Spain

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI on 45 companies as of 15 May 2010.

Companies listed in Spain generally provide strong shareowner rights. Spain has a well-respected regulatory system and has established a solid foundation of basic *de jure* investor protections. Shareowner rights in Spain are limited in some instances by the fact that many of the country's listed companies have controlling shareowners and non-independent boards. Also, most legally established avenues for investor activism are limited to shareowners who own 5 percent or 10 percent stakes in listed companies.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent directors on public company boards (% independent board members)?	40%	Many companies in Spain have controlling shareowners and majority non-independent boards.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	78%	Companies in Spain commonly engage in high levels of related-party transactions with shareowners.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	40%	Controlling shareowners are very common in Spain.
Is voting by proxy permitted?	Yes	Voting by proxy is common practice in Spain.
Must shares be deposited or blocked from trading in order to vote?	No	Share blocking is not common practice in Spain.
Are there share ownership limitations in this market?	Yes	Regulated industries (the oil sector, the energy sector) have legally mandated share ownership restrictions in Spain. For instance, in the energy sector, share ownership is limited to 10%.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	This sort of restriction is not common practice in Spain.
Do companies adhere to a majority voting standard in the election of board members?	Very limited	Only 9% have majority voting.
Do companies allow for cumulative voting in the election of board members?	Yes	It is mandated in Spanish law.

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Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No	This practice is not common in Spain.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	No	This practice is not common in Spain. Disclosure of executive remuneration policies and practices in Spain is limited.
Are shareowners able to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	In Spain, at annual general meetings, shareowners are able to introduce nonbinding resolutions but not binding resolutions.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	A group of shareowners constituting 5% of the shares may convene an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	This practice is not common in Spain.
Are shareholder rights plans (poison pills) allowed in this market?	No	Poison pills are not common in Spain.
If shareholder rights plans are in use, do they have to be approved by shareowners?	NA	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is the established practice in Spain.
Do companies require a supermajority vote to approve a merger?	Yes	This practice is common in Spain.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	This practice is common in Spain.
Are class action suits commonly used in this market?	No	Shareowner activism is not common in Spain.
Are derivative suits commonly used in this market?	No	Shareowner activism is not common in Spain.

NA = not applicable.

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Current Engagement Practices and Shareowner Rights Developments

Spain has established a number of basic protections that give minority shareowners the power to engage in investor activism, but such activism is rare because of institutional factors, such as the presence of controlling shareowners. The country's nonbinding 2006 Unified Good Governance Code recommends that listed companies avoid implementing "safeguard" conditions, such as restrictions on voting rights or stricter-than-standard quorum requirements for certain types of decisions. Still, some companies require shareowners to own a certain number of shares before they are eligible to attend annual general meetings (AGMs).

Spain's Securities Market Law requires companies to allow shareowners to approve mergers and other major corporate transactions. Shareowners representing at least 5 percent of the share capital may request the board to call an extraordinary general meeting or special meeting or to include items in the AGM agenda. Shareowners owning 10 percent of the company shares can appoint directors directly to the board. (This practice is a proportional representation system; owners of 20 percent can appoint two directors.) Owners of 5 percent of the shares can nominate directors for election and can call meetings to remove directors from office, with or without cause. Spanish listed companies are required to provide shareowners with cumulative voting in director elections. Shareowners may file class action lawsuits and derivative actions, but such legal actions are discouraged by local institutional factors, such as the "loser-pays" rule.

Even though Spain provides relatively strong legal protections for investors, the country does not have a culture of investor activism. An October 2009 article by Reuters Spain correspondent Fiona Maharg-Bravo pointed out that even as discontent with excessive CEO pay and severance packages rises, shareowner activism is still surprisingly absent in Spain. She wrote, "The silence of investors on executive pay in Spain is deafening—and symptomatic of the lack of shareowner activism."

Investor activism in Spain is limited by institutional factors, including strong ties between major companies and the government, the large percentage of companies with controlling shareowners, and limited disclosure of many areas of governance, including compensation policy. No large, independent Spanish institutional investors are making their voices heard. Most major institutional investors in Spain used to be run by the country's major banks. Because of the recent banking crisis and the public offering of new companies, however, the relative weight of bank holdings within the stock market is falling.

Barring a few recent exceptions, foreign activist investors have not targeted Spanish companies. Centralized management power and weak board independence deter investor activism, as do laws that prevent minor shareowners who control less than 5 percent of a company's shares from filing derivative lawsuits.

Most of Spain's major listed companies are former public utilities that were privatized in the 1990s. Most companies are controlled by wealthy individuals and groups who invest in particular sectors. Government ownership is rare in Spain.

Finally, activism is limited by the fact that Spanish companies lag behind their U.K. and U.S. counterparts when it comes to disclosure of executive compensation policies and packages. It is hard for investors to gauge what steps companies are taking to link executive pay to company performance because detailed descriptions of individual executive pay programs are not disclosed.

Legal and Regulatory Framework

In the last decade, regulators in Spain have taken a number of steps to clarify and codify expectations of corporate governance at listed companies. Spain provides relatively strong legal protections.

When Spain joined the EU in 1986, it was one of Europe's poorest countries. After joining the EU, Spain privatized many major companies (primarily, public utilities), however, and starting in the 1990s, many of these former utilities successfully expanded internationally. Today, Spain is home to a large number of global companies in industries ranging from banking to construction, gas, oil, electricity, telecommunication, and clothing. The Spanish government and the EU have a strong track record of regulating the former public utilities.

Because Spain's legal traditions are based on French rather than British law, current corporate structures and governance practices in Spain differ sharply from the Anglo-American model, in which ownership is separated from management. In Spain, the dichotomy is not between ownership and management but, rather, between powerful owner/managers and weaker minority shareowners; privatization in the 1990s shifted control of many companies from the state into the hands of coalitions of private investors. Most major corporations are controlled by majority owners, and independent board chairs are extremely rare in Spain.

Spain's limited experimentation with shareowner activism has impeded the development of enforceable precedents on issues of director and executive fiduciary duty. Judges have been wary of taking an activist role in interpretation of the law when it comes to defining responsibilities for directors and controlling shareowners.

In Spain, corporate culture is dominated by insiders. Despite new developments in corporate governance regulation, controlled companies with non-independent boards continue to be the norm. Although most companies offer solid disclosure of their finances, governance practices, and corporate social responsibility initiatives, listed companies provide extremely limited disclosure of their executive pay policies and packages.

Unlike in the United States, where failure to comply with NYSE listing regulations is punishable by law, in Spain most corporate governance guidelines are voluntary and self-enforced. Spain's 2006 Unified Good Governance Code, the country's most recent set of governance guidelines, explains:

> 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 shareowners, investors and the markets in general can arrive at an informed judgment.

The 2006 Unified Code requires all listed companies to publish standardized annual corporate governance reports, which are available on company websites and through Spain's market regulator, the CNMV (Comisión Nacionale del Mercado de Valores), which is Spain's National Commission on Markets and Securities. Unfortunately, this type of self-regulated approach to governance offers only limited protection for minority shareowners in a country where controlling shareowners and non-independent boards are common. For example, the code recommends that companies minimize the size of their boards and states that 15 directors should be the maximum size for a board. A significant proportion (about one-third) of major publicly listed Spanish companies, however, have boards with more than 15 directors. Spanish companies commonly have large boards that include multiple executives, a panel of "dominical" directors who are appointed by core shareowners, and a few independent directors.

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Key organizations with information relevant to shareowner rights in Spain include the following:

CNMV (www.cnmv.es)

European Corporate Governance Institute (www.ecgi.org)

National Competition Commission (www.cncompetencia.es)

Association of Pension Funds and Investment Institutions (www.inverco.es)

Bolsa de Madrid (www.bolsamadrid.es)

Registro Mercantil Central (www.rmc.es)

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