

CORPORATE REGULATIONS AND GOVERNANCE IN SPAIN

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1. INTRODUCTION

Spain is a member of the European Union and as such follows the standards set out by EU directives and regulations. Structurally, Spain has adopted a federal system of governance comprised of 17 autonomous regions, which can govern certain areas independently, mainly relating to public services (education, health, etc). As to company law and corporate regulations, these are fundamentally established by the Spanish central government and thus are applicable throughout the country.

Spain, like many other European Countries and the U.S., is currently undergoing difficult economic times. To tackle the problems, the Spanish government has implemented a comprehensive austerity programme to reduce public deficit and created an economic policy in line with economic cycles and the European Union's recommendations. Among others, the Spanish government has reduced public expenditure, has raised taxes and has approved a structural labour reform. Furthermore, it also approved stimulus packages in 2010 and 2011 to

boost the economy and create a favourable framework for domestic and international investment.

Japanese translations of names of Spanish laws and government institutions and wordings in this article have been prepared by the author and please note that these are not official translation. Please see the original Spanish documents as much as possible, when you interpret the meanings of Spanish laws.

2. LEGAL SYSTEM

2.1 Common law or civil law

Spain has a civil law and statute based legal system. Court decisions are not a source of law but are of interpretative value. As mentioned, Spain is a Member State of the EU and has a federal system of governance with 17 autonomous regions. Basic commercial, corporate and intellectual property regulations are enacted by the central government, while regional governments enact their own legislation on matters such as health, education, the environment and consumer protection.

2.2 Court system

The Spanish legal system has specific commercial courts, which are specialized in corporate issues and disputes. Although corporate disputes can be resolved by arbitration according to Law 60/2003 of 23 December on arbitration, in practice, these types of disputes are rarely resolved by arbitration, but rather by the commercial courts.

3. OUTLINE OF CORPORATE GOVERNANCE REGULATIONS

Legal entities under Spanish law, generally referred to as companies, are mainly governed by two regulations: (i) Royal Decree 28 August 1885 on the approval of the Commercial Code («CC»); and (ii) Royal Legislative Decree 1/2010 of 2 July which approves the consolidated text of the Capital Companies Law («LSC»).

Notwithstanding these two basic pieces of legislation, Spanish law contains other mandatory regulations on corporate entities and governance, such as:

- Law 24/1988 of 28 July on the securities market;
- Law 19/1988 of 12 July on audit accounts;
- Ministerial Order ECO/3722/2003 of 26 December on the annual corporate governance report issued by listed companies;
- Circular 1/2004 of 17 March issued by the Spanish Securities and Exchange Commission (Spanish acronym «CNMV») on the annual corporate governance report to be issued by listed companies;
- Order EHA/3050/2004 of 15 September on related-party transactions;
- Circular 4/2007 of 27 December issued by the CNMV to modify the form of annual corporate governance reports;

- Royal Decree 1362/2007 of 19 October on transparency requirements in relation to information regarding issuers whose securities are listed in an official secondary market;
- Law 3/2009 of 3 April on the structural modification of companies;
- Royal Decree-Law 2/2012 of 4 March on sustainable economy;

Apart from these regulations, corporate governance in Spain is also subject to a soft rule: the Code of Corporate Governance of Listed Companies approved in May 2006. This Code, which shares the international standards and recommendations on good governance practices, adopts modern trends in corporate governance, as stated 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’. The companies have to decide whether or not to follow the Code’s recommendations, but they must give a reasoned explanation for any deviations in their annual corporate governance report. The evaluation of the degree of compliance with the recommendations is left to the markets.

All companies have articles of association establishing the terms and conditions for the operation of the company. These cover the contracts and relationships between shareholders and contain corporate rules (e.g., shareholders’ meetings, powers and duties of directors, etc). In the event of a discrepancy, legal provisions prevail over articles of association. Furthermore, listed companies must approve specific regulations regarding the general shareholders’ meetings and the board of directors, to further develop the relevant provisions of the articles of association.

Shareholders’ agreements are very common in Spain to regulate matters not strictly related to the governance and ownership of the company, where the rigidity of corporate law and the limited scope of the articles of association, in addition to the strict criteria applied by Commercial Registry to authorize the recording of corporate resolutions and other corporate actions, make it necessary to regulate these matters through separate agreements. The content of shareholders’ agreements can vary greatly. Shareholders’ agreements generally regulate issues such as: (i) mechanisms to transfer interests; (ii) restrictions on transfer of interests; (iii) voting criteria; (iv) resolution of deadlocks; (v) financing requirements and capital calls; (vi) commercial matters, including business plans; (vii) business strategies; (viii) non-compete agreements; and (ix) control of management and shareholders meetings.

3.1 Types of entity for business

Spanish companies have legal personality and thus can acquire rights and assets and assume liability.

There are two main types of companies, which, together with limited shareholders partnerships (*sociedad comanditaria por acciones*), are regulated by the LSC:

- Public limited companies («Sociedad Anónima» or «S.A.»): shareholder liability is generally limited to the amounts contributed to the company’s equity. This participation is represented by shares that qualify as negotiable securities, which may be listed on the stock exchanges. The minimum capital to set up an S.A. is EUR 60,000 which must be fully subscribed and at least 25 per cent paid up upon incorporation. The issuance of

non-voting shares is also allowed. The holders of these non-voting shares are entitled to receive minimum annual dividends, whether fixed or variable, as established in the company's articles of association according to the framework provided by the applicable law.

- Private limited companies («Sociedad Limitada» or «S.L.»): partner liability is generally limited to the investment in the company's equity. The minimum capital required to set up an S.L. is EUR 3,000 which must be subscribed and fully paid up upon incorporation. The capital is represented by 'quotas', an instrument that closely resembles the shares of an S.A, and which can also have a non-voting nature. However, quotas may not be listed on stock exchanges.

S.A. used to be the most common form of company in Spain but S.L. has become more popular because of their flexibility in terms of incorporation (more economical), organization and management. S.L. are currently by far the most common type of business organization for non-listed companies.

Spanish corporate law also foresees the so-called European Limited Company «Societas Europaea», which is a kind of supranational company recognized in the Community legal framework and regulated by Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company. The legal framework of the European Limited Company is essentially to extend freedom of establishment within the territory of the European Union enabling companies to operate in the Community under the same Community regulations, which are directly applicable in all Member States. In this regard, Member States are bound to adopt whatever measures are necessary to ensure the effectiveness of directly applicable Community rules.

The model of European Limited Company is mainly aimed at large investments with a minimum called-up capital of EUR 120,000 although medium or even small enterprises are not excluded.

However, European Limited Companies are quite uncommon in Spain and in many other European countries (with the exception of Germany, where it has been sometimes used as a way to dilute employees co-determination), because their regulation is somewhat impractical (e.g., there is a withdrawal right for shareholders who vote against a change of the company's registered office to another member country).

There are also three main types of partnerships in Spain, with a reduced presence in the Spanish business sector, due to the unlimited liability of their members:

- General partnerships: a private entity (*sociedad colectiva*) with legal personality and unlimited joint liability, governed by the CC.
- Simple limited partnerships (*sociedad comanditaria*) and limited shareholders partnerships (*sociedad comanditaria por acciones*): both of which have legal personality and two types of partners: (i) general partners with unlimited liability; and (ii) limited partners with limited liability up to their contribution.

The setting up of any of the corporate entities mentioned above requires the execution of a notarial deed of incorporation (which will include, among others, (i) the identification of the partners or shareholders, (ii) the intention to create a corporate enterprise, specifying the type

of company, (iii) the articles of association, (iv) the contributions made or, in the case of listed companies, the amount that each partner/holder undertakes to contribute, as well as the number of shares attributed as consideration, (v) the identity of the person or persons initially entrusted with management and representation; and (vi) any agreements or provisions considered appropriate for the founding members).

The deed of incorporation (and all other company-related matters) must be registered with the Commercial Registry. After registration, the company will acquire legal status depending on the type of company chosen. Subsequently, any amendments made to the articles of association, appointment or dismissal of directors, auditors or liquidators, capital increases or reductions, approval of structural modifications, issuance of debentures and other corporate resolutions must be recorded in the Commercial Registry in order to be effective vis-à-vis third parties.

There are also other types of business organizations or associations, which in most cases do not have a separate legal personality to that of their members. These entities include: temporary business association (*UTE*), joint account contracts (*cuentas en participación*), joint ownership (*comunidad de bienes*) and civil law partnerships (*sociedad civil*).

3.2 Companies Law

The abovementioned LSC is the most important corporate law in relation to S.A. and S.L. It is a consolidated text of the previous regulation for S.A. (including the *sociedad comanditaria por acciones*) and S.L. and was enacted in 2010.

This major corporate law regulates the main aspects of corporate governance for S.A. and S.L. Although corporate governance is relevant to all types of companies, it is particularly important for listed companies, where the position of minority shareholders needs to be protected by rules on corporate governance. The following summary of the key aspects of corporate governance in Spain includes general rules applicable to both S.A. and S.L. detailing, where applicable, regulations relating only to a specific form of company.

3.2.1 Shareholders' rights

Every shareholder generally has the following rights:

- To take part in the allocation of benefits and in the liquidation quota.
- Preemptive rights for new shares: although every shareholder has this right, if deemed to be in the company's best interest, the General Shareholders' Meeting, when approving the capital increases involving the issue of new ordinary or preference stakes or shares, posted against cash contributions, may decide to wholly or partially waive partners' preemptive rights. To do so, the requirements set out in the LSC will have to be met. Moreover, in some cases, preemptive rights are not applicable (e.g., in the event of the conversion of bonds into shares or in case of capital increases against in-kind contributions).

In listed companies, whenever the General Shareholders' Meeting delegates the power to increase the share capital to company directors, it may also vest them with the power

to suppress preemptive rights for the share issues approved under this delegation, if deemed to be in the company's best interest.

- To attend and to vote in the General Shareholders' Meeting: Attending and voting in the Shareholders' Meeting enables shareholders to partake in the management of the company, since shareholders have the power to approve, through a majority vote: (i) the annual accounts, (ii) the distribution of profits or allocation of losses, (iii) the management of the company, (iv) the appointment and removal of directors, auditors and liquidators (as the case may be), and (v) the modification of the articles of association and any structural modifications (e.g., mergers, spin offs, global assignments, transformations or changes of registered office).

Despite the importance of this right as a way of monitoring the management of the company, LCS allows shareholders of companies to be disenfranchised, but only in very limited situations, such as: (i) whenever the articles of association establish the obligation to hold a minimum number of shares to have the right to attend General Shareholders' Meetings, (ii) in the acquisition of companies' own shares, or (iii) to squeeze out minority shareholders of listed companies in some successful takeover bids.

- To challenge corporate resolutions: LSC establishes two types of corporate resolutions that may be challenged by shareholders: (i) corporate decisions which are contrary to the law (considered void), and (ii) corporate resolutions that are contrary to the articles of association or those that jeopardize the corporate interest in favour of certain shareholders and/or third parties (considered voidable).
- Right of information: shareholders have the right, as established by law, to receive information about the main events that have an effect on the company's development. This right is independent from the right to vote, although there is a connection between them, since it allows to the shareholder to exercise the latter in a suitable and informed manner.

This right is exercised through two mechanisms:

- a. The right to request corporate information regarding the items in the agenda of the General Shareholders' Meeting; and
- b. The right to examine the financial statements and the auditor's report before their approval by the General Shareholders' Meeting.

Exercise of shareholders' right to information in S.L. and S.A.

Any shareholder may request, immediately and free of cost, any documents that have to be submitted to the General Shareholders' Meeting for approval, and, as appropriate, the management and auditor's reports.

Shareholders may also examine at the registered office all the documentation and reports and request the delivery or dispatch for free of these documents, when particularly important corporate resolutions are going to be passed (e.g., the modification of the articles of association). In a S.L., the articles of association may also provide for the right of any holder to examine, together with an expert, the accounting books of the company.

Shareholders may also request in writing information about the items included in the agenda before the General Shareholders' Meeting and they are entitled to orally request clarifications, explanations and information about these items during the meeting. However, and only in the case of S.A., the written request must be submitted seven days before the holding the General Shareholders' Meeting.

The management body must provide in writing the information requested before the meeting takes place or, if the request is made during the meeting, answers should be provided orally during the meeting. The LSC provides, only for S.A., the option to answer oral questions in writing within seven days following the meeting (if the relevant information is not available at the time of the meeting).

Nevertheless, information may be denied if the management body considers that disclosure would be contrary to the company's best interest. However, refusal to provide information will not be valid if the request is supported by shareholders representing, at least, 25% of the share capital of the company. In S.A., the articles of association may lower this minimum requirement to 5% of the share capital.

Exercise of the shareholders' right to information in listed companies.

The regulation on the right to information for listed companies is similar to that for S.A., except for the following:

- a. With the same prior notice and in the same way as for S.A., the shareholders of listed companies may request information or clarifications or submit written questions regarding information available to the public which has been provided by the listed company to the CNMV since the holding of the last General Shareholders' Meeting or which relate to the auditor's report;
 - b. LSC establishes the obligation of listed companies to include in their websites, as from the calling of the General Shareholders' Meeting, all the information regarding the agenda and proposed resolutions of any ordinary or extraordinary general meeting as well as any material information that may be required by shareholders to cast their votes; and
 - c. The board of directors of listed companies will not be obliged to answer any request for corporate information if, before the request was made, the information is clear and directly available to all shareholders on the company's website, under the FAQ section.
- Right to request the management body to call a General Shareholders' Meeting: members of the management body may call a meeting if and when requested in writing by one or more shareholders, which participation in the share capital represents at least 5%. The written request must include the proposed items for the agenda.

The General Shareholders' Meeting must be held within two months of receipt of the relevant request through a notary public. If the corresponding call is not made or the meeting is not held, any shareholder may request the calling of the meeting through the competent commercial court.

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- Right to include additional items to the agenda: in S.A., shareholders representing at least 5% of the share capital may request the publication of an addition to the agenda, once it has already been published. This request must be made through reliable means of communication that must be received at the company's registered office within five days of 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.
- Right to seek enforcement action against members of the management body: the following actions may be brought against directors:

–**Company action.** The company can file an action for liability against directors, subject to the existence of a previous resolution from the General Shareholders' Meeting that is adopted by ordinary majority; whenever the General Shareholders' Meeting can settle or waive the action and provided that there is no opposition by 5% of share capital. This action will lead to the dismissal of the directors in question. The purpose of this action is generally to seek compensation to the company for any damages caused by fraudulent or negligent acts or omissions of directors contrary to the law, the articles of association or for a breach of their corporate and fiduciary duties. Shareholders may also bring this action if not brought by the company and also creditors, if the company is insolvent, but in any case any compensation has to be paid to the company.

–**Individual action.** Any third party (including shareholders) can take individual liability action against directors if his/her interest is impaired due to the behaviour of directors. This purpose of this action is to seek compensation for damages directly suffered by third parties (not damages caused through the company).

- Withdrawal right:

Under Spanish law, a shareholder may withdraw from the company for two main reasons:

- a. **Causes foreseen by law**: there are several corporate decisions (among others: (i) the disappearance of the corporate purpose, (ii) the extension of company's term, and the (iii) relocations of the registered office abroad) regarding which an unfavourable vote entitles the relevant opposing shareholder to withdraw from the company.
- b. **Causes foreseen in the articles of association**: The articles of association may establish causes for withdrawal other than those provided by corporate law. In this case, they will determine the procedure to evidence the existence of the cause and to exercise the right of withdrawal as well as the term to do so.

Spanish law also provides for a withdrawal right solely for shareholders of non-listed companies; however, this withdrawal right will not be applicable until 1 January 2015.

Other rights may be established in the articles of association, thus the abovementioned rights do not represent a closed list.

3.2.2 *Transfer of shares*

Spanish regulations on restrictions to equity transfers vary depending on the type of company.

In the case of S.L., an unconditional restriction on the transfer of membership interests is allowed if the lock-up is limited to five years. The members may agree on a longer term but the opposing members will have the right to withdraw from the S.L.

In relation to S.A., unconditional restrictions on transfer (or limitations which make it virtually impossible to transfer shares) are not allowed. Any clauses containing these restrictions will be void. Certain mechanisms are available to legitimately circumvent this prohibition, including the pooling of voting interests at a holding company level (preferably in an S.L.) so that for the purposes of the S.A. there are no restrictions in its articles of association or its shareholders' agreement.

Other valid restrictions under Spanish law include requiring the shareholders or the board of directors to authorize an intended transfer of shares, and the granting of a right of first refusal in favour of the remaining shareholders and/or the company, whether the transfer is *inter vivos* or *mortis causae*. Call options that may be triggered by an intended transfer of stock are also a legitimate way of restricting the free transfer of stock.

In any case, S.L. must always include in its by-laws a certain level of restrictions to transfers, while in a S.A. it is possible that there are no restrictions at all.

Spanish law allows most of the mechanisms commonly used in corporate transactions around the world, including 'tag along' and 'drag along' rights, put and call options, rights of first refusal, 'russian roulettes' and 'shot gun' clauses. Some of these mechanisms are already regulated by Spanish corporate law (e.g., rights of first refusal) while others are not but are accepted (and frequently included) in shareholders' agreements (e.g., tag along/drag along rights).

The transfer of shares of S.L. must be made before a notary public, while in the case of S.A. this obligation will apply only as and when established by law (e.g. listed shares need not meet this requirement).

3.2.3 *Shareholders' Meeting*

There are two ways of calling Shareholders' Meetings in Spanish companies:

- Universal Shareholders' Meeting: in fact, a Shareholders' Meeting is universal when it has not been called, and when every shareholder is present or represented, and it is unanimously agreed that the meeting constitutes a Universal Shareholders' Meeting with an agreed agenda.
- Called Shareholders' Meeting: the General Shareholders' Meeting will be called by the members of the management body, at any time when necessary for the corporate interest and according to the articles of association.

At the same time, a Shareholders' Meeting could be viewed from the standpoint of its agenda. In that case, Shareholders' Meeting may be held as:

- An Ordinary Shareholders' Meeting: to be held during the first six months of each business year, in order to approve: (i) the annual accounts of the previous business year; (ii) the allocation of the results of the previous business year; and (iii) the management of the company of the previous business year.
- An Extraordinary Shareholders' Meeting: which is any meeting that is not an Ordinary Shareholders' Meeting.

As regards where Shareholders' Meetings take place, they will be held in the city where the company has its registered office. However, the articles of association may legitimately establish otherwise.

3.2.4 *Company management*

(A) **Management body, board structure and practices**

Spanish companies are managed and represented by the management body, which may adopt different forms as provided in the articles of association, such as: (i) a sole director; (ii) various members acting jointly and severally, or jointly; or (iii) a board of directors formed by at least 3 directors.

In S.L., the articles of association may establish different ways of organizing the management of the company, such as granting the Shareholders' Meeting the ability to choose any form between those foreseen without the articles of association having to be modified. If the management body chosen for the S.L. is a board of directors, it may have no more than twelve members.

Regarding S.A., Spanish law provides for a standard one-tier board structure. Listed companies must have a board of directors. Only European Limited Companies in Spain may opt for a two-tier board, where directors assume the management of the company and the supervisory body controls their performance.

(B) **Composition of the board of directors and committees**

The board must have at least three members, which can be individuals or entities.

The Code of Corporate Governance of Listed Companies recommends, in the interest of maximum effectiveness and participation, that the board should have at least five and no more than 15 members. It is also recommended that companies strike a balance between external and internal directors. Very often, however, powers are delegated by the board to an executive committee, or to one or more executive directors or CEOs, that in fact assume the ordinary management of companies.

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. In some companies, the function of the executive committee is to hold meetings more regularly than the board (weekly or fortnightly), while the board as a whole meets less frequently (once a month). The Code of Corporate Governance of Listed Companies recommends however that the board of directors is kept fully informed of the discussions and decisions adopted by the executive committee.

In addition, boards of directors of listed companies must create a compulsory audit committee, formed by members of the board (a majority of whom must be external directors) and, at the recommendation of the Code of Corporate Governance of Listed Companies, chaired by an independent director. At least one of its members must have accounting or auditing knowledge. The role of the audit committee is mainly of an advisory 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.

The Code of Corporate Governance of Listed Companies also recommends that a nomination or remuneration committee (or both) be created within the board. This committee should be formed mostly by 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. Many of the large Spanish listed companies have created a nomination or remuneration committee, or both.

(C) Appointment and removal

The management body must be appointed by the Shareholders' Meeting.

However, and exclusively for S.A., Spanish law foresees special procedures for this appointment:

- a. Proportional representation: Shareholders might form groups and appoint a number of members in proportion to the percentage of share capital that each group establishes; and
- b. Cooptation: the Board of Directors may appoint a shareholder as a director to cover an unforeseen vacancy or when no 'substitute director' has been appointed, until the next Shareholders' Meeting.

The Code of Corporate Governance of Listed Companies recommends that the proposal for the appointment and renewal of members that the management body submits to the Shareholders' Meeting be approved by the management body on the proposal of the nomination committee or subject to a report from the same committee.

The members of the management body can be removed at any time by means of a resolution of the Shareholders' Meeting. This decision will not have to be justified nor will the proposed removal have to be included in the agenda in advance.

(D) Directors' duties and liabilities

Directors have two basic duties: to act diligently and to be loyal to the interests of the company. These two duties may be instrumented through several specific obligations as provided by law:

- I. Diligent management: directors will carry out their tasks with the diligence of a prudent business person and must diligently be informed of the running of the company's business.

- II. Loyalty: all directors have a duty of loyalty. They must act in the best interest of the company and comply with the duties established in the articles of association and the applicable laws and regulations.
- III. Prohibition to use the company's name (or refer to his/her condition as director of the company) to perform personal tasks or tasks for other parties.
- IV. Prohibition to take advantage of business opportunities regarding investments or activities affecting the company's assets when that investment was known by the member of the company as a consequence of his/her condition as such, or the company had an interest in it.
- V. Duty to notify conflict of interest: directors must inform of any direct or indirect conflict of interest that might arise and be in any way detrimental to the company's interest.
- VI. Prohibition to compete: unless previously authorized by the company, director may not carry out, whether in his/her own name or on behalf of a third party, activities that are identical or similar to those of the company's corporate purpose.
- VII. Secrecy: members of the management body must keep a duty of secrecy in relation to confidential information known due to their position, unless its disclosure is allowed by law. In the event that the director is a company, this duty must be observed by its legal representative.

Directors will be liable before the company, shareholders and the company's creditors for any damage caused as a result of wilful or negligent acts or omissions contrary to the law or the articles of association or in breach of their duties. Furthermore, the board of directors and management bodies can incur personal liability (civil, administrative or criminal) for the actions of the company under certain circumstances such as failing to pay social security contributions, breaches of health and safety at work regulations, the fraudulent use of subcontractors, etc.

3.3 Restriction on foreign investment in Spain

Foreign investment in Spain is generally unrestricted except for investments in certain specific sectors, such as air transportation, radio and gambling where foreign investment is restricted (the most notable restriction being a 25% limit on foreign ownership of the share capital of the company in question). Furthermore, the manufacture, marketing and distribution of weapons and explosives for civil use and activities related to national security require prior governmental authorization, except for listed companies engaged in any activity related to Spanish national defence. In these cases, investment authorization is required when foreign ownership exceeds 5% of the share capital of the company.

The acquisition of a significant stake in certain entities (such as credit entities, insurers, or investment service companies) requires the prior authorization of the relevant regulator. Moreover, any transaction involving a concentration exceeding the legal thresholds established by Spanish or European law requires prior notification to the antitrust authorities; antitrust clearance is required before the transaction can be implemented.

Spanish antitrust law requires that the appropriate application be made to the National Competition Commission where one of the following two thresholds is met:

- a. a 30 per cent share of the national market or a defined geographical market is acquired or increased as a result of the concentration (except where the target or assets acquired in the transaction achieved turnover in Spain of no more than EUR 10 million in the previous financial year, and provided that the undertakings concerned do not hold, individually or in aggregate, a market share of 50 per cent or more in any affected market); or
- b. the combined aggregate turnover in Spain of all the undertakings during the previous financial year exceeds EUR 240 million, provided that each of at least two of the undertakings reaches an aggregate turnover in Spain of more than EUR 60 million.

3.4 Additional regulation on corporate governance for listed companies

3.4.1 Corporate governance disclosure required from listed companies

In relation to corporate governance and its provisions, listed companies must disclose information and produce several documents for the market:

1. An annual financial report within the first four months following the closing of the business year. This financial report should comprise the annual accounts and the management report (including the annual corporate governance report) revised by auditors as well as its contents liability declarations.
2. A biannual interim financial report that should include the resumed annual accounts, an intermediate management report and its contents liability declarations.
3. A quarterly interim management report to be issued within the first and second six-month period of the business year that should have the following minimum content: (i) an explanation of the significant events and transactions that took place in the relevant period and their impact on the financial situation of the listed company and its controlled companies; and, (ii) a general description of the financial situation and the results of the listed company and its controlled companies within the relevant period.
4. Any change to the rights of the securities and information about new debt issuances.
5. Any project to modify the incorporation documents or the articles of association.
6. Information regarding significant holdings and transactions of listed companies with their own shares.
7. Information in relation to the transactions carried out over the company's securities by its directors, officers and their family/arm's length ties.
8. Price sensitive information, that is, information that could reasonably have an impact on the securities' listing in the market and thus affect investors must be disclosed immediately after the relevant agreement has been reached, a significant event has occurred or an important decision has been made and which may affect the price of the relevant securities in the market.

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-party transactions between the company and its shareholders and directors and officers as well as intra-group transactions; (iv) risk control system; (v) operation of the Shareholders’ Meeting; (vi) an account of compliance with the corporate governance recommendations and, as the case may be, of the reasons for non-compliance; and (vii) a description of the main aspects of the risk monitoring and internal management system in relation to the transmission of financial information.

3.4.2 Responsibility for disclosure and transparency

Under Spanish law and regarding listed companies, the company and its directors are responsible for information disclosure. Thus, the board of directors must adopt a proactive approach in this regard, ensuring that the information regarding the company’s activities and results provided to the market are accurate and faithful.

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Although Spain is currently facing economic difficulties, various measures are being implemented as described in "1. Introduction" above, and thus it is expected that Spain continuously be an attractive market for Japanese investors. We hope this article support the further investment.