



Opening of the Director's Forum

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Good morning and thank you very much, Hilario and Franz for your introduction.

This forum organised by KPMG, IESE, Forética and the Spanish Association of Executives is a relevant event not only because of the tradition in its organisation, but above all because it is aimed at directors, who play probably the most important role within the corporate governance framework of our companies. That is why we at the CNMV try to attend whenever possible.

I would like to focus on some aspects that complement the relevance of the recently adopted Spanish Law 5/2021 on shareholder engagement and which are linked to the future of our stock market.

Related-party transactions

One of the amendments introduced by the new regulation concerns the new corporate regime for transactions with related parties, in fact the first one that aims to be systematic and comprehensive in terms of its scope, both subjectively and objectively. As you know, the CNMV's powers in this area focus on the regime for disclosure of related-party transactions, which it applies to transactions exceeding 5% of total assets or 2.5% of annual turnover. Over the last few months, we have received queries and doubts about the practical application of this new regime.

From experience we know that when a regulation is approved, no matter how much it has been submitted to public consultation, questions arise that no one asked when it was drafted and consulted. One of the initiatives we have adopted at the CNMV is to extend the consultation period for Circulars to 2-3 months (as opposed to the typical 15 days for laws), precisely in an attempt to make the consultation process more informative and increase the technical quality of the regulation.

Some of the questions received are related to whether the aggregation of transactions carried out in the last twelve months affects those carried out prior to the entry into force of this new regime, which took place on 3 July, or whether, on the contrary, on that date the counter is reset to zero and therefore only transactions carried out since that date are counted. Other doubts relate to the concept of "entered into with the same related party" and the concept of "value or

amount of the transaction" depending on the nature or type of underlying in which the transaction consists.

At the CNMV we want to be transparent with the market about the point of view of the supervisory criteria to be used and thus encourage adequate comparability of the information provided by entities. For this reason, we will soon be making available to the market a "Q&A" document on these questions and others that we are receiving. I encourage you to send us any doubts and queries you may have.

Stewardship code

As a supplement to the legislative changes in the Law, you are probably aware that in the CNMV's 2021 activity plan we introduced the objective of assessing the advisability of drawing up a **Code of Good Practice for institutional investors and asset managers**, in order to encourage long-term shareholder engagement.

This code must address a set of good practices of what is known internationally as "stewardship", i.e., the responsible allocation, management and supervision of capital by institutional investors, thereby creating long-term value for investors and, by extension, generating sustainable benefits for the economy, the environment and society in general.

Institutional investors and managers have a fiduciary responsibility to their clients, shareholders, unitholders and beneficiaries, and must therefore be involved in the corporate governance of the listed companies in which they invest. The creation of this code, in the image and likeness of others that already exist, should enable us to create a more efficient market and thus contribute to improving the long-term, sustainable financial and non-financial performance of listed companies. All of this, must benefit the rest of the minority shareholders of the companies and the growth of the stock market and the economy in general.

Following an initial analysis, we have agreed to promote the drafting of this code in a continuous and broad dialogue with all the sectors involved. We have taken steps to this end and have analysed in detail some international Codes, among those we consider most representative, such as the British Code; the Japanese Code - the latter promoted by governmental institutions -, as well as those of the two most important professional associations (the Code of the European Fund and Asset Management Association (EFAMA) and the Global Stewardship Principles of the International Corporate Governance Network (ICGN)). We are currently forming the Expert Advisory Group to give a voice to the main groups involved on the basis of a first draft prepared by the CNMV itself. Our ultimate goal is to obtain a consensus document that could be put out for public consultation before the end of this year.

Gender Diversity of Female Directors and Executives

I commented, at the beginning of my speech, on the importance of the role of the director in the framework of corporate governance of listed companies. In connection with this point, I believe it is necessary to point out the trend that has been observed in recent years for the incorporation of women on the Boards of Directors of companies.

The percentage of women on boards in 2012 was 10.4%, while at the end of 2020 it stood at 26.1% for all companies and 31.3% for Ibex companies. We are moving steadily but gradually towards parity. With this long-term objective in mind, in the Good Governance Code for listed companies, which we reviewed last year, we have set a recommendation of 40% by 2022.

If we analyse the presence of women in senior management, the picture is not positive given that as at the end of 2020, only 17% of senior management positions were held by women, only one percentage point more than the previous year. And the picture is even worse if we look at female executive directors, a mere one for every 19 men. Not enough progress has been made in this area and it is an essential point, insofar as senior management is the natural breeding ground for future female executive directors.

We are often asked the question of whether progress is fast enough or whether we should opt for a system of compulsory quotas. I usually answer that it depends on what the perspective is. If we look at the data from year to year, the progress can be perceived as too slow. If we look back over the course of a decade, the perspective changes. If the target we have set of 40% by the end of 2022 is achieved, we will have gone from a 10% presence of women on Boards of Directors to 40% in ten years. That seems to me to be a very substantial step forward.

Directors' Remuneration Policy

I would also like to talk about the remuneration of the Board.

Remuneration is one of the essential instruments for ensuring that the interests of companies are properly aligned with those of their directors. Given the fundamental role they play in companies, it is important that the remuneration policy is determined in an appropriate manner by the competent bodies of the company and that shareholders have the opportunity to vote and express their views on it.

Adequately remunerating directors is key to ensuring independence of judgement, generating the right incentives and avoiding conflicts of interest, as well as attracting the necessary talent and qualifications. We at the CNMV have

understood this and that is why we introduced some reforms to the code of good governance to clarify certain issues. Among them, I highlight three:

- the need for sufficient verification of compliance with the requirements for the payment of variable remuneration, as well as the recommendation to consider the introduction of reduction clauses (malus clauses);
- that the variable remuneration of executive directors be linked to the delivery of shares or other financial instruments and that in general they may not be transferred or exercised until a period of three years has elapsed;
- and that payments for termination or extinction of the function of director include all items arising from the termination of the relationship, including contractual non-competition agreements, and that they do not exceed an amount equivalent to two years of total annual remuneration. And all this without being paid until the effective verification of the criteria or conditions established for their reception.

The Long-Term Shareholder Involvement Act also understands the importance of remuneration and therefore introduces some new features which I shall detail below:

- Until now, the obligations on remuneration policy have been more about transparency without going into what the objectives of remuneration policy should be. The regulatory amendment states that it must contribute to business strategy and to the long-term interests and sustainability of society and explain how it does so.
- Companies may apply temporary exceptions to the remuneration policy whenever necessary to serve the long-term interests and sustainability of the company as a whole or to ensure its viability. Additionally, in the event that there is variable remuneration, which happens in three out of four issuers, not only financial but also non-financial performance criteria should be established, explaining how they contribute to the long-term sustainability of the entity.
- Remuneration policies must be submitted to the General Shareholders' Meeting for approval prior to the end of the last year of application of the previous agreed policy and, if rejected, the company may continue to remunerate its directors in accordance with the policy in force at that time, submitting a new proposal to the next ordinary Shareholders' Meeting.
- And with regard to the annual report on the remuneration of board members (ARRBM), some modifications are included in the current model

to adapt it to the Directive. Firstly, a comparative table of the evolution over the last five years of the remuneration of the company's employees, that of each of the directors and the company's results should be included. In addition, it is planned to include an explanation of how the remuneration accrued and consolidated in the year complies with the provisions of the remuneration policy in force and how it contributes to the sustainable and long-term performance of the company.

In this regard, the above requirement reinforces the idea already put forward that it is clear that the variable component of remuneration, in order to reinforce the achievement of the corporate interest, must be aligned with the company's long-term objectives. Many listed companies have incorporated or are incorporating objectives related to sustainability, governance or social aspects into their policies.

The logical step, therefore, is to incorporate these factors to the appropriate extent into the elements determining variable remuneration. Some companies have already done so, in a very significant way, and it will probably be a trend that we will observe in certain sectors (those that will have to make the greatest effort to improve their ESG dimension). For example, some energy companies have linked their decarbonisation targets to their remuneration and others have even included reputational elements to determine the variable. All this may generate a growing trend for the next few years.

And finally, let me emphasise the role of the director. The director - and here I agree with Lord Cadbury's position three decades ago - forms the backbone of corporate governance. It occupies this central role and acts as a bridge between the owners and the employees and senior managers, to guide and guarantee the company's mission. In that sense, I can think of few more relevant and demanding roles in the business world.

The role of independent directors is particularly relevant in two cases. The first, in corporate transactions with related parties, such as capital increases against capitalisation of credits or contribution of businesses of the majority shareholder, mergers and acquisitions between listed companies under common control or takeover bids in companies where significant shareholders have signed agreements with the bidder. In these particularly sensitive cases, our recommendation is always that the transaction be reported and piloted by a committee made up exclusively of independent directors, without prejudice to the role that the Long-Term Shareholder Involvement Act grants to the audit committee, in order to guarantee that the interests of minority shareholders are respected.

The second is the case of changes in the chairmanship of the entity, when there are shareholders with significant influence. In these cases, the recommendations of the GGC and the technical guide for nomination and remuneration committees seek to ensure the absence of undue influence by significant shareholders and the selection of the most suitable persons for each position on the board, regardless of who put their name forward for consideration. In these situations, the real independence of judgement of the independent directors is put to the test and, if exercised correctly, is the best guarantor of the alignment of these processes with the corporate interest. This is why the CNMV is so sensitive to ensuring that the role of independent directors is respected and is available to analyse any incident and support, where necessary, their proper exercise.

But at the same time as being relevant, being a director of a listed company is a profession where responsibility and demands are increasingly high. Directors today are required to have knowledge of strategy, finance, accounting, corporate law, control, financial and non-financial risks, and even sustainability. We are in a way creating an expectation of supermen and superwomen, who lead, control, manage and inspire organisations that are already extremely complex.

In that sense, some say that it has become almost a risky profession, because of the relevance of the decisions that are made. And at this point we should probably reflect on which expectations are reasonable and which respond to an idealistic and somewhat utopian pretension of reality, which is not necessarily the standard to follow.

Finding this balance is undoubtedly a relevant task, in which we supervisors are far from being the key points of reflection, which is your task above all.

Thank you very much for your attention.