

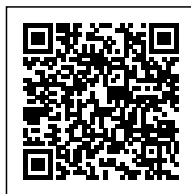
ONE STEP FORWARD AND TWO STEPS BACK, MANUEL OLIVENCIA

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Manuel Olivencia, who has played a pivotal role in the development of Corporate Governance in Spain, believes recent reforms will hinder and not help the better functioning of companies.

Manuel Olivencia, que jugó un papel primordial en la creación y el desarrollo de las directrices sobre gobierno corporativo en España, opina en este artículo que las recientes reformas (posteriores al Código Conthe) son sobretodo restrictivas y no son de ayuda para con el buen funcionamiento de las empresas. Olivencia apunta el contraste que existe entre los 23 puntos de las recomendaciones iniciales y las 54 estrictas y complejas condiciones marcadas por el Gobierno. Vista la realidad empresarial española, Olivencia considera que estas últimas son difíciles de cumplir.

In 1998 I had the honour of chairing the drafting committee of private experts, commissioned by the

cabinet of José María Aznar of the Partido Popular, to analyse the operation of boards of directors and develop a code of voluntary recommendations, the Olivencia Report, with which Spain joined the Corporate Governance movement.

Our brief report aimed at improving the transparency, effectiveness and efficiency of boards, to better serve company interests, although the reaction was not all favourable. While business circles viewed the recommendations as further grounds for the intervention of the securities market regulator (CNMV), some academics accused it of transposing an Anglo-Saxon model against the Spanish preference for legislative measures.

I believe the facts speak for themselves. The underlying principles of our report gradually took root in the business reality, with a positive impact in the corporate world, particularly for listed companies. Nobody denies today that we introduced Corporate Governance to Spain in accordance with the special characteristics of the companies and markets in this country.

After the 2000 elections the new government, also presided by Mr. Aznar, entrusted another committee, chaired by Mr. Aldama, to evaluate the adoption of our recommendations - though with a wider scope covering general shareholders' meetings and relations between companies and service providers (auditors, analysts, investment banks and agencies). Significantly, the new group had authority to draw up new legislative proposals.

Like our own recommendations, the Aldama Report (2003) was presented as a 'continuation' of our work - although it modified some recommendations and added legislative proposals. New legislation introduced greater transparency for listed companies, including an audit committee as proposed by the Olivencia Report, and imposed rules on general shareholders' meetings, boards of directors and managers duties - with new reporting obligations including an annual corporate governance report.

After the victory of the socialist party in the 2004 elections, the new socialist cabinet entrusted the CNMV with the "unification, harmonization and updating of the corporate governance recommendations" in the Olivencia and Aldama reports, within European Union and the OECD guidelines.

Unlike its predecessors, the committee, chaired by Mr. Conthe, chairman of the CNMV, were composed of representatives of both the public and private sector.

The draft Unified Corporate Governance Code (UCGC) was submitted to public consultation and to an expert's opinion at the start of 2006. A widespread criticism led to significant modifications and softened the strong tone and content of the draft.

Nevertheless, the mandatory conditions for independent directors were kept, and although as recommendations, its scope has been extended, such as the very controversial issue of the number of women on the board of directors.

In contrast to our original 23 points, I see the 54 strong and awkwardly worded recommendations of the Conthe Code as too extensive and demanding. It is too early to evaluate any practical results of the Unified Code, published on May 19. Over and above what I see as the substantial defects, I believe it represents a serious threat to the free acceptance of the belief that companies need to operate better in order to achieve their aims, namely the creation of value for the shareholder.

Manuel Olivencia is Vice-President of Cuatrecasas and President of its Academic Committee. He is Ambassador Extraordinary of Spain and representative in the United Nations Commission on International Trade Law (UNCITRAL). He has been a board member of the Bank of Spain and Banco Central Hispano (manuel.olivencia@cuatrecasas.com).