *bis* of the LMV 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?

In a listed company the members of the Management Body have the duty to inform the CNMV of the following:

(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 with regards to the Management Body Meeting is that there must be a majority; thus, the majority of its members should attend the meeting personally or be 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 duties of the members of the Management Body, established in the legislation are:

(i) Diligent management: The members of the Management Body should carry out their task with the diligence of a business man; and must be informed of the running of the business.

(ii) Loyalty: Each member of the Management Body will carry out his task in the best interest of the company.

(iii) The member of the Management Body will not use the name of the company or their status as a member of the Management Body in order to perform acts for himself or for related parties.

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

(v) Duty to notify conflict of interests: The members of the Management Body must notify the remaining members or the Shareholders' Meeting of any direct or indirect situation that might arise and cause damage in relation to the interests of the company and which may cause a conflict of interest. Members should also inform of any direct or indirect share they own at any other company with the same or similar activity as the company. Such information must be published in the Annual Report.

(vi) 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 affects the company, unless they have express authorisation from the Shareholders' Meeting.

(vii) 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 do otherwise. 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 and what are perceived to be the key, current challenges for the management body?

The Spanish Corporate Governance Code describes the following responsibilities and functions to be performed by the Management Body:

1. Perform its duties with unity of purpose and independent judgment, affording all shareholders the same treatment. It should be guided at all times by the company's best interest and, as such, strive to maximise its value over time.
2. Ensure that the company abides by the laws and regulations in its dealings with shareholders; fulfils its obligations and contracts in good faith; respects the customs and good practices of the sectors and territories where it does business; and upholds any additional social responsibility principles it has subscribed to voluntarily.
3. The Management Body should see the core components of its mission as to approve the company's strategy and authorise the organisational resources to carry it forward, and to ensure that management meets the objectives set while pursuing the company's interests and corporate purpose.

As such and according to the Spanish Corporate Governance Code, the Management Body should reserve the right to approve the company's general policies and strategies, and in particular:

i. the strategic or business plan, management targets and annual budgets;
ii. investment and financing policy;
iii. design of the structure of the corporate group;
iv. corporate governance policy;
v. corporate social responsibility policy;
vi. remuneration and evaluation of senior officers;

vii. risk control and management, and the periodic monitoring of internal information and control systems; and

viii. dividend policy, as well as the policies and limits applying to treasury stock.

3.8 What public disclosures concerning management body practices are required?

The information regarding the practices of the Management Body that have to be detailed in the Annual Corporate Governance Report and on the listed company's webpage should be made public. Besides this, the Code of Corporate Governance recommends:

(i) Establishing a mechanism to scrutinise the function and performance of the Management Body and that of its committees on a regular basis. It is also recommended that each director has an individual appraisal.

(ii) Setting out the rules for the selection and appointment of a director and disclosure of their particulars, as well as keeping 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?

There are special insurances for Directors and Officers, called D&O policies. This insurance will cover the Directors and Officers against any civil liability that may arise in relation to the performance of their activity.

4 Transparency and Reporting

4.1 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 any 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 to be especially agile, careful and precise on transmitting the information, in particular regarding relevant issues that could affect the prices of the market. Such recommendations are included in the Code of Corporate Governance.

4.2 What corporate governance related disclosures are required?

Information that should be disclosed to the market is:

1. An annual financial report within the first four months following the closing of the business year, which should comprise the annual accounts and the management report revised by auditors as well as its contents liability declarations.
2. A biannual interim financial report that should include the resumed annual accounts.
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. Every change in the rights of the securities and information about new debt issuances.
5. Every 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 could reasonably have an impact on the securities listing within the market and thus affect the investors.
9. The Annual Report on Corporate Governance that 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 transactions between the company and its shareholders and directors and officers, as well as intra-group transactions; (iv) risk control systems; (v) information regarding the functioning of the Shareholders' Meeting; (vi) an explanation about the compliance of the corporate governance recommendations and about the reasons for non-compliance; (vii) a description of the main aspects of the risk monitoring and internal management system in relation to the transmission of financial information; (vii) representation in the Management Body of shareholders with a significant number of shares; (viii) shares owned by members of the Management Body; (ix) shareholders' agreements; (x) values that are not negotiated in the market; (xi) treasure holdings of the company; and (xii) any restrictions with regards to transmission of the shares or in the voting rights.

4.3 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 a maximum period 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.

4.4 What corporate governance information should be published on websites?

Listed companies must have a website in order 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 there be one, of the Board of Directors' Committees.
- Annual report and conduct of internal regulation.
- 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 Shareholders' Meetings held.
- The existing channels between the company and the shareholders that enable the latter 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 on-line.
- 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.

5 Corporate Social Responsibility

5.1 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 from 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: This code contains recommendations about corporate social responsibility.

(ii) LME: The LME gives members the duty of filing a report, together with the legal and economic implications of any 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 1,000 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 it according to the terms and conditions detailed by the abovementioned Council.

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

There is not a specific legislation yet, apart from the LME that grants employees a right to information similar to that of shareholders in the structural modifications, especially if their employment status 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 a lead 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 by the company with the creation and monitoring of special channels for employees to report irregularities in such areas ("whistle blowing").

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