Spain

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1. GENERAL PRINCIPLES

1.1 What are the general principles of corporate governance in your jurisdiction? What are the main objectives of corporate governance principles in your jurisdiction? State also whether your legal system is based on common law or civil law.

The main principle of corporate governance in Spain is 'corporate interest'. Spanish corporate governance regulations use a narrow contractual interpretation of 'corporate interest', which values the common interests of shareholders. Therefore, directors should perform their duties with unity of purpose and independent judgement, according all shareholders equal treatment, and their performance should be guided at all times by the company's best interests.

This should not be understood to mean that shareholders' interests must be pursued at any price. Directors must ensure that the company satisfies its legal obligations in its dealing with stakeholders, fulfils its obligations and contracts in good faith, respects the customs and good practices of the sectors and territories in which it operates, and upholds any additional principles of social responsibility it has voluntarily committed to follow.

Spain has a civil law system based on statutes. Court decisions are not a source of law, but are of interpretative value.

1.2 Have there been any recent developments in the law, codes and rules of corporate governance?

Yes, among others, the following:

Securities market regulations

Law 2/2011 of 4 March, on Sustainable Economy (the SE Law) implemented important amendments to Law 24/1988 of 28 July on the Securities Market (SML). The SE Law was designed, among other aims, to foster transparency of remuneration policies of listed companies and financial institutions. It applies international principles of corporate governance in order to support solvency and to ensure that directors carry out appropriate risk management. The SE Law follows the European Commission's Recommendation 2009/3159/EC on remuneration policies in the financial services sector and the commitments undertaken at the G20 meeting held in London on 2 April 2009.

In particular, the SE Law establishes that the board of listed companies must prepare and submit, as a separate item on the agenda, an annual

report on the remuneration of directors for an advisory vote at the general shareholders' meeting (GSM). This provision, which made the pre-existing recommendation on the 'say-on-pay' practice compulsory, was applied for the first time in the 2012 GSM season.

The SE Law also establishes that savings banks (*cajas de ahorros*) must prepare and submit, as a separate item on the agenda in the same way as listed companies, an annual report on the remuneration of directors and members of the supervisory committee for an advisory vote of the general assembly.

On 20 March 2013, the Ministry of Economy and Competitiveness approved Order ECC/461/2013, which updates the content required in annual reports on corporate governance (ARCG) and sets out the content required in the reports on remuneration. The development and approval of standard forms for those reports was delegated to the National Securities Market Commission (CNMV), who recently approved them through two ancillary rules (*Circular* 4/2013 and *Circular* 5/2013 of 12 June). The content of these circulars details the form, matters, structure and instructions for completing both the ARCG and the annual report on remuneration. These updated standard forms will apply for the 2014 GSM season.

National Reforms Programme

On 26 April 2013, the Spanish government approved the submission of the 2013 National Reforms Programme to the European Commission and an update of the 2013–2016 Stability Programme for Spain. These documents reflect Spain's future strategy on economic policy. With regard to corporate governance, the programme's aim is to reform and expand the current framework of corporate governance best practices in Spain in order to improve efficiency and accountability and, at the same time, set the bar for the highest standards of compliance.

To that end, the Spanish government created a special commission of experts in May 2013 to analyse international corporate governance best practices and propose measures to update and improve Spain's current framework. One of the aims of the reforms will be to bolster the role of the GSM in monitoring compensation policies for managing bodies and senior executives. In addition, the government announced that the recommendations contained in the Corporate Governance Code (see paragraph 2.1 below) will be improved and expanded, placing special emphasis on the supervision and the quality of information provided by companies regarding their compliance with the recommendations, in order to avoid mere box-ticking compliance. It also announced that it will analyse the possibility of preparing a 'code of best practice' for unlisted Spanish companies.

Financial sector

On 12 April 2013, the Spanish government approved Royal Decree 256/2013 (RD 256/2013), which incorporates the European Banking Authority's guidelines of 22 November 2012 on the assessment of the suitability of

members of the management body and key function holders. RD 256/2013 empowers the Bank of Spain to assess the suitability of those individuals and introduces substantial changes to the current regime of requirements for commercial and professional reputation and experience. It also includes rules on good governance, particularly in relation to conflicts of interest.

RD 256/2013 has broadened the requirements of suitability for directors and general managers (*director general*) as well as officers with equivalent functions. Furthermore, these requirements have been extended to apply, for the first time, to those responsible for internal control functions and other key positions at the institution and at its parent company, as may be determined by the Bank of Spain. Institutions subject to RD 256/2013 must now have adequate resources and internal procedures to carry out the selection and ongoing assessment of people in affected positions.

Lastly, in respect of financial institutions that benefit from state aid, Royal Decree-Law 2/2011 of 18 February on reinforcing the financial sector sets out specific rules on the composition and functioning of the management body, while Royal Decree-Law 2/2012 (RDL 2/2012) of 3 February on the recapitalisation of the financial sector contains certain restrictions on executive remuneration (see paragraph 4.5 below).

Company law

The primary source of corporate legislation is Royal Legislative Decree 1/2010 of 2 July, which approves the consolidated text of the Capital Companies Law (LSC).

Amending the LSC, Law 25/2011 of 1 August (Law 25/2011), Royal Decree-Law 9/2012 of 16 March, and Law 1/2012 of 22 June (Law 1/2012) aimed to modernise specific aspects of the Spanish legal framework on companies contained in the LSC, simplify some of the formalistic provisions (especially the publication of announcements in the media) and reduce the costs and administrative burdens on companies. In order to achieve this, Law 25/2011 and Law 1/2012 allow for the approval of company websites (which are mandatory for listed companies), and set forth the requirements for their creation, reinforcing them as a means of communication with shareholders. Specifically, Law 1/2012 has allowed companies to address specific communications to their shareholders and debtors through their corporate webpages and has also permitted the notification of those communications to the shareholders electronically if shareholders have consented. As an example of those measures to develop the usefulness of corporate websites, a GSM can currently be called through an announcement via the company's website provided that the company's website had been created complying with the requirements set out in the LSC and recorded in the Commercial Registry, instead of by publishing an announcement in a newspaper and/or in the Official Gazette of the Commercial Registry (*Boletín Oficial del Registro Mercantil*, BORME). However, to make things more complicated, announcements by listed companies must be also published on the CNMV website and in the BORME. In the case of joint stock companies (*sociedades anónimas*) (SAs), Law 25/2011

has also removed the requirement for publicising (through a website or newspaper) agreements on a change of name, change of registered address or any other change to the company's object, which was a prerequisite for registration with the Companies Registry. Unfortunately, as indicated, those new provisions relating to the publication of notices by companies on their websites, while intending to simplify the regime and alleviate costs, have actually created a rather complex, highly bureaucratic procedure that makes a simple process such as calling a GSM a rather risky business in light of the formalistic approach of Spanish law.

Law 25/2011 also transposed Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies into Spanish law, removing obstacles that may hinder shareholders' access to information and deter them from voting. The law develops the regulation of proxy voting at the GSM, with a particular emphasis in case of conflict of interest of the proxy holder. The law stipulates, in this regard, that proxy holders affected by any of the situations that Law 25/2011 stipulates as a conflict of interest can vote if: (i) he/she has previously informed the represented shareholder about the existence of the conflict; and (ii) the proxy holder has received precise instructions on how he/she will vote.

In respect of announcing the calling of a GSM of a listed company, Law 25/2011 establishes that, in exceptional cases, an extraordinary GSM could be convened with 15 days' notice provided that: (i) all shareholders are offered an effective means of voting electronically; and (ii) it is expressly approved by an ordinary GSM, with a majority of at least two-thirds of the share capital with voting rights. The validity of this agreement cannot go beyond the date of the next ordinary GSM. The law requires that GSM documentation on corporate websites contain specific information that is available continuously from when the GSM is called until it takes place, including forms to apply for proxy voting and distance voting, unless the company sends these directly to each shareholder. In the event they cannot be available due to technical reasons, the website must contain information on how to obtain hard copies of these forms, and the company should send these to all shareholders who request them. The information framework for shareholders of listed companies has also been expanded, widening the right to request information in respect of any publicly available documents that the company has made available to the CNMV since the previous GSM, including the auditor's report. Directors are not obliged to respond if the information is clearly and directly available on the website in an FAQ format.

Finally, for non-listed companies (and only as from the five years following the registration of the incorporation of the company in the commercial registry), Law 25/2011 introduces a right for minority shareholders to request that the company acquire their stake in the event that, *inter alia*, the company does not distribute at least one-third of the previous year's distributable profits following the request of the shareholder. In view of the potentially negative financial effects of this 'withdrawal right', the rule has been suspended until 31 December 2014.

Further amending the LSC, Royal Decree-Law 9/2012 of 16 March and Law 1/2012 incorporate the rules contained in Directive 2009/109/EC of 16 September 2009 into Spanish law as regards reporting requirements in mergers and demergers. *Inter alia*, those regulations have established additional exceptions to the requirement of appointing financial experts for the valuation of in-kind contributions to SAs in certain mergers and capital increases. Law 1/2012 also introduced several amendments to the regulations for listed companies contained in the LSC and the SML, seeking to establish protective legislation against opportunistic tender-offers. Most importantly in relation to corporate governance, this law reinstates the possibility that the by-laws of SAs may limit the maximum number of voting rights a shareholder may have in the GSM (typically 10 per cent per shareholder), which was one of the most common anti-takeover instruments used by Spanish listed companies before 2010, when it was prohibited. Nevertheless, the limitation on voting rights will not apply where, following a takeover bid, an offeror has acquired 70 per cent or more of the target's share capital with voting rights (unless the offeror, its group companies or any other party acting in concert with them is not subject to similar breakthrough measures).

1.3 Outline recent court cases and incidents involving corporate governance issues. Were there any significant corporate scandals or large unlawful corporate cases?

One of the most representative recent court cases involving corporate governance issues was between two of Spain's largest listed companies. Actividades de Construcción y Servicios, S.A. (ACS), as an indirect shareholder of Iberdrola, S.A. (Iberdrola), had been requesting a seat on Iberdrola's board of directors pursuant to its right to appoint a director in accordance with the proportional representation system that allows minorities to get representation in the board. Iberdrola rejected each request, arguing that granting ACS a seat on the board would create a permanent conflict of interest given that the two companies were competitors in various sectors. At Iberdrola's 2010 GSM, ACS appointed a director who was immediately removed during the same meeting. ACS filed a claim challenging the dismissal. The court rejected the claim, holding that the dismissal was justified based on the need to preserve the company's interests against the damages resulting from the access to relevant information granted to a director appointed by a competing company. ACS appealed the ruling to the Supreme Court. A decision is pending.

Several corporate scandals have been made public within the context of the severe economic crisis Spain has been experiencing since 2008. The financial crisis has also revealed a number of shortcomings and limitations in the existing supervisory system. While various measures both at the European and domestic level have been taken, corporate governance reform remains an ongoing process. Examples of failed corporate governance include the recent scandal affecting a major Spanish fishing and food processing firm regarding alleged accounting failings and alleged corporate

management irregularities in certain Spanish saving banks.

1.4 Which law enforcement agency is in charge of enforcing corporate governance? May a criminal sanction be levied upon infringement of the corporate governance rules?

In Spain, no single agency or organisation is entrusted with ensuring compliance with all of the mandatory rules regarding corporate governance, a concept which, understood in the broadest sense, includes any rules related to the management and control of companies. The enforcement of a specific corporate governance rule will depend on the nature and content of that rule. Within the scope of corporate governance rules, there are mandatory rules deriving from general corporate legislation, which are binding on all companies (both listed and unlisted), and mandatory rules which are only applicable to listed companies or to companies which have issued listed securities. Among the latter group, there exist: (i) organisational and disciplinary rules for the securities markets, which, if not fulfilled, may lead to an administrative sanction usually imposed by the CNMV, without prejudice to civil and commercial court proceedings also arising from non-compliance; and (ii) rules which, if not satisfied, may lead to civil or commercial proceedings before the relevant courts. There are also corporate governance recommendations for listed companies and entities issuing listed securities, although breach of these recommendations does not result in any sanction (see paragraph 2.1 below).

Spanish banking regulations also include mandatory regulations on an array of corporate governance issues (eg, suitability requirements for owners, directors and senior officers, executive pay, disclosure and reporting requirements). The Bank of Spain oversees the Spanish banking system, supervises and monitors banks' compliance with the law and imposes sanctions for non-compliance. As previously indicated, such sanctioning is without prejudice to civil and commercial court proceedings that may arise from non-compliance.

Aside from the CNMV and the Bank of Spain, companies that are engaged in other regulatory sectors are also subject to the supervision of the corresponding regulatory body.

As for criminal offences, although there is no explicit offence under Spanish criminal law for failure to comply with corporate governance rules, specific conduct closely related to the governance of Spanish companies may constitute a criminal offence (eg, those denominated 'corporate offences', such as accounting fraud, unlawful appropriation or transfer of company assets, depriving shareholders of their rights, obstruction of inspections carried out by authorities in regulated markets).

2. SOURCES OF LAW

2.1 Which laws, codes or statutes govern company structures and organisations? Are there statutes like the Companies Act or other forms of law? Is there much relevant case law?

Historically, the most common vehicle used in Spain for doing business

was the SA, but the limited liability company (*sociedad de responsabilidad limitada*) (SL) has become more popular as a result of economical incorporation and management and greater flexibility. SLs are currently by far the most common type of business organisation. SAs are also used for larger investments and, since only SAs can be listed and issue debt, when a subsequent stock market listing or a debt issuance is contemplated. Both the SA and SL are limited liability companies (shareholders' liability is generally limited to their investment in the company's equity).

Under Spanish law there are other distinct corporate structures and organisations for doing business and the specific regulations that apply to each vary.

Limited liability companies (SAs and SLs) are primarily governed by the LSC, which includes the general corporate framework for listed companies previously contained in the SML. Apart from the LSC, specific ancillary regulations govern different corporate issues (eg, accounting audit, corporate reorganisations, transparency and disclosure, tender-offers).

Financial institutions are also subject to specific financial regulations that contain several rules on corporate governance. For reasons of brevity, this chapter will not address those rules, with the exception of specific issues of particular relevance for credit institutions, and will focus on general corporate governance rules applying to SLs and SAs (particularly listed companies).

Apart from these regulations, corporate governance in Spain is subject to a soft law rule: the Unified Code of Good Corporate Governance of Listed Companies approved in May 2006 by the CNMV (the CUBG or the Corporate Governance Code). The CUBG generally mirrors the international standards and recommendations on good governance practices set out by different entities and institutions such as the OECD, the Basel Committee on Banking Supervision and the European Commission. It sets out recommendations under the principle of 'comply or explain'. Companies are free to decide whether or not to follow the CUBG's recommendations, but they must give a reasoned explanation in their ARCG for any deviations from those recommendations. All listed companies (together with savings banks and entities issuing listed securities) are obligated to prepare an ARCG, in the recently renewed formats prescribed by the CNMV (see paragraph 1.2 above), including fairly extensive information regarding the company, such as that relating to: (i) ownership structure; (ii) organisation and functioning of the GSM; (iii) the board of directors (including, among other information, its composition, rules, committees, remuneration, relationship with 'significant shareholders', and procedures for the selection of directors); (iv) related-party transactions, including intra-group transactions; (v) risk management policies; (vi) main aspects of the risk monitoring and internal management system in relation to the process of issuing financial information; and (vii) an account of compliance with the CUBG recommendations and, as the case may be, reasons for non-compliance.

Although voluntary, the CUBG recommendations are provided within a framework of categories and concepts considered mandatory for all listed

companies, irrespective of the size, market capitalisation or nature of their business. In this regard, the CNMV evaluates the degree of companies' compliance with the recommendations and it has powers to request additional explanations from any issuer regarding its corporate governance practice and information on its practice included in the ARCG, including the publication of amendments and the imposition of fines or other sanctions in the case of breaches of applicable law.

Given the time elapsed and the changes in the corporate environment since the CUBG's approval, an overall revision of CUBG is being carried out at the time of writing this chapter (see paragraph 1.2 above).

Case law

While the role of case law is inherently different in civil law than in common law, it nevertheless plays an important role in interpreting the law. It is fair to say that, depending on the particular issue of company law, there could very well be a substantial amount of relevant case law.

2.2 Which laws, codes or statutes regulate capital markets in your jurisdiction?

The SML is the primary source of Spanish securities market regulations. It governs the Spanish systems for trading in financial instruments and establishes the principles for their organisation and functioning and the rules regarding the financial instruments that are traded in those systems and the issuers of such instruments. It also contains rules on providing investment services and establishes a system of supervision, inspection, and discipline. The SML establishes the rules of conduct that apply generally to all participants in the Spanish securities markets, including primary rules on disclosure and transparency, market abuse, insider trading and takeover bids.

The SML has been developed and completed through a substantial number of secondary regulations approved by the Spanish government, in the form of Royal Decrees (*Reales Decretos*), and by the Ministry of Economy and Competitiveness, in the form of Ministerial Orders (*Órdenes Ministeriales*). Furthermore, ancillary rules issued by the CNMV (*Circulares*) implement and further develop Royal Decrees and Orders.

2.3 Are there any public interest laws which apply to or influence corporate governance?

In addition to the general company law rules which regulate standard corporate governance issues (see paragraph 1.2 above), there are also administrative law regulations which fall under the public interest umbrella, such as: (i) securities market regulations (eg, transparency and disclosure duties, market abuse); (ii) financial regulation regarding suitability of members of the management body and their salaries (see paragraph 1.2 above); and (iii) regulations on gender diversity in boards through the promotion of gender equality, which also impact corporate governance (see paragraph 12 below).

2.4 Have there been any recent developments in any of the above laws? What are the recent changes to the above laws or rules and the reasons for such changes?

See paragraph 1.4 above.

3. SHAREHOLDERS AND THE SHAREHOLDERS' MEETING

3.1 How are shareholders' interests represented in the company? How are the shareholders assured exercise of their rights? What is the highest governing body within the company structure if it is not the shareholders' meeting?

Although the GSM is a company's highest decision-making body, its non-permanent nature (being convened only with formal advance notification by the directors, except in the case of universal meetings in which all shareholders are present, or at the request of 5 per cent of the shareholders) and the fixed, formal nature of the decisions it can make (eg, appointment of directors, changes to the by-laws, appointment of auditors) means that the board of directors takes charge of the day-to-day management of the company.

To carry out this daily management, the board of directors must act in the interests of the company, which is understood to mean the common interest of shareholders. However, in a rather concentrated market such as Spain, it is not unusual for the board's decisions to give rise to conflicts between the interests of the majority and the minority shareholders due to the fact that some of the directors are often related to the controlling or significant shareholders (the so-called insider-outsider conflicts). In this case, the board must take a decision with the conflicted directors abstaining from debating and voting on the conflicting issue. For example, it is standard practice in a merger between a parent company and one of its subsidiaries that the ultimate approval of the transaction at the subsidiary's management body level is made by a committee of independent directors.

Shareholders' rights are protected at two different levels. First, the LSC contains several provisions protecting the interests of shareholders in general and minority shareholders in particular, including:

- Depending on the number of directors, shareholders of SAs can pool their shares in order to appoint a number of directors to the board in proportion to the share capital they hold in accordance with the proportional representation system.
- Shareholders holding at least 5 per cent of the share capital may: (i) request that the directors call a GSM with an agenda specified in the request and, if the directors fail to do so within two months, submit a judicial request that the meeting be called; (ii) in SAs, request the publication of a supplementary notice of a GSM that includes at least one additional agenda item; (iii) challenge certain board resolutions; (iv) seek enforcement action against directors (see *infra*); and (v) seek the removal and replacement of auditors by the courts, if justified reasons exist.
- Any shareholder may request that the directors provide information

on items in the agenda for the meeting (or any information made public through the CNMV since the last GSM or relating to the audit reports), which request the directors may only reject if they believe that the publicity of the information may be harmful to the company. The directors, however, may not refuse to give that information if the request has been made by shareholders representing at least 25 per cent of the company's share capital.

- The right to seek enforcement action against members of the management body through:
  (a) Company action: the company can file an action for liability against directors subject to the existence of a previous resolution approved at the GSM by an ordinary majority. The GSM may settle or waive the exercise of this action provided that there is no challenge by shareholders representing 5 per cent or more of the share capital. The general purpose of this action is to seek compensation for the company for any damages caused by fraudulent or negligent acts or omissions of directors contrary to law or the by-laws or for a breach of their corporate or fiduciary duties. Shareholders holding at least 5 per cent of the share capital also have standing to bring this action if it is not brought by the company, as do creditors if the company is insolvent. In all cases, any compensation awarded must be paid to the company.
  (b) Individual action: any third party (including shareholders) may file a claim for damages against the directors if their interests are compromised due to the directors' actions. The purpose of this action is to seek compensation for damages directly suffered by third parties not being damages caused indirectly through the company.
- Any shareholder may challenge any GSM resolution that is contrary to law or to the by-laws or that favours specific shareholders or any other third party to the company's detriment, provided that the shareholder voted against the resolution or was not present at the GSM.

Second, one of the CNMV's most important duties regarding listed companies is protecting the interests of minority shareholders. This protection is carried out through: (i) the assessment of complaints filed with the CNMV's Shareholder Information Office (*Oficina de Atención al Inversor*); (ii) the supervision and inspection of the technical and legal requirements on listed companies, and sanctioning of the same, where appropriate; and (iii) scrutinising the quality standards and accuracy of information publicly disclosed by listed companies.

3.2 How is the shareholders' meeting conducted? Who may chair the meeting? May attendance (not voting) at the meeting be restricted only to the shareholders? Are the shareholders allowed to be accompanied by legal or other counsel?

The GSM is conducted by the chairman (who chairs the meeting and has broad powers to moderate shareholders' speeches) and the secretary, who

assists the president. Both of them, together with the other directors in attendance, normally constitute the presiding committee at the GSM. Unless otherwise specified in the by-laws or in the GSM's regulations, which all listed companies must approve, the chairman and the secretary of the GSM will be those of the board of directors and, in their absence, persons designated by the shareholders upon commencement of the meeting.

Generally, shareholders or their proxies attend the GSM. However, the chairman can allow anyone else to attend (eg, shareholders' counsel), although the GSM is authorised to revoke this permission. The directors must also attend the GSM. A public notary may also attend to draft the minutes of the meeting if directors or shareholders holding a minimum stake in the company (1 per cent for SAs and 5 per cent for SLs) so decide.

To conclude the meeting, the chairman will order a vote on the agenda items and announce the results of the votes. The shareholders exercise their right by voting for or against the resolutions, by abstaining or by voting in blank, as the case may be. In particular, listed companies must allow shareholders to participate through distance voting (eg, by post, electronically), and the by-laws may set out a procedure to allow shareholders an off-site exercise of their right to attend and vote at the GSM (eg, by broadcasting the meeting in real time). There are several examples of listed companies in Spain which currently allow their shareholders to fully participate in the GSM off-site (attending and voting remotely).

3.3 How are minority shareholders' rights protected?

See paragraph 3.1 above.

3.4 Is shareholder activism encouraged or discouraged? If not encouraged, how is it regulated?

As set out in paragraph 3.1, the shareholding structure of Spanish listed companies is somewhat concentrated. According to the most recent publicly available data for the fiscal year 2011 (see *www.cnmv.es*), while the free float in listed companies amounted to 37.5 per cent, 28.3 per cent of the share capital was held by significant shareholders represented in the board of directors and 32.5 per cent by non-director significant shareholders. The sum of 'significant shareholdings', including share packages in the hands of the board, exceeded 50 per cent of the share capital in 110 companies (73.8 per cent of the total), 19 of which were listed on the Ibex 35 Index, which includes the largest companies. In any case, the concentration level is higher in average in smaller companies.

This shareholding structure partly explains why the shareholder activism movement that has swept through the American and European markets over the past decade has been more muted in Spain. To date, the Spanish market has not seen significant shareholder action, except in very specific cases linked to disputes over the control of target companies, normally in the context of tender-offers or minority shareholders disagreeing with management.

Notwithstanding the above, it is worth noting that shareholder

communication is gaining increasing importance, especially among the largest Spanish companies, which are also those in which the shareholding concentration level is more reduced and foreign shareholders are predominant. These companies have normally been among the first to comply with the 'say-on-pay' recommendation and regularly conduct both one-on-one and selective meetings with shareholders.

One additional matter to consider is the fact that GSMs do not function sufficiently, since there are high levels of shareholder apathy in respect of their rights to attend and vote. In spite of recent legislation to encourage shareholder participation (eg, by creating shareholders' forums) (see paragraph 1.1 above), as far as we are aware these attempts have been unsuccessful, as not only has the percentage of shareholders participating in GSMs not improved, but there has also been an increase in paperwork and costs for companies themselves.

Another attempt to activate shareholders' participation in the GSM is contained in the regulations on Spanish investment funds, which impose an obligation on management companies to exercise all political rights inherit to the shares in Spanish companies held by the funds they manage, provided that the shares represent at least 1 per cent of the share capital and have been held for one year or more. Lastly, the CUBG recommends that financial intermediaries actively exercise the political rights attached to the shares of the listed companies they hold and inform investors on the voting criteria.

3.5 How are professional shareholders (those minority shareholders who seek some extra benefit from companies by unduly and habitually influencing management by using their shareholding) treated by the law? Are they excluded from attending the shareholders' meeting? Are they criminally or otherwise publicly sanctioned?

This phenomenon has not become an issue in Spain yet and, as such, there is no specific legal treatment of it apart from being charged by the competent courts cost of proceedings initiated without cause or sound basis against companies.

3.6 Are shareholders' benefits given to some of the shareholders by the company without resolution by the shareholders' meeting prohibited or regulated by the law or other rules?

In general, shareholders in Spanish companies must be treated equally, in compliance with the principle of equal treatment of shareholders under equivalent circumstances. However, this general principle is compatible with the existence of different classes of shares with different rights attached to them (eg, ordinary shares and privileged shares which confer supplementary rights, such as a preference dividend). In principle, only corporate transactions (such as a reduction of capital) are subject to controls to avoid violating this principle. Therefore, any other type of transaction that takes place between the company and any of its shareholders (such as entering into a supply contract) does not need the approval of the GSM, since the board of directors or even managers of the company are capable of

entering into such a transaction. However, a company can include different provisions in its by-laws to change the way that non-corporate transactions are governed. For example, there are some companies whose by-laws state that any type of transaction with a shareholder must be approved by the GSM. In listed companies it is standard practice that the approval of related party transactions is entrusted to the board (based on a prior report of a committee normally formed by a majority of independent directors), which should in turn apply the rules on conflicts of interest that prevent conflicted directors from participating and voting the specific transaction. There are also listed companies that require shareholders' approval for specific related-party transactions. Related parties include, among others, significant shareholders (ie, shareholders who own at least 3 per cent of the company's share capital) and directors.

Lastly, regarding listed companies, related-party transactions are specifically subject to public disclosure obligations under the SML, Order EHA/3050/2004 of 15 September and prescribed by the CUBG: listed companies must: (i) submit a report to the CNMV every six months disclosing transactions carried out with related parties, including 'significant shareholders'; and (ii) include information on related-party transactions in the ARCG.

4. DIRECTORS AND BOARD OF DIRECTORS

4.1 What are the functions and responsibilities of the directors and the board of directors? Do you have a one- or two-tier board system? What are the outside directors called?

Directors are entrusted with, and responsible for, the management and representation (before courts and outside courts *vis-à-vis* third parties) of the company in relation to all matters falling within the scope of ordinary business. To do so, they must have the widest authority and powers to adopt resolutions regarding all matters not assigned by the by-laws or the LSC to the GSM. As a general rule, the board entrusts the day-to-day management of the company to the executive bodies and focuses its activity on the general duty of supervision and decision on matters of particular importance. Directors have two basic duties: to act diligently and to be loyal to the interests of the company. The law sets out several obligations which are an expression of these two duties. For example, in order to fulfil their obligation of loyalty, directors must maintain the secrecy of all the confidential information which comes into their possession or avoid acting when a conflict of interest arises.

Spanish law provides for a standard one-tier board structure. Listed companies must have a board of directors. Only European Limited Companies (*Societas Europaea*) in Spain may opt for a two-tier board, in which directors assume the management of the company and the supervisory body controls their performance.

Outside directors, as opposed to internal or 'executive' directors (essentially, those which are also senior officers or employees in the company or its group companies), are denominated 'external directors'

(*consejeros externos*). These external directors may be either: (i) proprietary directors (those holding, or representing or appointed by those holding, a significant or controlling stake in the company or which have otherwise been appointed due to their status as shareholders regardless whatever their holding is; or (ii) independent directors (see paragraph 4.4 below).

Finally, individuals who directly or indirectly are competitors of the company are barred from being directors (except with the express authorisation of the GSM).

4.2 What are the rules that may give rise to civil and criminal liability of the director(s)? How are those liabilities sought?

The general rule under the LSC is that directors shall be liable *vis-à-vis* the company, its creditors and the company's shareholders for any damage caused by them as a consequence of acts or omissions contrary to law or the by-laws or acts carried out in breach of the fiduciary duties inherent to the position of director. Liability would be imposed jointly and severally on all directors although, in certain circumstances, directors who did not participate in the approval or execution of (or who opposed to) the harmful resolution could be exonerated from liability. Regarding how to enforce these liabilities, see paragraph 3.1 above.

In addition to this general regime of civil liability, there are also other potential sources of civil liability for directors arising from breaches of corporate law (eg, if they failed to take the actions required under Spanish law to recapitalise or to wind up the company when its net worth had been reduced to less than one half of its share capital) or insolvency law (in case of fraudulent bankruptcy (*concurso culpable*) in certain circumstances). Directors can also face liability for the company's breaches of certain non-corporate related laws (eg, tax, labour, social security and environmental laws). Finally, directors may be criminally liable under the Spanish Criminal Code (eg, in case of 'corporate offences' (see paragraph 1.4 above)).

4.3 Does the board of directors have a committee system, eg, nomination committee, compensation committee, audit committee? If not required, is it common practice for companies? How does it function?

Spanish listed companies tend to have, in addition to a managing director holding delegated powers from the board, an executive committee with similar powers, that in practice operates as a reduced board.

Boards of directors of listed companies must have an audit committee (see paragraph 5.1 below).

The CUBG further recommends that a nomination or remuneration committee, or a single committee which performs both tasks (as is the common practice in Spanish listed companies), be created within the board. It is recommended that this committee be formed mostly of independent directors and chaired by one of these directors. The nomination and remuneration committees have advisory powers in matters such as the selection of candidates for the board, the right to make proposals (or

inform of the proposals made by the board) relating to the appointment of directors and the right to propose (or inform of the proposal by the board) remuneration policies. Credit institutions that benefit from state aids must have either a nomination committee or a remuneration committee, or both.

4.4 Is it a legal requirement to have an independent director or a third-party director? If so, how are they appointed? Is it required for listed companies?

The CUBG recommends that companies strike a balance between external and internal directors. External directors should account for a wide majority of the board, while the number of executive directors should be limited to the minimum number necessary, taking into account the complexity of the corporate group and ownership interests. Under the CUBG, while proprietary directors should represent the 'significant shareholders' in a proportion that matches the capital that they represent, independent directors should represent at least one-third of all board members. The CUBG also states that the audit, nomination and remuneration committees should be exclusively composed of external directors and chaired by an independent director, and that a majority of nomination and remuneration committees must be independent directors.

Independent directors are essentially defined as those who, appointed for their personal or professional qualities, are in a position to perform their duties without being influenced by any connection with the company, its shareholders, or management. Order ECC/461/2013 lists a number of circumstances incompatible with acting as an independent director, such as having been an employee or an executive director during the preceding three or five years, respectively; receiving some significant payment or other form of compensation from the company or its group; or being in office uninterruptedly for more than 12 years.

Members of the board of directors must be appointed by the GSM. Although seldom used, the GSM may also designate 'substitute directors' to cover any vacancies that might arise on the board until new directors are appointed. Law also provides for subsidiary procedures for the appointment of directors, which alter the standard GSM appointment rule, denominated co-optation: the board of directors may designate a shareholder as a director in order to cover a vacancy until the following GSM is held.

Members of the board of directors can be removed by a resolution passed at the GSM, which can remove any director from their post without specifying a reason and without previously including a resolution for their removal in the agenda for the meeting.

4.5 How is the compensation for directors or officers determined? Can it be contested by the shareholders or the regulatory authorities? What are the common rules or practices for the compensation of officers?

Directors' remuneration for their supervisory duties: general framework

The position of director may, but need not necessarily be, remunerated. When the position is remunerated, the by-laws must expressly indicate that it is remunerated and the manner in which it is calculated. In general, companies are free to opt for the particular type or types of remuneration systems that they desire (eg, fixed annual remuneration, profit share, pension plans).

In the case of fixed remuneration schemes, the amount, or at a minimum a cap, of the aggregate remuneration to be paid to all directors must be decided by the GSM. Subject to these limitations, a company's by-laws may vest in the board of directors the authority to determine the amount of remuneration payable to each individual director, keeping in mind that all directors need not be remunerated on identical terms.

Where the remuneration system consists of a profit share, the by-laws must provide for the extent of the profit share or a maximum percentage thereof which, in the case of SLs, shall in no case exceed 10 per cent of the company's distributable profits. In the case of SAs, in order for remuneration of this nature to be payable to the directors, the shareholders' right to a dividend of 4 per cent (or any higher percentage established in the company's by-laws) of the company's paid-in share capital must have been previously recognised.

Finally, if remuneration involves delivery of the company's shares, that circumstance must be expressly indicated in the company's by-laws and will be subject to shareholder approval.

Executive directors' remuneration: the contractual nature doctrine (*doctrina del vínculo*)

One problem of particular practical relevance related to the need for directors' remuneration to be established in the by-laws, is when directors receive remuneration for carrying out their executive functions under an employment contract or a commercial law relationship separately from the remuneration they receive for exercising non-executive supervisory functions.

It is standard practice in Spanish companies for executive directors to sign employment contracts or rendering-of-service contracts which set out their salary and other remuneration for the 'executive functions', which can be concurrent with, and independent from, their purely corporate role of director. In many cases, the execution of executive directors' employment contracts and the remuneration provided for those tasks are authorised by the board without any other approval from the GSM other than the 'say-on-pay' role relating to the remuneration policy.

While far from being a settled issue, various Supreme Court judgments and certain scholars have supported the position that: (i) the executive functions of directors are not substantially different from their non-executive functions, forming part of the overall role of the director; and (ii) the same benefits cannot be simultaneously awarded under different legal guises (one derived from being a director of a company and the other derived from an employment or rendering-of-services contract with that

company) and that, consequently, the relationship between the directors and the company should encompass both roles and their accompanying benefits. Specifically, this means that the corporate role of a director and the role of a senior executive under an employment contract are incompatible, and the first should take precedence over the second.

In accordance with this principle, known as the 'contractual nature doctrine', which we do not describe further in this chapter, and with academic commentary and case law, it has been suggested that employment contracts between a company and its executive directors could be invalid or void and that the remuneration awarded under these contracts could be lacking the necessary authority from the company's statutes if such remuneration is not established under the by-laws or through a resolution at the GSM. In our view, this doctrine is based on a fundamental misconception, as it equates the duties of directors in their position as executives (management duties) with those of non-executive directors (supervisory and advisory duties). It also ignores the fact that the duties of an executive director are fundamentally different from those of a non-executive director. Executive directors carry out daily activities as members of the board, whereas non-executive directors only attend the periodic board meetings (also attended by executive directors), in which they perform a merely supervisory role.

What the doctrine does not take into account is that the reason why executive directors receive specific remuneration is that the board has the authority to commission some of its members to carry out executive duties and also to determine, within this context, the remuneration due to them. This is the rule applied in surrounding jurisdictions, the approach of Spanish corporate governance codes, and the continued practice of Spanish companies.

Nevertheless, the prevailing case law is trending towards a scenario in which the remuneration of executive directors must be specifically approved by the shareholders and included, at least, as a maximum limit in the by-laws.

One reason for this may be current public opinion, which is hostile in the wake of certain cases of abuse and exacerbated by the economic crisis. However, in our view this is not the best means of preventing abuse; nor, apart from the 'say-on-pay' vote on the remuneration policy, does the GSM seem the most appropriate place for designing remuneration schemes to allow companies to attract, retain, and motivate the most qualified executives.

CUBG recommendations on directors' remuneration and disclosure

The CUBG contains various recommendations on directors' remuneration. By way of illustration, it recommends that external directors are not subject to variable remuneration systems which could compromise their objectivity or otherwise effectively result in a conflict of interest. That said, it acknowledges that a director that receives any variable remuneration need not necessarily forfeit the status of an independent director.

As to disclosure, the annual report on remuneration to be submitted for an advisory vote at the GSM must include complete, clear, and comprehensible information regarding the remuneration policy approved by the board for the current year and, if appropriate, the policy planned for future years, an overall summary on how the remuneration policy was applied during the fiscal year, and details on individual remuneration accrued by directors. The annual report on remuneration must be drafted in conformity with the standard format approved by the CNMV. Such report shall also specify the outcome of the advisory vote on the previous year's annual report on remuneration by the GSM and be published as a 'significant event' ('*hecho relevante*').

Remuneration's regulatory control in financial institutions

Subject to certain exceptions, the remuneration paid to directors cannot generally be contested by regulatory authorities. As an exception, the Bank of Spain has authority over financial institutions regarding issues of directors and senior key executives' remuneration, which follow the Guidelines on Remuneration Policies and Practices approved by the Committee of European Banking Supervisors in December 2010. Specifically, under the SE Law, financial institutions and companies that render investment services must increase transparency of their remuneration policies and the consistency of such policies with the promotion of sound and effective risk management. To that end, the SE Law reinforced the Bank of Spain's role in the implementation and supervision of remuneration policies and the corporate governance rules of financial entities. In particular, the Bank of Spain is vested with powers to require financial institutions to limit variable components of their remuneration systems in order to preserve a solid capital basis. Both the requirements affecting the design and approval of remuneration policies and the corresponding supervisory powers of the Bank of Spain are comprehensively regulated by Royal Decree 771/2011 of 3 June, which amended specific regulations on capital requirements for financial institutions. Furthermore, RDL 2/2012 sets out specific restrictions for financial institutions that benefit from state aid, which affect both the *quantum* of the remuneration and its variable components and pension benefits associated with them, with the latter two items being reduced to zero in certain cases.

4.6 How will the board handle a corporate crisis like an internal criminal case, violence, social media exposure or dawn raid by the authorities?

It will normally set up a dedicated internal team (including an internal communication department) and hire expert lawyers, communication consultants and, as the case may be, investment banking advisors.

5. BOARD OF AUDITORS, AUDIT COMMITTEE, ACCOUNTING AUDITORS

5.1 How is the internal accounting and legal audit structured and

conducted? Is an outside accounting audit required and, if so, how is it structured? Are there requirements to change the auditor each five years?

Retaining external accounting auditors is compulsory for certain companies (eg, listed companies and companies issuing listed securities, financial intermediaries, insurance companies, companies exceeding certain thresholds in terms of turnover, total assets or number of employees).

Boards of directors of listed companies must have an audit committee. At least one of its members must have accounting or auditing knowledge. The role of the audit committee is primarily advisory in nature and refers to the supervision of auditing practices, the relationship with the external and internal auditors, paying special attention to the independence of external auditors, the oversight of risk management policies and the review of the financial information that the company has to make public.

Legislation sets out a system for the 'appointment and rotation' of external auditors, to ensure their independence. For instance, in companies with total turnover exceeding EUR 50 million, the lead auditor (but not the auditing firm itself) must rotate after seven years from the initial contract and may not audit the same company for a subsequent period of two years.

Lastly, listed companies and other financial institutions must have adequate internal procedures to oversee compliance with the securities market rules of conduct. In this regard, the CUBG recommends that supervision of compliance with the internal codes of conduct and corporate governance rules be entrusted to the audit committee, the remuneration committee or, if they exist as a separate body, the corporate governance or compliance committee.

5.2 Do you have supervisory auditors? What is the function of the supervisory auditors' board?

In Spain, an administrative body (*Instituto de Contabilidad y Auditoría de Cuentas* (ICAC)) monitors the manner in which auditors accomplish their duty of independence.

6. MARKET DISCLOSURE/TRANSPARENCY TO THE SHAREHOLDERS AND THE PUBLIC

6.1 What are the disclosure requirements for companies in your jurisdiction under company law, capital markets law or any other rules?

Standard corporate regulations require companies to provide general information to the commercial registry (memorandum and by-laws, directors, share capital, annual accounts, together with the management report and, if applicable, the audit report, etc.). In addition, directors must provide additional information to shareholders upon calling GSMs to decide certain specific matters (eg, amendments to the by-laws, mergers, spin-offs) as set out in detail in the corporate regulations.

Entities issuing listed securities are also subject to specific transparency and disclosure obligations, most of which arise from the Spanish regulations

transposing Directives 2004/109/EC and 2007/14/EC. These obligations include, among others:

- Preparation and publication of specific periodical information (essentially, annual financial reports, biannual interim financials, intermediate management reports).
- Information regarding the company's transactions involving its own shares.
- Changes to the rights attached to the securities and information about debt issuances.
- Price-sensitive information ('*hechos relevantes*').
- The ARCG and the directors' remuneration report.

In addition, shareholders of listed companies acquiring or transferring shares with voting rights must notify the company and the CNMV of their stake in the company when, as a result of the transaction, it reaches or falls below certain thresholds (3 per cent, 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 35 per cent, 40 per cent, 45 per cent, 50 per cent, 60 per cent, 70 per cent, 75 per cent, 80 per cent and 90 per cent).

Directors, senior officers and their family/arm's length ties must notify all transactions in the company's securities regardless of the percentage of share capital they represent.

Listed companies must have a corporate website to comply with the shareholders' right to information. The securities market regulations specify the minimum content to be included on the website.

Lastly, financial entities subject to special regulations (eg, credit entities, saving banks, investment services entities) are also subject to specific reporting and disclosure requirements on several matters (eg, financial statements, risks control).

6.2 What is the liability or responsibility of the board in relation to the company's disclosure requirements?

The company and its directors are responsible for disclosure.

The board must adopt a proactive approach on this matter, ensuring that the information regarding the company's activities and results provided to the market is accurate and faithful. The CUBG contains several recommendations emphasising the responsibility of the board to be accurate, especially regarding any issues that could affect share prices.

According to the SML, the company and its directors will be responsible for damage caused to shareholders due to incorrect or misleading information. Directors are also responsible for keeping the content of the company's website current to reflect documents filed with public registries.

7. M&A AND CORPORATE GOVERNANCE

7.1 Upon an M&A offer, how are the transparency and fairness rules of the company provided under the company and stock market laws and rules?

In the case of a voluntary bid, the decision to make a takeover bid must be announced as soon as it is adopted. Whoever falls within any of the cases

that trigger the obligation to make a takeover bid must make public and disseminate the decision to the market immediately.

In all cases, the communication to the market must be made in the same manner as in the case of a 'significant event' ('*hecho relevante*'), and therefore: (i) the communication must be sent to the CNMV at the same time that it is disseminated by any other means and as soon as the event becomes known or the decision is adopted; and (ii) the content of the communication must be true, clear and complete, such that it is not misleading or deceptive. In addition, when the entity is an issuer of securities, it must disseminate the information through its website.

The takeover regulations establish the general principle of 'equal amount of information for competing offerors', to place all offerors on the same footing. The offeree company has a duty to guarantee that all competing offerors receive the same amount of information and potential good-faith offerors are under the same obligation. However, this principle does not imply an obligation on the offeree company to disclose any specific information. This principle would only apply after the offeree gives information to one potential offeror. In such case, it must then provide the same information to every competing offeror. The availability of information is conditional upon: (i) the information being specifically requested; (ii) such information having been previously provided to other existing or potential offerors; (iii) the recipient of the information duly ensuring its confidentiality, and such information being used for the sole purpose of making a takeover bid; and (iv) the information being necessary to make the bid.

In addition, Spanish regulations impose a requirement of passivity both on the offeree's board of directors and any executive body of the board (or anybody receiving powers therefrom), as well as the companies belonging to the offeree's group and persons acting in concert with any of the above. The purpose of this passivity rule is to eschew any possible interference with the bid by the offeree company, so before taking any action that may prevent the success of the bid, the management bodies of the offeree company must obtain the prior approval of the shareholders at a GSM. The only exception is that the offeree's board of directors does not need shareholder approval in order to seek other offers that compete with the original takeover bid, because, in so doing, the board not only causes no damage to the shareholders of the offeree company but rather complies with the fiduciary duties owed to the shareholders to maximise the value of the company.

8. PROXY FIGHTING

8.1 Is proxy fighting customarily conducted for control of the company management or what other items? How is it regulated under the company law or market regulations?

Proxy fighting is not common in Spain and has been seen only exceptionally in specific cases linked to disputes over the control of target companies, normally in the context of takeover bids or minority shareholders disagreeing with the management.

Corporate law contains specific rules on the delegation of votes, including the duty of the representative to duly inform the shareholder of conflicts of interest and specific rules if the representative is a director.

9. OFFICERS' REMUNERATION RULES

9.1 How is remuneration of officers determined? By whom? Is there a role for the shareholders' meeting? Is there any mechanism for an independent body to review and evaluate them?

The remuneration of senior executives will generally be as provided for in the corresponding employment contract and under applicable employment law. In the case of senior executives who are also directors, see paragraph 4.5 above.

For listed companies, the CUBG recommends that, as is the case with directors, the remuneration policies for senior executives be proposed to the board of directors by the remuneration committee. With respect to the remuneration of the senior executives of financial institutions, see paragraph 4.5 above.

9.2 Is the mechanism of officers' remuneration publicly debated?

Yes, in the context of the GSM's advisory vote on officers' remuneration policy.

10. DIRECTORS' LIABILITIES, LIABILITY INSURANCE, INDEMNIFICATION

10.1 What are the directors' responsibilities and liabilities under the law? Can those liabilities be covered by insurance? Can it be indemnified by the company or other related parties?

Directors' duties and liabilities are described in paragraph 4.1 above. Under Spanish law it is possible to purchase insurance policies to cover directors' liabilities to insure them against damages claims which may arise from actions taken in the scope of their regular duties. The core purpose of these policies is to provide financial protection for directors against the consequences of actual or alleged 'wrongful acts' when acting within the scope of their managerial duties. They do not cover fraud, criminal conduct or wilful misconduct. In addition, following the general criterion established by the Spanish insurance regulator, these policies do not cover fines or sanctions.

Although coverage may differ by insurer and is subject to negotiation, these policies usually do not cover claims brought by the company

Indemnification by the company or a related party

As a general matter, it is uncommon in Spain for a company to agree to directly indemnify its directors for damages incurred by them in their capacity as such. Indeed, there is a quite broad – albeit not unanimous – consensus among scholars that agreements of this nature could be deemed to be null and void on the ground that the liability regime of directors is mandatory and cannot be attenuated or excluded by the company and its directors. It is surprising that the scholars following the general consensus

do not take issue with the 'external insurer' (through a policy insuring the liability of directors in which the premium is paid by the company) but nevertheless reject 'self-insurance' (ie, an indemnity between the company and the director).

On the other hand, according to this line of argument, the fact that an indemnification undertaking were to be given by a parent company (usually with respect to the proprietary director that it has appointed in the subsidiary) or by another related person would not resolve the risks of invalidity that these undertakings stir up and could even raise additional issues that exceed the scope of this chapter (eg, potential incompatibility with the duty of loyalty and corporate interest or the risk of the parent company being deemed a *de facto* director).

11. SHAREHOLDERS' DERIVATIVE SUITS

11.1 Is a shareholder's derivative suit provided for by law in your jurisdiction? How is it enforced by the shareholders?

Shareholders' derivative suits, understood as lawsuits brought by any shareholder on behalf of the company against third parties (who may or may not be the company's directors) allegedly causing harm to the company when the company has failed to take any measures against the wrongdoers, are not available under Spanish corporate law. Perhaps the only close equivalent would be the right of the company's shareholders to seek enforcement actions for damages against the management body through a 'subsidiary action' (see paragraph 3.1(a)).

11.2 Have there been any recent relevant court cases on the subject?

No. However, various related cases have shown that the best route for obtaining these judgments is in the criminal courts, where litigation costs are lower than in civil courts.

12. SOCIAL INTEREST IN CORPORATE BEHAVIOUR

12.1 How is a company in your country expected to deal with the following issues? Corporate social responsibility; gender, racial and social diversification; environmental issues; ecology and corruption?

During the 2000s, an increasing number of listed companies adopted internal policies on social responsibility and issued annual reports on their implementation. These reports, which were in all cases voluntary and – until recently – were not subject to any specific legal provisions, have become common practice in listed companies and show an upward trend in undertaking commitments with stakeholders. Beginning in 2011, corporate responsibility has been dealt with in the SE Law. Pursuant to the SE Law, listed companies may (but are under no obligation to) issue an annual report on corporate responsibility based on certain international standards, such as transparency of management, good corporate governance and commitment to responsible environmental practices. Any such report must state whether or not it has been verified by third parties. Reports issued by companies employing more than 1,000 individuals must be submitted to the National

Council for Corporate Responsibility for monitoring purposes. Under the SE Law, any company may request acknowledgement as being a socially responsible company.

Two principle measures have been taken in Spain with regard to gender diversity: the Spanish parliament approved Basic Law of 22 March 2007 on Effective Equality between Women and Men (the LOIHM) and the CNMV approved the CUBG, including a recommendation on this matter. The LOIHM calls for a balanced presence of women and men (no less than 40 per cent of either sex) on the boards of directors (not applicable to small- and medium-sized enterprises). The law does not contain express formal sanctions for failure to maintain this balance, although public authorities may, under certain circumstances, adopt positive discrimination in the bidding conditions for certain contracts.

The CUBG recommends that companies with few or no women on their boards explain the reasons for this situation and the measures taken to correct it, and make a specific effort to find potential candidates whenever they need to cover a vacancy. Moreover, the new standard format for the ARCG includes the obligation to explain the steps, if any, taken by the companies to promote a more equitable balance of women and men in the board of directors.

Finally, it is common for major listed companies to have additional internal policies forming part of their corporate governance systems, including anti-fraud and crime prevention policies.