

ANNEX I

UNIFIED GOOD GOVERNANCE CODE

I. CORE PRINCIPLES

Characteristics of the Code

- *Voluntariness*, subject to the “comply or explain” principle

Article 116 of the Securities Market Law cites the principle known internationally as “comply or explain” in requiring listed Spanish firms to specify their “*degree of compliance with corporate governance recommendations, justifying any failure to comply*” in their Annual Corporate Governance Reports. The present Code sets out the recommendations to be borne in mind by listed companies when fulfilling their disclosure requirements under the said law.

In other words, Spanish legislation leaves it up to companies to decide whether or not to follow corporate governance recommendations, but requires them to give a reasoned explanation for any deviation, so that shareholders, investors and the markets in general can arrive at an informed judgement.

In keeping with this “voluntariness” principle, this Code does not replicate legally binding precepts among its recommendations. It therefore omits certain recommendations that are necessary in other countries or advocated by the European Commission, on the grounds that they are already written into Spanish law (see Appendix 1 for the Spanish provisions of most bearing in this connection).

- *Binding definitions*

Listed companies can freely decide to comply or not with the Code's good governance recommendations, but their reporting on the same must invariably respect the underlying concepts used. So, for instance, it is up to companies whether they follow Recommendation 13 on independent directors, but what they cannot do is call a director “independent”, for the purposes of disclosure requirements, if that person does not meet the minimum conditions stated in point 5 of Section II (Definitions).

- *Evaluation by the market.*

It will be left to shareholders, investors and the markets in general to evaluate the explanations companies give of their degree of compliance with Code recommendations. In other words, the extent of compliance or the quality of explanations will not give rise to any actions by the CNMV, as this would directly invalidate the voluntary nature of the Code.

This affirmation is understood to be without prejudice to the monitoring powers assigned to the CNMV with regard to the Annual Corporate Governance Report of listed companies in article 116 of the Securities Market Law and Order

ECO/3722/2003 of 26 December, whereby the regulator may order companies to make good any omissions or false or misleading data.

- *Generality*

This Code is directed at all listed companies, whatever their size and market capitalisation. This is not to deny that some recommendations may be unsuitable or excessively burdensome for smaller sized firms. In such cases, however, all firms need do is state their reasons for non fulfilment and any alternatives chosen, i.e. their freedom of decision and organisational autonomy are entirely guaranteed.

II. RECOMMENDATIONS

BYLAWS AND GENERAL SHAREHOLDERS' MEETING

Bylaw restrictions

The existence of an active control market provides an unparalleled spur to the good governance of corporate entities. They should accordingly renounce the option of establishing "safeguard" conditions, such as restrictions on voting rights, seniority requirements for certain posts or stricter-than-standard quorum requirements for certain types of decision, which are designed to hinder or prevent a possible takeover bid and subsequent change in ownership control.

That said, such measures may be justified in exceptional cases, particularly when a company is preparing its stock market launch (they will be discounted in the market price), or if they are later approved by a very large majority of shareholders, suggesting that they may respond to reasons of efficiency (for example, to protect specific investments or strengthen the bargaining power of the entire shareholder body in the event of a hostile offer).

It is recommended as follows:

- 1. The bylaws of listed companies should not place an upper limit on the votes that can be cast by a single shareholder, or impose other obstacles to the takeover of the company by means of share purchases on the market.**

Listed companies from the same group

Corporate groups are characterised by having a unity of management, and their natural strategy, that of maximising the group's benefit, does not necessarily equate to maximising the benefit of each of the companies that make it up. At times, the group's objectives may be at odds with those of component companies and conflicts of interest may arise. This problem is especially acute in the case of "intra group" related-party transactions involving subsidiaries with external shareholders other than those of the dominant firm.

It is therefore advisable for listed companies forming part of groups to clearly demarcate each one's area of activity, to draw up a protocol for the approval of their mutual business dealings, and, in general, to create a framework of rules that can forestall potential conflicts.

It is recommended as follows:

- 2. When a dominant and a subsidiary company are stock market listed, the two should provide detailed disclosure on:**
 - a) The type of activity they engage in, and any business dealings between them, as well as between the subsidiary and other group companies;**
 - b) The mechanisms in place to resolve possible conflicts of interest.**

Competences of the General Shareholders' Meeting

The Public Limited Companies Law states expressly that the General Shareholders' Meeting must decide on matters such as mergers, spin-offs, changes of corporate form or corporate purpose, winding-up or the global transfer of assets and liabilities, which substantially affect the nature and structure of the company. These transactions are collectively known as "fundamental changes". And yet other corporate decisions producing similar results may be left to the Board of Directors, unless powers in their respect have been specifically assigned to the Shareholders' Meeting. One such decision would be the "subsidiarisation" of a company's assets, effectively transforming it into a holding operation. This, in practice, would deprive shareholders of the powers to resolve on capital policy or the distribution of earnings and transfer them to the board. The Code therefore advocates that the competence to decide on fundamental changes should lie with the General Shareholders' Meeting.

Naturally, this principle should be applied with caution, so as not to overinflate the powers of the Shareholders' Meeting or limit the board's capacity to design and implement the company's strategy. It would not be appropriate, for instance, to submit property sale and leaseback transactions to the Shareholders' Meeting, or the sale of a company's plant when it opts to outsource an activity that it hitherto performed directly.

It is recommended as follows:

- 3. Even when not expressly required under company law, any decisions involving a fundamental corporate change should be submitted to the General Shareholders' Meeting for approval or ratification. In particular:**
 - a) The transformation of listed companies into holding companies through the process of subsidiarisation, i.e. reallocating core activities to subsidiaries that were previously carried out by the originating firm, even though the latter retains full control of the former;**
 - b) Any acquisition or disposal of key operating assets that would effectively alter the company's corporate purpose;**
 - c) Operations that effectively add up to the company's liquidation.**

Prior circulation of board proposals to the General Shareholders' Meeting

In line with the recommendations of the Aldama Report and the subsequent Ministerial Order ECO/3722/2003 of 26 December, listed companies must disclose the board proposals to be put to the Shareholders' Meeting in advance of the same. In the interests of maximising transparency, such publicity should not be confined to the general wording of the proposal, but properly fleshed out with details, for instance, on the identity and other particulars of the directors whose appointment or renewal is being put to the Meeting.

It is recommended as follows:

- 4. Detailed proposals of the resolutions to be adopted at the General Shareholders' Meeting, including the information stated in Recommendation 28, should be made available at the same time as the publication of the Meeting notice.**

Separate votes on General Meeting items

In order that shareholders can exercise their vote to best effect, and to avoid the distortions associated with bundled resolutions, the items to be voted on must be formulated in such a way that shareholders can pronounce separately on each proposal. This is especially relevant in the appointment of directors, where shareholders should be able to evaluate and vote on each candidate individually instead of opting for a “slate”, and in the case of bylaw amendments, where shareholders should surely be entitled to issue a separate opinion on each clause or set of clauses.

It is recommended as follows:

- 5. Separate votes should be taken at the General Shareholders’ Meeting on materially separate items, so shareholders can express their preferences in each case. This rule shall apply in particular to:**
 - a) The appointment or ratification of directors, with separate voting on each candidate;**
 - b) Amendments to the bylaws, with votes taken on all articles or groups of articles that are materially different.**

Split votes

Even when rules are in place for remote voting, it is frequently difficult for foreign shareholders to directly exercise their cross-border voting rights. The reason is that most foreign shareholders, the beneficial owners of the rights, invest in Spain through financial intermediaries who act as nominees on their behalf. The way to fully respect the voting rights of these final investors is to ensure that financial intermediaries acting as nominees and, therefore, legitimised to exercise these rights before the company, can do so in accordance with the instructions of each individual client. This would frequently give rise to situations where a nominee has to vote in differing directions (“split vote”). The Code wishes to advocate this option, which is already accepted by many Spanish companies although not expressly contemplated in the Public Limited Companies Law.

It is recommended as follows:

- 6. Companies should allow split votes, so financial intermediaries acting as nominees on behalf of different clients can issue their votes according to instructions.**

BOARD OF DIRECTORS

The corporate interest

All directors, whatever their provenance or the origin of their appointment, must share the common purpose of defending “the corporate interest”. The Code opts for a contractualist interpretation of this concept which prizes the common interest of the company's shareholders or, if preferred, the interests of the common shareholder. It sees this option as the most conducive to the effective and targeted exercise of director responsibilities, and also truest to the expectations of the investors to whom the board

is finally accountable. For this reason, it urges that the ultimate goal of the company and, therefore, the principle guiding the board in all its actions, should be the maximising of its economic value over time. This seems preferable to other, broader definitions of “the corporate interest”, because it gives the board and the executive bodies under it a clear handle for the adoption of resolutions and their subsequent evaluation.

This is by no means to say that shareholders' interests must be pursued at any price, without regard to other groups involved in the company or the community in which it operates. The interest of shareholders provides a touchstone for decisions which must nonetheless comply in full with the provisions of law (for instance, in tax or environmental matters), and enable the company to meet its contractual obligations, explicit or otherwise, with stakeholder groups such as employees, suppliers, creditors and customers and, in general, to adhere to any social responsibility principles taken on board.

It is recommended as follows:

- 7. The Board of Directors should perform its duties with unity of purpose and independent judgement, according all shareholders the same treatment. It should be guided at all times by the company's best interest and, as such, strive to maximise its value over time.**

It should likewise ensure that the company abides by the laws and regulations in its dealings with stakeholders; fulfils its obligations and contracts in good faith; respects the customs and good practices of the sectors and territories where it does business; and upholds any additional social responsibility principles it has subscribed to voluntarily.

Competences of the board

The Public Limited Companies Law assigns the Board of Directors full powers for the company's strategy and management. At the same time, it allows it ample freedom in delegating such powers within the legally established limits. This being so, companies can adopt widely divergent models of board organisation and procedures, especially as regards its involvement in day-to-day management. This Code does not line up behind a particular model, but wishes to warn against excessive delegation with the result that the board falls down in its most basic and inalienable duty: the “general oversight function”. This function divides in turn into three key responsibilities: to guide and promote the company's policy (strategic responsibility), control its management echelons (stewardship) and liaise with its shareholders (disclosure).

The idea is to define the powers that configure the core of this oversight function and should therefore not be subject to delegation. Although the list is a long one, some points are evident enough to need no explanation. That said, three questions in particular merit closer attention.

Concerning the ratification of management decisions, it seems reasonable that the board should approve the appointment or removal of senior officers at the proposal of the company's chief executive. No such proposal would be mandatory in the case of the appointment of a managing director to take on some of the duties of the Executive Chairman or facilitate his or her succession.

At the same time, the board should pay special attention to the organisation of the corporate group, avoiding where possible artificial or overly complex structures, as

urged in Principle 8 of the Recommendations of the Basel Committee on Banking Supervision for the corporate governance of banking organisations (know your structure)². Specifically, the board as a whole should be answerable for the creation of special purpose vehicles, i.e. entities which, despite having their own legal personality, are created solely for some intermediate purpose and are controlled by the group to which the listed company belongs, or companies resident in jurisdictions defined as tax havens, as well as any analogous transactions or operations. Such entities should respond in all cases to a legitimate purpose and should not unjustifiably impair the transparency of the group's structure and operations.

Finally, as an essential part of its oversight function, the board should be cognisant with any issues that may generate a conflict of interests and, specifically, control and authorise any company transactions with related parties that do not correspond to normal business flows.

It is recommended as follows:

8. The board should see the core components of its mission as to approve the company's strategy and authorise the organisational resources to carry it forward, and to ensure that management meets the objectives set while pursuing the company's interests and corporate purpose. As such, the board in full should reserve the right to approve:

a) The company's general policies and strategies, and in particular:

- i) The strategic or business plan, management targets and annual budgets;**
- ii) Investment and financing policy;**
- iii) Design of the structure of the corporate group;**
- iv) Corporate governance policy;**
- v) Corporate social responsibility policy;**
- vi) Remuneration and evaluation of senior officers;**
- vii) Risk control and management, and the periodic monitoring of internal information and control systems;**
- viii) Dividend policy, as well as the policies and limits applying to treasury stock.**

b) The following decisions :

- i) On the proposal of the company's chief executive, the appointment and removal of senior officers, and their compensation clauses.**

² *Enhancing corporate governance for banking organisations, Basel Committee on Banking Supervision, February 2006.*

- ii) Directors' remuneration and, in the case of executive directors, the additional consideration for their management duties and other contract conditions.**
 - iii) The financial information listed companies must periodically disclose.**
 - iv) Investments or operations considered strategic by virtue of their amount or special characteristics, unless their approval corresponds to the General Shareholders' Meeting;**
 - v) The creation or acquisition of shares in special purpose vehicles or entities resident in jurisdictions considered tax havens, and any other transactions or operations of a comparable nature whose complexity might impair the transparency of the group.**
- c) Transactions which the company conducts with directors, significant shareholders, shareholders with board representation or other persons related thereto ("related-party transactions").**

However, board authorisation need not be required for related-party transactions that simultaneously meet the following three conditions:

- 1. They are governed by standard form agreements applied on an across-the-board basis to a large number of clients;**
- 2. They go through at market rates, generally set by the person supplying the goods or services;**
- 3. Their amount is no more than 1% of the company's annual revenues.**

It is advisable that related-party transactions should only be approved on the basis of a favourable report from the Audit Committee or some other committee handling the same function; and that the directors involved should neither exercise nor delegate their votes, and should withdraw from the meeting room while the board deliberates and votes.

Ideally the above powers should not be delegated with the exception of those mentioned in b) and c), which may be delegated to the Executive Committee in urgent cases and later ratified by the full board.

Size

The number of the board's members has a bearing on its efficiency and on the quality of its decision-making. Having a minimum of members ensures a broader debate enriched by a greater number of viewpoints. However, too large a board may limit the involvement of directors and undermine its effectiveness or, even, its internal cohesion.

It is recommended as follows:

- 9. In the interests of maximum effectiveness and participation, the Board of Directors should ideally comprise no fewer than five and no more than fifteen members.**

Functional structure

The Board of Directors should have an adequate diversity of knowledge, gender and experience to perform its tasks efficiently, objectively and in an independent manner. Especially relevant here is the classing of directors by the origin of their appointment, into the now established categories of internal (or “executive”) and external directors, in the last case either proprietary or independent. Directors’ interests, susceptibilities and, even, incentives may be influenced by their provenance. However the board as a whole must work to achieve a constructive interaction between its members and a commonality of purpose informed by the pursuit of the corporate interest. The cohesion and unity of the board, irrespective of its membership mix, are decisive factors for the proper governance of any company.

Companies must strike an optimal balance between external and internal directors without losing sight of the board's core oversight function. The board, in other words, must keep track of the company's management operations and work closely with the senior officers responsible. It is therefore reasonable that leading members of the management team should hold directorships, particularly the chief executive. But at the same time, the board must be able to appraise managers’ performance with a degree of distance and impartiality; otherwise its oversight rigour would be open to question. The Code recommends, therefore, that a majority of board places be held by external directors; in other words, executive appointments should be the minimum necessary for informational and coordination purposes. This minimum number should be decided in each case on the basis of the complexity of the group or directors' ownership interests (the more complex the group or the greater directors' holdings, the more executive directors will be warranted).

Another possible argument for limiting the number of executive directors is that their hierarchical relations in their management posts could predispose them to act *en bloc*. Also, board informational requirements can be addressed in other ways than by executive director appointments; for instance, by having managers participate in meetings with speaking rights but no vote.

The different types of external director – proprietary and independent – are defined for the purposes of this Code in points 4 and 5 of section III.

In defining proprietary directors, the Code takes its cue from the Olivencia Report, supplementing its definition with references to article 3.9 of Royal Decree 1197/91 on takeover bids.

In defining independent directors, the Code rounds out the general guidelines of the Olivencia and Aldama Reports with the more concise conditions stated in the European Commission's Recommendation of 15 February 2005. While adhering closely to the said Recommendation, it also makes the definition binding for listed companies and qualifies the contents in some respects. Hence it adds to the qualifying conditions for independence that a director be proposed for the post by the Nomination Committee, while allowing directors to stay on as independents even after 12 years' service in this capacity.

The above are the minimum requisites for a director to be classed as independent. It is then up to the company's governing bodies to decide whether a candidate unites the other qualities that they believe add up to independence.

It is recommended as follows:

10. External directors, proprietary and independent, should occupy an ample majority of board places, while the number of executive directors should be the minimum practical bearing in mind the complexity of the corporate group and the ownership interests they control.

Other directors

The Code must allow for the fact that some directors may not fit neatly into any of the above categories. At times, these will be board members previously classed in one or other category but who have since ceased to unite the corresponding conditions: for example, executive directors no longer holding a management post due to retirement or other circumstances; or independent directors who, for some reason, no longer qualify as such but whose experience and knowledge warrant their continuing presence on the board. The logical course, in these cases, would be for the company to openly disclose the directors' links with significant shareholders or else with the organisation or its senior officers.

It is recommended as follows:

11. In the event that some external director can be deemed neither proprietary nor independent, the company should disclose this circumstance and the links that person maintains with the company or its senior officers, or its shareholders.

Proportion between proprietary and independent directors

The Code recommends that external members should include a certain number of independents, able to exercise their functions without being influenced by direct or indirect relations with significant shareholders or else with the company and its senior officers.

In keeping with the proportional relationship between share ownership and board representation defended in the Olivencia Report pursuant to article 137 of the Public Limited Companies Law, the ratio of proprietary members to independents should reflect the proportion between the capital represented on the board by proprietary directors and the company's free-floating equity – including the part corresponding to institutional investors who explicitly waive their rights to a board place. This is not intended as a mathematical equation, but rather as a rule of thumb to ensure that independents are sufficiently present and that no significant shareholders can exert an influence on the board's decisions that is out of step with their capital ownership.

Two arguments can be stated at this point for a degree of overrepresentation by proprietary directors. One is the absolute value of their shareholdings. Specifically, in large cap companies it makes sense to grant board places to one or more shareholders whose stakes may be short of the "electoral threshold" specified in article 137 of the Public Limited Companies Law, but are nonetheless "significant" in legal terms as well as abundant in volume. The second is the number or dispersion of significant shareholders. It seems reasonable to allow more proprietary directors when they represent a greater number of significant shareholders, with the proviso that they do not act with one accord, that is, in a coordinated or collusive manner. In both cases, the board representation of proprietary directors will by mathematical imperative exceed the percentage of capital they represent. Note that this should not be seen as a worrying break with the principle of proportionality: rather the contrary, the inclusion of

more small proprietary directors may favour reciprocal control and, as such, redound to the benefit of dispersed capital.

It is recommended as follows:

12. That among external directors, the relation between proprietary members and independents should match the proportion between the capital represented on the board by proprietary directors and the remainder of the company's capital.

This proportional criterion can be relaxed so the weight of proprietary directors is greater than would strictly correspond to the total percentage of capital they represent:

1. In large cap companies where few or no equity stakes attain the legal threshold for significant shareholdings, despite the considerable sums actually invested.

2. In companies with a plurality of shareholders represented on the board but not otherwise related.

Sufficient number of independent directors

The importance that the present Code and international practice assign to independent directors – and in particular their role on board committees – advises that the "sufficient number" of independents referred to in section VI.E of the OECD's Principles of Corporate Governance and the European Commission Recommendation of 15 February 2005 be construed as meaning at least one third of all board members.

This one-third minimum will ensure the presence of at least two independents on even the smallest boards – those, for instance, of small cap companies.

It is recommended as follows:

13. The number of independent directors should represent at least one third of all board members.

Explaining the nature of directors

Given the scant take-up of the proportional representation system envisaged in article 137 of the Public Limited Companies Act, and the frequent practice in listed companies of appointing directors to represent significant shareholders, certain minimum recommendations are put forward to increase the transparency of proprietary director appointments. The idea is not to curtail the appointment of directors representing holders of stakes below 5%, but to invite companies to explain the criteria informing their appointment decisions, especially when these criteria lead to shareholders with comparable interests being dealt with in a different manner.

It is recommended as follows:

14. The nature of each director should be explained to the General Meeting of Shareholders, which will make or ratify his or her appointment. Such determination should subsequently be confirmed or reviewed in each year's

Annual Corporate Governance Report, after verification by the Nomination Committee. The said Report should also disclose the reasons for the appointment of proprietary directors at the urging of shareholders controlling less than 5% of capital; and explain any rejection of a formal request for a board place from shareholders whose equity stake is equal to or greater than that of others applying successfully for a proprietary directorship.

Gender diversity

A good gender mix on boards of Directors is not just an ethical-political or "corporate social responsibility" question; it also an efficiency objective which listed companies might wish to work towards in the mid term at least. Neglecting the potential business talent of 51% of the population – women – cannot be an economically rational conduct for our country's leading corporate names. This is amply borne out by the experience of the last few decades which have seen women occupying a growing place in the business world. But more effort is required for this presence to extend into the senior executive and directorship spheres. With this in mind, the Code calls on listed companies with few women on their boards to actively seek out female candidates whenever a board vacancy needs to be filled, especially for independent directorships.

It is recommended as follows:

15. When women directors are few or non existent, the board should state the reasons for this situation and the measures taken to correct it; in particular, the Nomination Committee should take steps to ensure that:

- a) The process of filling board vacancies has no implicit bias against women candidates;**
- b) The company makes a conscious effort to include women with the target profile among the candidates for board places.**

The Chairman

It goes without saying that the Chairman's contribution is vital to the proper functioning of the board. He or she is responsible not only for calling meetings, drawing up the agenda and chairing the session itself, but also for ensuring that directors are supplied with information in a timely manner, and encouraging them to participate actively in the board's deliberations.

More controversial is the position the Chairman should hold in the organisation; specifically whether it is better to separate or combine the offices of board chairman and company chief executive. The Code is aware that both arrangements have their benefits and drawbacks. The concentration of powers can provide companies with clear internal and external leadership, while avoiding the information and coordination costs that would otherwise be generated. But this should not blind us to its main pitfall: the vesting of too much power in the hands of a single person. In these circumstances, and given the divergence of international practice and the lack of empirical evidence for a precise recommendation, the Code makes no comment on the advisability or otherwise of separating the two positions.

However, as part of its concern to facilitate the general oversight function, some measures are proposed as a check on the overconcentration of power. Taking its cue from the

Olivencia Report and the practice of many countries, the Code proposes that when a company's Chairman is also its chief executive, an independent director should be entrusted, possibly on a rotation basis, with the task of coordinating external directors. The efforts of this senior or lead independent director, as the position is known, should strengthen the collegiate environment of the board, avoiding a bi-polarisation that could jeopardise its unity of action.

It is recommended as follows:

- 16. The Chairman, as the person responsible for the proper operation of the Board of Directors, should ensure that directors are supplied with sufficient information in advance of board meetings, and work to procure a good level of debate and the active involvement of all members, safeguarding their rights to freely express and adopt positions; he or she should organise and coordinate regular evaluations of the board and, where appropriate, the company's chief executive, along with the chairmen of the relevant board committees.**
- 17. When a company's Chairman is also its chief executive, an independent director should be empowered to request the calling of board meetings or the inclusion of new business on the agenda; to coordinate and give voice to the concerns of external directors; and to lead the board's evaluation of the Chairman.**

The Secretary

A key figure in the operation of the board, he or she is responsible for the smooth running of board meetings, and must take care to supply directors with the information and advice they need, conserve documentation, keep minutes of all board proceedings and certify resolutions. The Secretary should not only assure the legality of the board's actions with regard to external and internal provisions, but also its proper observance of good governance precepts and practices.

In order to strengthen the independence and professionalism of the Secretary post, the Code suggests that appointments and removals should require a report from the Nomination Committee, as in the case of board members. This parallel with directors would also extend to cases of resignation due to serious discrepancy with board decisions. The Code makes no recommendations as to whether the Secretary should be a director and/or an external professional.

It is recommended as follows:

- 18. The Secretary should take care to ensure that the board's actions:**
 - a) Adhere to the spirit and letter of laws and their implementing regulations, including those issued by regulatory agencies;**
 - b) Comply with the company bylaws and the regulations of the General Shareholders' Meeting, the Board of Directors and others;**
 - c) Are informed by those good governance recommendations of the Unified Code that the company has subscribed to.**

In order to safeguard the independence, impartiality and professionalism of the Secretary, his or her appointment and removal should be proposed by the Nomination Committee and approved by a full board meeting; the relevant appointment and removal procedures being spelled out in the board's regulations.

Board meetings

A board which fails to meet with a certain frequency and lapses into absenteeism loses touch with the life of the company, and cannot fulfil its duty to supervise and control the management function and the Executive Committee. Something similar can be said of a director who does not regularly attend board meetings or who, when absent for imperative reasons, fails to delegate his or her vote to a fellow director with precise instructions regarding each item on the agenda.

It is recommended as follows:

- 19. The board should meet with the necessary frequency to properly perform its functions, in accordance with a calendar and agendas set at the beginning of the year, to which each director may propose the addition of other items.**
- 20. Director absences should be kept to the bare minimum and quantified in the Annual Corporate Governance Report. When directors have no choice but to delegate their vote, they should do so with instructions.**
- 21. When directors or the Secretary express concerns about some proposal or, in the case of directors, about the company's performance, and such concerns are not resolved at the meeting, the person expressing them can request that they be recorded in the minute book.**

Regular evaluation

The board must be careful not to fall into routine habits and inertia. It is accordingly wise to establish some mechanism to scrutinise its performance and that of its committees with a certain regularity, using its own resources or, if preferred, seeking the help of an external expert. Although the Code makes no reference to appraising directors individually, it makes sense that evaluations should at least extend to the Chairman and the chief executive.

It is recommended as follows:

- 22. The board in full should evaluate the following points on a yearly basis:**
 - a) The quality and efficiency of the board's operation;**
 - b) Starting from a report submitted by the Nomination Committee, how well the Chairman and chief executive have carried out their duties;**
 - c) The performance of its committees on the basis of the reports furnished by the same.**

Information to directors

Directors must be equipped with accurate and complete information about the situation of the company and its environment, in order to effectively perform their oversight function and other legal duties. Companies should establish channels or mechanisms for the proper exercise of this right and even, exceptionally, provide the wherewithal for directors to consult external advisors, when this is warranted by the importance or controversial nature of a particular decision item.

Companies are also urged to organise induction programmes for new directors, as well as refresher courses for existing directors when circumstances so advise; for instance, in the case of major regulatory changes.

It is recommended as follows:

- 23. All directors should be able to exercise their right to receive any additional information they require on matters within the board's competence. Unless the bylaws or board regulations indicate otherwise, such requests should be addressed to the Chairman or Secretary.**
- 24. All directors should be entitled to call on the company for the advice and guidance they need to carry out their duties. The company should provide suitable channels for the exercise of this right, extending in special circumstances to external assistance at the company's expense.**
- 25. Companies should organise induction programmes for new directors to acquaint them rapidly with the workings of the company and its corporate governance rules. Directors should also be offered refresher programmes when circumstances so advise**

Dedication

For directors to do their job correctly, they need not only have complete information on the issues to be discussed but also devote time and attention to its study. Listed companies should therefore try to ensure that directors' remaining professional commitments, in particular their involvement in other boards, does not detract from the fulfilment of their duties. This Code does not venture into details about the content of such restrictive rules – for instance, a limit on the directorships one member can hold or exemptions from this limit for directorships in other group companies or in portfolio companies owned by the member or a close family relation – but recommends that companies should draw them up and be strict in their observance.

It is recommended as follows:

- 26. Companies should require their directors to devote sufficient time and effort to perform their duties effectively, and, as such:**
 - a) Directors should apprise the Nomination Committee of any other professional obligations, in case they might detract from the necessary dedication;**
 - b) Companies should lay down rules about the number of directorships their board members can hold.**

ON DIRECTORS

Selection, appointment and renewal

The director selection process should assure both the representativeness of the board and the competence, soundness and experience of its members. The Nomination Committee has an important role to play in achieving this objective.

Companies should be particularly meticulous when selecting among candidates for the office of independent director, empowering the Nomination Committee to propose, and not just inform about prospective occupants. This would provide greater guarantees of the independence of new directors vis-à-vis the company's senior officers and significant shareholders.

It is recommended as follows:

- 27. The proposal for the appointment or renewal of directors which the board submits to the General Shareholders' Meeting, as well as provisional appointments by the method of co-option, should be approved by the board:**
- a) On the proposal of the Nomination Committee, in the case of independent directors.**
 - b) Subject to a report from the Nomination Committee in all other cases.**

Disclosure of director particulars

As well as laying down rules for the selection and appointment of directors, listed companies should publicly disclose – and keep updated – the key personal and professional particulars of all board members.

The requirement to disclose other directorships will not extend to portfolio companies of the director or his or her immediate family.

Regarding shares directors hold in the company itself, this information is already available, as a legal requirement, in the Official Registers of the CNMV. But its simultaneous dissemination by the listed company would cost little, while saving interested investors and shareholders the time and expense of searching.

It is recommended as follows:

- 28. Companies should post the following director particulars on their websites, and keep them permanently updated:**
- a) Professional experience and background;**
 - b) Directorships held in other companies, listed or otherwise;**
 - c) An indication of the director's classification as executive, proprietary or independent; in the case of proprietary directors, stating the shareholder they represent or have links with.**

- d) **The date of their first and subsequent appointments as a company director, and;**
- e) **Shares held in the company and any options on the same.**

Rotation of independent directors

A long time on the board of a particular company can provide directors with invaluable experience plus a thoroughgoing knowledge of the organisation. However, the bonds formed naturally with other board members, especially executive directors, and the fact directors are jointly accountable for decisions taken during their mandate, may end up robbing independents of their "outside" perspective vis-à-vis senior officers and proprietary directors. Hence the present Code, in emulation of the European Commission Recommendation of 15 February 2005, recommends a 12-year limit on their tenure, i.e. two terms of the maximum length allowed by article 126.2 of the Public Limited Companies Act. Remember, however, that the expiry of this period does not automatically mean that a director loses the status of "independent".

It is recommended as follows:

29. Independent directors should not stay on as such for a continuous period of more than 12 years.

Removal and resignation

Certain changes in the circumstances motivating the appointment of a director may counsel his or her removal. This would be the case, for instance, of a proprietary director when the significant shareholder he or she represents withdraws from the company's capital. By the same token, independent directors should logically be removed when events mean they no longer fulfil some criterion of independence. Otherwise independents should enjoy a certain stability of tenure, provided they are not in breach of their duties, and not be subject to the will of the company's senior officers or significant shareholders. Of course, theoretical compliance with independence standards does not of itself guarantee that a director will act as such, especially when called on to oppose the wishes of other board members or management echelons.

The Code also puts forward recommendations on circumstances affecting board members which might harm the company's name or reputation. These include being brought to trial on criminal charges, in particular those envisaged in article 124 of the Public Limited Companies Law (that is, crimes against liberty, property, the social and economic order, collective security or the administration of justice, and crimes of deception), in all of which cases a judicial sentence would entail a bar on holding company directorships.

The Code distinguishes between merely being charged for some offence – where it confines itself to recommending that the director in question should inform the board – and being indicted or tried for any of the causes listed in the aforementioned article 124. This second case, which presupposes a judicial decision based on reasonable evidence of an offence that, by law, disqualifies a person from holding directorships, does not undermine the presumption of innocence in the judicial terrain, but may undermine the relation of trust supporting the appointment of any director or affect the company's name and reputation. As such, the board is advised to examine whether a

director's resignation is called for depending on the concrete circumstances of the case, and whether his/her removal should be proposed to the General Shareholders' Meeting.

Finally, the Code recommends that any director resigning his or her post as a result of sustained and substantive disagreement with the decisions of the board, should lay the reasons clearly before his or her fellow members and not use personal or family matters as a "smokescreen". This recommendation is made extensive to board secretaries as a means to strengthen their position.

It is recommended as follows:

30. Proprietary directors should resign when the shareholders they represent dispose of their ownership interest in its entirety. If such shareholders reduce their stakes, thereby losing some of their entitlement to proprietary directors, the latter's number should be reduced accordingly.

31. The Board of Directors should not propose the removal of independent directors before the expiry of their tenure as mandated by the bylaws, except where just cause is found by the board, based on a proposal from the Nomination Committee. In particular, just cause will be presumed when a director is in breach of his or her fiduciary duties or comes under one of the disqualifying grounds enumerated in section III.5 (Definitions) of this Code.

The removal of independents may also be proposed when a takeover bid, merger or similar corporate operation produces changes in the company's capital structure, in order to meet the proportionality criterion set out in Recommendation 12.

32. Companies should establish rules obliging directors to inform the board of any circumstance that might harm the organisation's name or reputation, tendering their resignation as the case may be, with particular mention of any criminal charges brought against them and the progress of any subsequent trial.

The moment a director is indicted or tried for any of the crimes stated in article 124 of the Public Limited Companies Law, the board should examine the matter and, in view of the particular circumstances and potential harm to the company's name and reputation, decide whether or not he or she should be called on to resign. The board should also disclose all such determinations in the Annual Corporate Governance Report.

33. All directors should express clear opposition when they feel a proposal submitted for the board's approval might damage the corporate interest. In particular, independents and other directors unaffected by the conflict of interest should challenge any decision that could go against the interests of shareholders lacking board representation.

When the board makes material or reiterated decisions about which a director has expressed serious reservations, then he or she must draw the pertinent conclusions. Directors resigning for such causes should set out their reasons in the letter referred to in the next Recommendation.

The terms of this Recommendation should also apply to the Secretary of the board; director or otherwise.

34. Directors who give up their place before their tenure expires, through resignation or otherwise, should state their reasons in a letter to be sent to all members of the board. Irrespective of whether such resignation is filed as a significant event, the motive for the same must be explained in the Annual Corporate Governance Report.

Remuneration

Approval and transparency

The Code starts from the conviction that complete transparency regarding directors' remuneration, including total payments to executive directors, is a way to mitigate the risk of immoderate compensation.

This transparency should extend to all remuneration components and concepts, including director severance packages. Given the complexity of deferred payment schemes (insurance or pensions), these will be best understood if they are translated for comparative purposes into an estimated amount or annual equivalent cost.

The Code recommends that boards approve a detailed remuneration policy, as envisaged in Recommendation 40, to be written up and submitted to the General Shareholders' Meeting. This is on top of the proposal made in Recommendation 41, whereby individual directors' remuneration should be listed in the notes to the annual accounts.

It is recommended as follows:

35. The company's remuneration policy, as approved by its Board of Directors, should specify at least the following points:

- a) The amount of the fixed components, itemised where necessary, of board and board committee attendance fees, with an estimate of the fixed annual payment they give rise to;**
- b) Variable components, in particular:**
 - i) The types of directors they apply to, with an explanation of the relative weight of variable to fixed remuneration items.**
 - ii) Performance evaluation criteria used to calculate entitlement to the award of shares or share options or any performance-related remuneration;**
 - iii) The main parameters and grounds for any system of annual bonuses or other, non cash benefits; and**
 - iv) An estimate of the sum total of variable payments arising from the remuneration policy proposed, as a function of degree of compliance with pre-set targets or benchmarks.**
- c) The main characteristics of pension systems (for example, supplementary pensions, life insurance and similar arrangements), with an estimate of their amount or annual equivalent cost.**

- d) **The conditions to apply to the contracts of executive directors exercising senior management functions. Among them:**
- i) **Duration;**
 - ii) **Notice periods; and**
 - iii) **Any other clauses covering hiring bonuses, as well as indemnities or 'golden parachutes' in the event of early termination of the contractual relation between company and executive director.**

Guidelines

Although this Code upholds companies' right to privately decide on remuneration matters and its primary insistence is on their transparency and approval by the competent bodies, it also makes recommendations regarding the content of remuneration policy.

In particular, it urges the exclusion of external directors from remuneration schemes with a variable component linked to the company's net profit or other financial management indicators (for example, operating profit or ebitda), or the value of its share at a given point in time. The idea is to forestall any conflict of interest for external directors when called on to evaluate accounting practices or take other decisions with a possible bearing on the company's reported earnings, given that such earnings or evaluations could have an impact on their income. At the same time, the Code acknowledges that an earnings-related remuneration scheme positively correlated with changes in shareholder value should, if correctly applied, align directors' interests with those of shareholders. Seeking a balance between the two preceding objectives, it urges that variable remuneration be confined to executive directors, but does not suggest that receiving variable payments should disqualify an independent director from maintaining such status.

The Code also advises companies not to use the average remuneration of peer companies as a benchmark for their own remuneration policies: because the desire to converge with the average among those receiving less will not meet with any symmetrical effort from those receiving more, activating what is known as the "ratchet effect".

As regards share-based incentives, variable payments should prize not the absolute change in the price of the share but its improvement relative to the cost of capital for shareholders or that of peer organisations. This is so directors do not pocket disproportionate sums due merely to the general progress of the market or moments of stock euphoria.

Except where individual remuneration is variable or linked to the company's performance, directors' compensation shall not be deemed variable simply because the company's bylaws state that the sum of variable payments may not exceed a given percentage of its profits.

In sum, the Code recommends that director remuneration should suffice to attract and retain the right kind of person but not be so high as to compromise their independence.

It is recommended as follows:

36. Remuneration comprising the delivery of shares in the company or other companies in the group, share options or other share-based instruments,

payments linked to the company's performance or membership of pension schemes should be confined to executive directors.

The delivery of shares is excluded from this limitation when directors are obliged to retain them until the end of their tenure.

37. External directors' remuneration should sufficiently compensate them for the dedication, abilities and responsibilities that the post entails, but should not be so high as to compromise their independence.
38. In the case of remuneration linked to company earnings, deductions should be computed for any qualifications stated in the external auditor's report.
39. In the case of variable awards, remuneration policies should include technical safeguards to ensure they reflect the professional performance of the beneficiaries and not simply the general progress of the markets or the company's sector, atypical or exceptional transactions or circumstances of this kind.

The advisory vote of the General Shareholders' Meeting

The moderating influence of a stringent transparency regime can be enhanced by submitting the remuneration policy approved by the board to the advisory vote of the Annual General Shareholders' Meeting, as proposed by the European Commission in its Recommendation of 14 December 2004. Because of this advisory nature, there seems no need for any limiting condition to the effect that the vote should be requested by a minimum percentage of shareholders. The advisory vote is an innovation in Spanish corporate practice, allowing the Shareholders' Meeting to take a stance which, without affecting the validity of the company's remuneration commitments, may equate to a vote of confidence or no confidence in the directors' stewardship.

One acceptable limit to the transparency principle concerns specific bonuses or parameters whose disclosure to competitors could harm the corporate interest by revealing more than is necessary of the listed company's commercial strategy.

It should be noted that compensation in the form of shares or options has been governed since 1999 by the terms of article 130 of the Public Limited Companies Law.

It is recommended as follows:

40. **The board should submit a report on the directors' remuneration policy to the advisory vote of the General Shareholders' Meeting, as a separate point on the agenda. This report can be supplied to shareholders separately or in the manner each company sees fit.**

The report will focus on the remuneration policy the board has approved for the current year with reference, as the case may be, to the policy planned for future years. It will address all the points referred to in Recommendation 34, except those potentially entailing the disclosure of commercially sensitive information. It will also identify and explain the most significant changes in remuneration policy with respect to the previous year, with a global summary of how the policy was applied over the period in question.

The role of the Remuneration Committee in designing the policy should be reported to the Meeting, along with the identity of any external advisors engaged.

Disclosure of individual remuneration

The Code makes the supplementary but separate recommendation that remuneration transparency should extend beyond the board as a whole to individual directors. It also urges the disclosure of individual non cash payments, and the performance of the shares and options delivered to directors in that year or previous years. Individual directors' emoluments should be listed in companies' notes to the annual accounts. The Code recommends that as well as disclosing all remuneration items, these notes should include a section on the relation between payments to executives and the company's performance in the year.

It is recommended as follows:

41. The notes to the annual accounts should list individual directors' remuneration in the year, including:

a) A breakdown of the compensation obtained by each company director, to include where appropriate:

- i) Participation and attendance fees and other fixed director payments;**
- ii) Additional compensation for acting as chairman or member of a board committee;**
- iii) Any payments made under profit-sharing or bonus schemes, and the reason for their accrual;**
- iv) Contributions on the director's behalf to defined-contribution pension plans, or any increase in the director's vested rights in the case of contributions to defined-benefit schemes;**
- v) Any severance packages agreed or paid;**
- vi) Any compensation they receive as directors of other companies in the group;**
- vii) The remuneration executive directors receive in respect of their senior management posts;**
- viii) Any kind of compensation other than those listed above, of whatever nature and provenance within the group, especially when it may be accounted a related-party transaction or when its omission would detract from a true and fair view of the total remuneration received by the director.**

b) An individual breakdown of deliveries to directors of shares, share options or other share-based instruments, itemised by:

- i) Number of shares or options awarded in the year, and the terms set for their execution;**
- ii) Number of options exercised in the year, specifying the number of shares involved and the exercise price;**
- iii) Number of options outstanding at the annual close, specifying their price, date and other exercise conditions;**
- iv) Any change in the year in the exercise terms of previously awarded options.**

- c) Information on the relation in the year between the remuneration obtained by executive directors and the company's profits, or some other measure of enterprise results.**

ON COMMITTEES

The sheer breadth of the powers that the law and bylaws vest in the Board of Directors may warrant the delegation of certain functions, especially of an executive nature. Likewise it is useful for the board to have delegate bodies that can provide support and input concerning vital aspects of its core oversight function.

This is the rationale behind Board of Directors committees, which can roughly be divided into the Executive Committee, on the one hand, and supervision and control committees on the other.

Executive Committee

The trend towards smaller sized boards meeting more often may gradually do away with Executive Committees. However they are currently in place at most Spanish listed companies and fulfil an important function.

The risk arises when their composition does not match that of the board, meaning they may exercise their delegated powers from a different or divergent perspective. It is accordingly advisable for their membership mix to reflect that of the board itself.

The board in full should also be cognisant with all the decisions adopted by the Executive Committee.

It is recommended as follows:

- 42. When the company has an Executive Committee, the breakdown of its members by director category should be similar to that of the board itself. The Secretary of the board should also act as secretary to the Executive Committee.**
- 43. The board should be kept fully informed of the business transacted and decisions made by the Executive Committee. To this end, all board members should receive a copy of the Committee's minutes.**

Supervision and control committees

The Code elaborates on the proposals made in the Olivencia and Aldama reports, with the text of the European Commission Recommendation of 15 February 2005 also very much in mind.

No reference is made to the Strategy and Investment Committee advocated by the Aldama Report, on the understanding that its functions come under the powers attributed to the board *per se*. Likewise, while acknowledging that a separate Corporate Governance Committee might be a good idea for some listed companies, there seems to be no immediate need for a blanket recommendation of this sort. Individual companies, are, of course, free to create one or to assign its functions to one of the committees stated in this Code (setting up, for instance, an "Audit and Compliance Committee", a "Nomination and Corporate Governance Committee" or some other combination).

Since the oversight and control function is mainly directed at the company's senior officers, the Code makes the general recommendation that committees be comprised entirely of external directors – here excluding those linked to the executive team – and chaired by an independent.

Although members should be equipped with the knowledge needed to perform their duties, committees may occasionally engage the services of an outside expert as established in Recommendation 22. A typical case would be a Nomination Committee hiring a specialist search firm to select candidates for a director's post.

The minutes of committee meetings should be sent to all board members.

It is recommended as follows:

44. In addition to the Audit Committee mandatory under the Securities Market Law, the Board of Directors should form a committee, or two separate committees, of Nomination and Remuneration.

The rules governing the make-up and operation of the Audit Committee and the committee or committees of Nomination and Remuneration should be set forth in the board regulations, and include the following:

- a) The Board of Directors should appoint the members of such committees with regard to the knowledge, aptitudes and experience of its directors and the terms of reference of each committee; discuss their proposals and reports; and be responsible for overseeing and evaluating their work, which should be reported to the first board plenary following each meeting;**
- b) These committees should be formed exclusively of external directors and have a minimum of three members. Executive directors or senior officers may also attend meetings, for information purposes, at the Committees' invitation.**
- c) Committees should be chaired by an independent director.**
- d) They may engage external advisors, when they feel this is necessary for the discharge of their duties.**
- e) Meeting proceedings should be minuted and a copy sent to all board members.**

45. The job of supervising compliance with internal codes of conduct and corporate governance rules should be entrusted to the Audit Committee, the Nomination Committee or, as the case may be, separate Compliance or Corporate Governance committees.

Audit Committee

The Code's contents in this case draw on the relevant text of the European Commission Recommendation of 15 February 2005, as well as the eighteenth additional provision of the Securities Market Law.

The Audit Committee's mandate should be to supervise the company's internal audit function and review the quality of risk management systems. In order to forge closer links between the Audit Committee and company shareholders, the Code proposes that its chairman should address the General Meeting directly concerning any reservations or qualifications in external auditors' reports.

It is important that Audit Committee members have accounting, finance or even management skills (so they can issue a reasoned judgement, for instance, on related-party transactions).

The Code takes one novelty from the European Commission Recommendation, which draws in turn on the experience of the United States, United Kingdom and other countries, in recommending that the Audit Committee be entrusted with the creation and monitoring of special channels for employees to report alleged irregularities (whistle blowing). These channels should protect the identity of the complainant or, in some cases, allow him or her to remain anonymous. The presumption is that they will mainly be used to report financial or accounting irregularities and will adhere at all times to the restrictions imposed by Law 15/1999 of 13 December on the Protection of Personal Data.

It is recommended as follows:

46. All members of the Audit Committee, particularly its chairman, should be appointed with regard to their knowledge and background in accounting, auditing and risk management matters.

47. Listed companies should have an internal audit function, under the supervision of the Audit Committee, to ensure the proper operation of internal reporting and control systems.

48. The head of internal audit should present an annual work programme to the Audit Committee; report to it directly on any incidents arising during its implementation; and submit an activities report at the end of each year.

49. Control and risk management policy should specify at least:

- a) The different types of risk (operational, technological, financial, legal, reputational...) the company is exposed to, with the inclusion under financial or economic risks of contingent liabilities and other off-balance-sheet risks;**
- b) The determination of the risk level the company sees as acceptable;**
- c) Measures in place to mitigate the impact of risk events should they occur;**
- d) The internal reporting and control systems to be used to control and manage the above risks, including contingent liabilities and off-balance-sheet risks.**

50. The Audit Committee's role should be:

1. With respect to internal control and reporting systems:

- a) Monitor the preparation and the integrity of the financial information prepared on the company and, where appropriate, the group, checking for**

compliance with legal provisions, the accurate demarcation of the consolidation perimeter, and the correct application of accounting principles.

- b) Review internal control and risk management systems on a regular basis, so main risks are properly identified, managed and disclosed.
- c) Monitor the independence and efficacy of the internal audit function; propose the selection, appointment, reappointment and removal of the head of internal audit; propose the department's budget; receive regular report-backs on its activities; and verify that senior management are acting on the findings and recommendations of its reports.
- d) Establish and supervise a mechanism whereby staff can report, confidentially and, if necessary, anonymously, any irregularities they detect in the course of their duties, in particular financial or accounting irregularities, with potentially serious implications for the firm.

2. With respect to the external auditor:

- a) Make recommendations to the board for the selection, appointment, reappointment and removal of the external auditor, and the terms and conditions of his engagement.
- b) Receive regular information from the external auditor on the progress *and* findings of the audit programme, and check that senior management are acting on its recommendations.
- c) Monitor the independence of the external auditor, to which end:
 - i) The company should notify any change of auditor to the CNMV as a significant event, accompanied by a statement of any disagreements arising with the outgoing auditor and the reasons for the same.
 - ii) The Committee should ensure that the company and the auditor adhere to current regulations on the provision of non-audit services, the limits on the concentration of the auditor's business and, in general, other requirements designed to safeguard auditors' independence;
 - iii) The Committee should investigate the issues giving rise to the resignation of any external auditor.
- d) In the case of groups, the Committee should urge the group auditor to take on the auditing of all component companies.

51. The Audit Committee should be empowered to meet with any company employee or manager, even ordering their appearance without the presence of another senior officer.

52. The Audit Committee should prepare information on the following points from Recommendation 8 for input to board decision-making:

- a) The financial information that all listed companies must periodically disclose. The Committee should ensure that interim statements are drawn

up under the same accounting principles as the annual statements and, to this end, may ask the external auditor to conduct a limited review.

- b) The creation or acquisition of shares in special purpose vehicles or entities resident in countries or territories considered tax havens, and any other transactions or operations of a comparable nature whose complexity might impair the transparency of the group.
- c) Related-party transactions, except where their scrutiny has been entrusted to some other supervision and control committee.

53. The Board of Directors should seek to present the annual accounts to the General Shareholders' Meeting without reservations or qualifications in the audit report. Should such reservations or qualifications exist, both the Chairman of the Audit Committee and the auditors should give a clear account to shareholders of their scope and content.

Nomination and Remuneration committees

Getting the right directors appointed is of capital importance for an efficiently performing board. The Nomination Committee, whose role is an advisory one, assists the board in achieving this objective and can help forestall conflicts of interest among board members in connection with directorship appointments. Hence the Code advocates that the Nomination Committee should propose the candidates for independent directorships, as well as assessing and reporting on other prospective appointees.

The Remuneration Committee, meantime, must have the right expertise and judgement for the complex technical and political task of designing a remuneration system for directors and senior officers that manages to be both fair and efficient. The board should bear these requirements in mind when appointing Committee members, and providing them with any advisory resources they need.

Although the Code defends the principle that both committees should be composed entirely of external directors, it also proposes regular consultations with company chairmen and chief executives, especially when the business at hand affects executive directors.

In view of the key role this Code assigns the Nomination Committee (section III.5) in the appointment of independent directors, it is proposed that as well as being formed exclusively of external directors, independents should be a majority.

It is recommended as follows:

Nomination Committee

54. The majority of Nomination Committee members – or Nomination and Remuneration Committee members as the case may be – should be independent directors.

55. The Nomination Committee should have the following functions in addition to those stated in earlier recommendations:

- a) Evaluate the balance of skills, knowledge and experience on the board, define the roles and capabilities required of the candidates to fill each vacancy, and decide the time and dedication necessary for them to properly perform their duties.
 - b) Examine or organise, in appropriate form, the succession of the chairman and chief executive, making recommendations to the board so the handover proceeds in a planned and orderly manner.
 - c) Report on the senior officer appointments and removals which the chief executive proposes to the board.
 - d) Report to the board on the gender diversity issues discussed in Recommendation 14 of this Code.
56. The Nomination Committee should consult with the company's Chairman and chief executive, especially on matters relating to executive directors.

Any board member may suggest directorship candidates to the Nomination Committee for its consideration.

Remuneration Committee

57. The Remuneration Committee should have the following functions in addition to those stated in earlier recommendations:
- a) Make proposals to the Board of Directors regarding:
 - i) The remuneration policy for directors and senior officers;
 - ii) The individual remuneration and other contractual conditions of executive directors.
 - iii) The standard conditions for senior officer employment contracts.
 - b) Oversee compliance with the remuneration policy set by the company.
58. The Remuneration Committee should consult with the Chairman and chief executive, especially on matters relating to executive directors and senior officers.

III. DEFINITIONS

1. Senior officer

Any member of a company's executive staff reporting direct to the board or the chief executive; to include in any event the internal auditor.

2. Significant shareholdings

Shareholdings legally defined as such; currently, those exceeding 5% of share capital pursuant to Royal Decree 377/1991 on the notification of significant shareholdings.

3. Executive directors

Directors who are senior officers or employees of the company or its group.

However, board members who are senior officers or directors of the company's parent firm shall be classed as proprietary directors.

When a director performing senior management functions at the same time is or represents a significant shareholder or any shareholder represented on the board, he or she will be considered an "executive" or "internal" director for the purpose, exclusively, of this Code. For other purposes, e.g. the rules on mandatory takeover bids by a shareholder controlling the board, this same director would be classed as proprietary.

4. Proprietary directors

Defined as:

- a) Directors who own an equity stake above or equal to the legally determined threshold for significant holdings, or otherwise appointed due to their status as shareholders.
- b) Those representing the shareholders stated in a) above.

For these purposes, a director shall be deemed to represent a shareholder when:

- a) He or she has been appointed under a power of attorney.
- b) He or she is a director, senior officer, employee or regular service supplier of the said shareholder, or of companies within the same group.
- c) Company records show that the shareholder acknowledges the director as his appointee or representative.
- d) He or she is the spouse or maintains an analogous affective relationship or is a close relative of a significant shareholder³.

³ This definition follows the criterion of article 127 ter of the Public Limited Companies Law, also upheld in remaining Spanish legal provisions concerning related-party transactions, whereby

5. Independent directors

Directors appointed for their personal or professional qualities who are in a position to perform their duties without being influenced by any connection with the company, its shareholders or its management.

As such, the following shall in no circumstances qualify as independent directors:

- a) Past employees or executive directors of group companies, unless 3 or 5 years have elapsed, respectively, from the end of the relation.
- b) Those who have received some payment or other form of compensation from the company or its group on top of their directors' fees, unless the amount involved is not significant.

Dividends or pension supplements received by a director for prior employment or professional services shall not count for the purposes of this section, provided such supplements are non contingent, i.e. the paying company has no discretionary power to suspend, modify or revoke their payment, and by doing so would be in breach of its obligations.

- c) Partners, now or on the past 3 years, in the external auditor or the firm responsible for the audit report, during the said period, of the listed company or any other within its group.
- d) Executive directors or senior officers of another company where an executive director or senior officer of the company is an external director.
- e) Those having material business dealings with the company or some other in its group or who have had such dealings in the preceding year, either on their own account or as the significant shareholder, director or senior officer of a company that has or has had such dealings.

Business dealings will include the provision of goods or services, including financial services, as well as advisory or consultancy relationships.

- f) Significant shareholders, executive directors or senior officers of an entity that receives significant donations from the company or its group, or has done so in the past 3 years.

This provision will not apply to those who are merely trustees of a Foundation receiving donations.

- g) Spouses, or partners maintaining an analogous affective relationship, or close relatives of one of the company's executive directors or senior officers.
- h) Any person not proposed for appointment or renewal by the Nomination Committee.
- i) Those standing in some of the situations listed in a), e), f) or g) above in relation to a significant shareholder or a shareholder with board representation. In the

analogous affective relationships (e.g. couples living together) are given the same treatment as marriages.

case of the family relations set out in letter g), the limitation shall apply not only in connection with the shareholder but also with his or her proprietary directors in the investee company.

Proprietary directors disqualified as such and obliged to resign due to the disposal of shares by the shareholder they represent may only be re-elected as independents once the said shareholder has sold all remaining shares in the company.

A director with shares in the company may qualify as independent, provided he or she meets all the conditions stated in this Recommendation and the holding in question is not significant.