SPANISH SECURITY MARKET COMMISSION INTRODUCES THE NEW GOOD GOVERNANCE CODE OF LISTED COMPANIES

On 18 February 2015, the Board of Spain's Securities Market Commission (CNMV) approved the new Good Governance Code of Listed Companies (hereinafter, the "Code"), prepared with the support of the "Committee of Experts on Corporate Governance Matters" appointed by the Cabinet of Ministers in May 2013.

The new Code replaces the former Good Governance Code (2006) and is aimed at ensuring the proper working of the governance and administration bodies of Spanish companies, to guide them to achieving maximum competitiveness, generate trust and transparency for domestic and foreign shareholders and investors, to improve internal control and corporate responsibility of Spanish companies, and to ensure adequate separation of functions, duties and responsibilities in said companies.

The aforementioned Committee of Experts has drawn a distinction between proposals that should be considered imperative and those taking the form of voluntary recommendations; accordingly, the former, which are mandatory, have been included in the recent reform of the Corporate Enterprises Act (Law 31/2014, dated 3 December, amending the Corporate Enterprises Act to improve corporate governance), giving them the status of legal standards. The voluntary recommendations are those included in the Code and are discussed here.

The most notable new aspects in the Code are as follows:

(i) The principles that, in each case, inspire the recommendations are clearly and specifically identified.

(ii) Excluded from the Code are the recommendations from the unified code of 2006, which have been incorporated into legal standards (such as those concerning the exclusive competencies of the General Shareholders' Meeting or the Board of Directors, or the separate voting of resolutions).

(iii) Specific recommendations have been included concerning corporate social responsibility.

The new Code comprises a total of 64 recommendations, grouped into three main blocks: general aspects (recommendations 1 to 5), general shareholders' meeting (6 to 11) and Board of Directors (12 to 64).

The new aspects of the Code are applicable in the 2015 financial year, in respect of which companies must provide corporate governance information in their annual reports to be submitted to the CNMV in 2016.

The general principles of the new Code, on which the 64 recommendations are based, are described below:

Firstly, a characteristic of the Code is the **voluntary nature of the recommendations, subject to the "comply or explain" principle**. Unlike the rules contained in the Corporate Enterprises Law, the recommendations contained in the Code are voluntary. Companies are free to follow them or not without prejudice to their obligation to specify in the annual corporate governance report the "degree of compliance with the corporate good governance recommendations, justifying any failure to comply."

Another pillar of the Code is the **evaluation by the market**, whereby the task of evaluating the explanations companies give for their non- or partial compliance with recommendations falls to shareholders, investors and the markets in general.

Thirdly, the Code mentions the **scope of application,** since the Code addresses all listed companies whose shares are admitted to trading on an official secondary market, regardless of their size and market capitalisation. Nevertheless, the Code does stipulate a speciality for those companies with the largest market capitalisation, since it indicates that there are a series of recommendations that expressly address these companies, which do not need to be followed by smaller companies.

Lastly, the recommendations focus mainly on the Board of Directors, although they also establish a series of standards of transparency for the General Shareholders' Meeting. The main guidelines in relation to the Board of Directors are, among others, the following:

(i) In terms of the composition and structure of the Board of Directors, it is recommended that a selection policy, to be presented in a report by the Appointments Committee, be previously approved. Likewise, it is recommended that the process for selecting directors should also respond to the goal of increasing the number of female directors.

(ii) It is recommended that the number of independent directors should represent at least half of the total number of directors, and that the percentage of independent directors appointed by significant shareholders should not exceed the percentage of share capital they represent.

(iii) With regard to the operation of the Board of Directors, it is recommended that the Board should meet frequently enough to properly discharge its duties and, in any case, at least eight times per year.

(iv) The duties of the Chairman of the Board of Directors (and the Coordinating Director when the Chairman is an Executive Director) are extended.

(v) Particular emphasis is laid on remuneration to directors, and aspects of the European Commission recommendation on directors' remuneration have been included. It is recommended that an internal department of the company should undertake risk management and control duties, and generally it is suggested that directors' remuneration should be sufficient to attract and retain directors with the desired profile. In this context, it is also recommended that remuneration to Executive Directors should vary in line with the performance of the company and with their personal performance.