

# IMPROVING THE MANAGEMENT AND GOVERNANCE OF COMPANIES - CLIFFORD CHANCE

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**On 4 December, 2014, the Spanish Official State Gazette published *Ley 31/2014, de 3 de diciembre, por la que se modifica la Ley de Sociedades de Capital para la mejora del gobierno corporativo* (the LSC Reform Act) which amends the Spanish Companies Act (LSC) with a view to improving corporate governance. The LSC Reform Act entered into force on 24 December, 2014.**

The LSC Reform Act is the direct descendent of the work of the Expert Committee on Corporate

Governance and, more specifically, the study on proposed regulatory amendments issued by the committee on 14 October, 2013. The Expert Committee was created "with the aim of improving efficiency and responsibility in the management of Spanish companies" and "raising domestic standards to the highest level of compliance compared with international criteria and principles on good governance".

In accordance with the recommendations of the Study by the Expert Committee, which the LSC Reform Act has incorporated virtually in its entirety, the changes to the LSC refer – as is to be expected in the case of a reform concentrating on the improvement of corporate governance – to the two bodies that comprise the corporate structure of companies ("*sociedades de capital*"):

- some amendments affect the general shareholders' meeting and shareholder rights, with the recurrent aim – as stated in the preamble to the LSC Reform Act – of "strengthening their role and providing means for promoting shareholder participation";
- other amendments affect the management body and, to be more precise, in the case of listed companies, the board of directors, due to the need to "regulate certain aspects – as the preamble of the LSC Reform Act puts it – which have been acquiring increasing relevance, such as, for example, the transparency of governing bodies, fair treatment of shareholders, risk management or the independence, participation and professionalisation of directors".

Some of the amendments to the LSC come from the Proposed Corporate Code of June 2013, drafted by the Commercial Law department of the General Code Committee (the "Proposed Corporate Code"). And many others have consisted of raising to legal status what until now were mere voluntary recommendations in the Unified Code of good governance for listed companies, approved in 2006 and updated in June 2013. Despite this, the Expert Committee, and by extension the LSC Reform Act, have considered that the voluntary nature of the codes of good governance and the correlative principle of "comply and explain" continue to be a useful system for addressing a large part of the corporate governance system. Nevertheless, the conversion of some of these recommendations into mandatory rules is justified by the growing recognition of some aspects of corporate governance as basic and essential when until recently they were not considered imperative, and by the organisational deficiencies which the recent financial crisis has laid bare in several entities.

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