NEW CODE AIMS TO HARMONISE GOVERNANCE GUIDELINES - ROCA JUNYENT

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On 24 February 2015, the Spanish National Securities Market Commission, Comisión Nacional del Mercado de Valores (CNMV), published the new Unified Good Governance Code for listed companies, drafted by a group of experts created especially for this purpose. The objective of the code is to harmonise and update the recommendations in the Olivencia and Aldama reports and the 2006 code of good governance for listed companies, as well as make additional

recommendations deemed necessary.

The scope of the code is limited to listed companies, meaning companies with shares admitted for trading in an official secondary securities market, regardless of their size or capitalisation ratio. The code aims to regulate the governing bodies of listed companies in line with Spanish recommendations and those of the EU.

Up to now, the framework regarding corporate governance of listed companies in Spain is limited to two aspects: on the one hand, the mandatory rules contained in the Spanish Companies Law and other applicable legal provisions, and on the other, the recommendations for good governance contained in the Good Governance Code, which are voluntary in nature.

In this regard, the Spanish Companies Law, faithful to the principle of "comply or explain", requires Spanish listed companies to indicate in their annual reports on corporate governance their degree of compliance with the aforementioned recommendations or, where applicable, to explain any potential failure to comply. The shareholders, investors and, in general, the markets, must assess the explanations given in such a case by the listed companies regarding their non-compliance or partial compliance with the recommendations. However, the recommendations must be implemented by listed companies in 2015, and their compliance must be assessed in the annual report on corporate governance to be sent to the CNMV in 2016.

The recommendations contained in the code can be grouped into three main categories: general aspects, general shareholders meetings and boards of directors.

Among the main changes involved, the following can be highlighted: identification of 25 principles serving as inspiration for the recommendations; inclusion of new transparency measures at shareholders meetings and measures for assessing boards of directors; inclusion of recommendations regarding the composition and operation of boards of directors and remuneration for their members; and the inclusion, for the first time, of aspects regarding corporate social responsibility.

The code has already been criticised, not only because of the amount of time that has elapsed since the government entrusted the task to the group of experts, but also because of the content itself. From my perspective, however, little criticism can be made of this text, given that it not only outlines the main recommendations in the Olivencia and Aldama reports and the 2006 code, but it is also in line with European Union directives and guidelines and the text of the Spanish Companies Law regarding corporate governance for listed companies.

Among the criticisms that have been made since the Unified Good Governance Code was published is that it is not particularly innovative. In my opinion, the code does not need to be innovative but rather must comply with the best practices that companies must follow regarding corporate governance, regardless of whether or not such practices are innovative.

It has also been said that it is not entirely balanced, although we believe that it contains all the relevant regulations and the main recommendations and is, in general, a highly reasonable text.

We feel that the code will help improve internal control mechanisms in companies and contribute to the responsibility system for listed companies, thus assuring sustainability, bolstering security and enhancing the prestige of this country in corporate governance matters as regards foreign investors. Furthermore, from now on, in this new "post-crisis" scenario, companies are going to have to prove that their governing bodies are responsible, making our companies competitive in an economic environment that is, once again, opening up internationally. This is the only, or at least the most important, way we have of making our companies competitive in a global setting. I am certain that we will soon be seeing results, and we hope that, with all the reforms that have been implemented, Spain comes to be considered a benchmark for corporate governance.

Gonzalo Navarro Martínez-Avial is a partner at Roca Junyent. He can be contacted at g.navarro@rocajunyent.com