Spain

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings on 43 companies as of 31 August 2012.

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).

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% or 10% 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)?	41%	Many companies in Spain have controlling shareowners and majority non-independent boards.
What percentage of companies have fully independent audit committees?	18.6%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	32.6%	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	

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are there share ownership limitations in this market?	Yes	Regulated industries (the oil and energy sectors) 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?	No, usually	
Do companies allow for cumulative voting in the election of board members?	Yes	It is mandated in Spanish law.
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?	Yes	
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.
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	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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.

Current Engagement Practices and Shareowner Rights Developments

Spain's Securities Market Law requires companies to allow shareowners to approve mergers and other major corporate transactions. Shareowners representing at least 5% of the share capital may request that the board call an extraordinary general meeting or special meeting or include items in the AGM agenda. Shareowners who hold 10% of the company shares can appoint directors directly to the board (this practice is a proportional representation system, so owners of 20%, for example, can appoint two directors). Owners of 5% 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. 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 offerings 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 minority shareowners who control less than 5% 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.

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 of its major companies (primarily public utilities), 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, telecommunications, 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.

Most corporate governance guidelines are voluntary and self-enforced. According to Spain's 2006 Unified Good Governance Code, the country's most recent set of governance guidelines, "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 judgment."[1]

The 2006 Unified Good Governance 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.

There has been substantial activity in the legislative arena in recent years in Spain, and 2011 proved to be an especially busy year. The Sustainable Economy Act of 2011 requires listed companies to submit a remuneration annual report to the annual shareholders' meeting for an advisory "say-on-pay" vote. Also in 2011, Law 25/2011 came into effect. This law amended some key aspects linked to voting on resolutions, specifically reducing barriers for shareholders exercising their vote and promoting electronic participation in meetings. Company websites are now considered a main tool of communication.

At the end of 2011, a draft rule limiting external independent directors to a 12-year tenure was put forth. The proposal would require companies to adopt the independent directors definition found in the Unified Good Governance Code. A separate draft rule to establish better disclosure on directors' and executive compensation was set up for consultation. Both rules were put on hold until further notice.

[1] www.ecgi.org/codes/documents/unified_code_may2006_en.pdf (p. 7).

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

Comisión Nacionale del Mercado de Valores (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 Central Mercantil (www.rcm.es)