

**The most relevant conclusions of the
9th European Conference on Corporate Governance
Madrid, June 28 and 29 2010.**

EXECUTIVE SUMMARY

- **First European Conference** on Corporate Governance which is celebrated in **Spain**.
- European Conference **organized** jointly by the **Spanish Association of Board Directors (IC-A, Instituto de Consejeros-Administradores)**, **Ministry of Economy and Finance / General Director of Treasury and Financial Policy**, and in collaboration with Spanish Supervisor CNMV, the European Commission (CE) and ecoDa (the European Confederation of Board Directors Association), amongst others.
- **17 countries** participated in this Conference.
- Those members of the audience of this Conference who assisted **IC-A's Annual Dinner** held in the Madrid Casino Madrid (c/ Alcalá, 15) have had the opportunity to **learn first-hand** the most relevant conclusions of the **World meeting of institutional investors held in Toronto last June**. Those conclusions were presented by the Managing Director of the ICGN (world association of institutional investors).
- The **European Commission highlighted its intention of finding a balance between rules and regulations** making clear that it does not have the intention of following the American model based exclusively on regulations.
- It was revealed, by various Experts, the **need to better understand the interrelations between the different elements of good governance and to avoid the errors committed in previous crisis**. For this reason, the **need to understand the interrelations was emphasized, instead of focusing** solely on the **visible external aspects** such as the matters related to the **remuneration, risks and others**, in listed companies which are at the same time as being important are also external signs.
- **The British world pioneer proposal on the Conduct Code for institutional investors** was put forward and discussed.
- The importance of understanding, the **present structure of shares of the listed companies** with different types of investors, and the **predictable evolution of the composition** of the type of investors in the listed companies in the future was highlighted.
- It was concluded, in relation to the institutional investors, the need to provide **more responsibilities as shareholders**.

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- The lessons of the **Brasilian model of the Novo Mercado de Bovespa**, for listed companies were analyzed where the requirements for defense of the minority investors, providing them with recognized/clear detailed rights, joined to a high level of demand for corporate governance, has made it possible for this market of listed companies to be considered a market with great success which has obtained **global interest and confidence by the institutional investors**.
- In relation with the **Board of Directors**, the opportunity was given to learn in detail the recent, **June 2010, United Kingdom Code on Corporate Governance** for **listed companies**. This code **explores and updates** the **additional function of the non-executive presidents of the Board of Directors**, as well as, the **new trends** in the role and composition of the **members of the Board** of the listed companies. The main new developments of the Code are the following:

New definition of some of the functions of the Board

New definition of the role of the President of the Board

New definitions of the role of the Directors and their obligations

New methods of control of the Board

- For the first time during a European Conference on Corporate Governance, the **relevance of the PYMEs and their company governance** was addressed. **The 21 million PYMEs existing in Europe against the 7.000 listed companies**, makes obvious that an improvement in their governance could have a very significant impact on the European economy.
- The lack of financing of the **PYMEs** makes that **good governance** becomes of **greater importance to be able to access to financing**. In the present situation, financing of the PYMEs and good governance are two sides of the same coin.

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SUMMARY OF REGISTRATIONS TO THE CONFERENCE

- Inscritos Conferencia/Conference registration----278

Desglose aproximado por categorías/**Aprox breakdown** by category:

- Europeos-Internacional/**European-International**--35%
- Por experiencia practica-academica/practicioners-academic:
 - . Experiencia Practica/**Practicioners**--95%
 - . Profesores /**Academic**--5%%
- Por función/by funtion:
 - . Consejeros/**Board Directors**---25%
 - . Secretarios de Consejo/**Company Secretary & Compliance Officers**--25%
 - . Inversores/Investors--20%
 - . Supervisores/**Supervisors**--10%
 - . Otros destacados/**Other relevant**s--20%
Headhunting/Audit/Legal/Insurance
- Por sector/By company sector:
 - . **Listed Companies**--45%
REPSOL, IBERDROLA, REE, ALTADIS, MAPFRE, ACERINOX, ACCIONA, CRITERIA, FCC, IBERDROLA, INDRA
 - . (Financial sector companies 10%---BANCO SANTANDER, BBVA, BANKINTER, LA CAIXA)
 - Unlisted Companies----15%
 - Professional Services--20%
 - Others--20%
- Por Paises/**Countries**:
Spain,UK, Belgium,Finland, France, Luxemburg, Italy, Cyprus, USA, Brasil, Libia, Holand, Denmark, Germany, Portugal, Sweden, others

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The most relevant conclusions of the 9th European Conference on Corporate Governance Madrid, June 28 and 29 2010.

The Conference was celebrated in the Auditorium of the Ministry of Economy and Finance (Pº de la Castellana, 162), Madrid.

- The European Conference organized under the Spanish Presidency of the European Union, by the **Spanish Association of Board Directors (IC-A**, Instituto de Consejeros-Administradores), Ministry of Economy and Finance/ Director General of Treasury and Finance Policy, with the collaboration of the Spanish Supervisor CNMV, the European Commission (CE) and ecoDa (the European Confederation of Board Directors Association) amongst others. It is the first European Conference on Corporate Governance which is celebrated in Spain.
- Amongst other relevant participants, the European Commission, General Directorates of Internal Markets and Services, the General Directorate of Companies and Industry, ODCE, IOSCO (International Organization of Securities Commissions – Organización Internacional de Comisiones de Mercados de Valores), ICGN (International Corporate Governance Network, world association of Institutional investors), Hermes (relevant European institutional investor), Sodali, CNMV, Stock Market and Financial Markets FRC (Financial Reporting Council - UK), Novo Mercado/Bovespa (Brasil), Business Europe (la asociación europea de empresas), ecoDa e IC-A, can be highlighted.
- This conference counted with 17 countries participating as audience (278 registered participants) and was inaugurated on behalf of the Ministry of Economy and Finance by the Director General of Treasury and Financial Policy, Executive Director of the CNMV and of the Bank of Spain, Mrs. Soledad Nuñez Ramos.
- Those members of the audience of this Conference who assisted **IC-A's Annual Dinner** held in the Madrid Casino Madrid (c/ Alcalá, 15) have had the opportunity to **learn first-hand** the most relevant conclusions of the **World meeting of institutional investors held in Toronto last June**. Those conclusions were presented by the Managing Director of ICGN, the World association of institutional investors.

SUMMARY OF THE MOST RELEVANT CONCLUSIONS

In general, a clear tendency to react to the problems derived from the incorrect non appreciation of the risks reflected in the financial crisis by means of implementing the most advanced measures of corporate governance.

- In this sense, firstly, it was emphasized that it is necessary to **insist on the internal aspects of corporate governance**, that is, in verifying how the measures on corporate governance is effectively implemented once they are incorporated.

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- Thus, it was stated, by various experts, the **need to better understand the interrelations between the different elements of corporate governance and to avoid the errors committed during previous crisis.**
- For this reason, the **need to understand the interrelations was emphasized, instead of focusing** solely on the **visible external aspects** such as the matters related to the **remuneration, risks and others**, in listed companies which while being important are just external signs.
- With regards to the **composition of the Board of Directors** of listed companies, attention was called to the **excessive** national and European **intervention** in the decision on the composition of the mentioned board which, if this trend were to continue, could influence in an non-adequate functioning of the same.
- It was stated that in corporate governance matters, during this last crises, the **specific measures** which could be necessary for the financial sector due to the implication of third parties, did not have to necessarily be extrapolated to other sectors.

In relation to adopting more advanced practices, the following may be highlighted:

(i) **European Commission´s Activity**

- The European Commission proved to be very receptive to the frank opinions of the experts on European Good Governance. The European Commission emphasized its intention to look for a balance between rules and regulations, leaving it clear that it did not have the intention of following the American model exclusively based on regulation. At the same time, announcing that apart from the Green Book on "Corporate governance in Financial Entities and the Remuneration Policies" at present, at a stage of public reference, a new Green Book on Corporate Governance in listed companies is being prepared. And work is also being carried out on a possible extension of the recommendations of corporate governance for the non listed companies.
- The fundamental points which are being discussed with respect to corporate governance in financial entities are:
 - Limiting the number of Board Seats (3)
 - Requiring more experience and including a prior evaluation of the candidates
 - Increasing the role of the supervisors in the revision of the corporate governance structures
 - Creating of a Risk Control Committee in the Board
 - Reinforcing the legal responsibility of the Board Directors

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- Reinforcing the situation of the Risk Director, up to the level of the Financial Director
- Regulating stock options and golden parachutes
- Creating of more severe rules in relation to the obligation of the auditors to warn the Board of Directors of the problems
- Obligating the institutional investors to make public their voting policies and to adhere to conduct codes

(ii) **The new Corporate Governance code in the United Kingdom**

- In relation with the **Board of Directors**, the opportunity was given to learn in detail the recent, **June 2010, United Kingdom Code on Corporate Governance** for **listed companies**. This code **explores and updates** the **additional function of the non-executive presidents of the Board of Directors**, as well as, the **new trends** in the **role** and composition of the **members of the Board** of the listed companies. The main new developments of the Code are the following:

The new definition of some the functions of the Board

- The Board is responsible for the success of the company on a long term.
- The Board is responsible for defining the approach and tolerance of the risk. Need for a control of risks system and of its reporting is stressed.
- The annual report must include an explanation of the business model and the financial strategy.

The new definition of the role of the President of the Board

- The president is responsible for the leadership of the Board and of insuring its effectiveness.
- The president must insure that sufficient time is spent discussing the strategic matters.
- The president must develop a culture of openness and debate.

The new definition on the role of the Board Directors and their obligations

- External Board Directors must constructively challenge and help in the development of the strategy proposals.

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- The board and its committees should be formed by persons with an adequate balance of competence, experience, independence and knowledge of the company.
- Sufficient time to be dedicated.
- The president must agree and regularly review a regularized plan of training and development with each director.
- Reinforce the concept of Senior Vice-president.
- Appointments should not limit the talent pools.
- The directors need proper knowledge of the company and to have access to its transactions and to its personnel.
- The directors should have the opportunity of meeting with the leading shareholders within the welcoming program.

The new systems of control of the Board

- External evaluation every 3 years. Disclosure of other activities of the consultants.
- Annual elections of the directors and of the president
- The succession plans should include the progressive renovation of the board.
- Clawback

Likewise, it should be emphasized that there are recommendations contained in the code which are specifically designed for large companies. The code opens its doors, for the first time, to the possibility that the small listed companies do not have to follow these specific recommendations, as long as adequate reasons for not following them is given.

(iii) **The Situation in the United States of America**

- The different approach that USA seems to want to give to these matters opposite to the European position, was stated.

It is still insisted on more regulation. However, some of the questions on debate at present, seem to draw regulation closer to the European practice, for example, **a tendency to advocate the separation between the President and the First Executive,**

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that the Risk Control Committee be formed solely by independent directors and that the **shareholders are the ones to decide the remuneration of the directors (say on pay)** is observed.

(iv) **The Institutional Investors´ New Responsibilities**

- The importance of understanding, the **present structure of shares of the listed companies** with different types of investors, and the **predictable evolution of the composition** of the type of investors in the listed companies in the future was highlighted. Only by understanding the composition of the investors and their aims, one can progress in the improvement of corporate governance, with the participation of the shareholders.
- It was concluded, in relation to the institutional investors, the need to provide them **more responsibilities as shareholders**.
- **The British world pioneer proposal on a Conduct Code for institutional investors** was put forward and discussed. Amongst other questions, the institutional investors should commit to have a clear voting policy and to reveal it, to manage conflicts of interest to which they may be subject to, to undertake a follow-up of the companies in which they invest and to be willing to collectively act with other investors when it is appropriate.
- The lessons of the **Brasilian model of the Novo Mercado de Bovespa**, for listed companies were analyzed where the requirements for defense of the minority investors, providing them with recognized/clear detailed rights, joined to a high level of demand for corporate governance, has made it possible for this market of listed companies to be considered a market with great success which has obtained **global interest and confidence by the institutional investors**.

(v) **Questions in relation with Minority Shareholders**

- In relation to the principle "one share, one vote" and anti-takeover measures, the European study on this matter that took place a year ago and the lack of a common position at a European level was reviewed.
- It was insisted on the need to reform the legal regime. On other matters, an effective regulation for the right of proportional representation, of the public request for votes, must be tackled to make easy, in its case, the proxy fights, the formulation of proposals by the shareholders and the regulation of shareholders´ associations in a manner which assures its effectiveness and avoids abuses.

(vi) **Board Directors´ remuneration in Listed Companies**

- It was confirmed by the European Union that the majority of member countries are adopting the recommendation of establishing the obligation for the Board of Directors to vote the retribution policy of the Board Directors even if it is in an advisory manner. Nevertheless, the member countries seem to be more reluctant

to adopt the recommendations in relation with the structuring of the remuneration, deferral of the variable remuneration and clawback (recuperation of the variable part if the results are not as expected).

- In relation with the Board **of Directors remuneration of listed companies**, the opinion of the institutional investors at first hand, and the President of the Retribution Committee of an international listed company were known, and the components of retribution of the executive directors and no non executive directors were analyzed in order to appraise which components may be reasonable and which are not recommendable. Also, in the case of executive directors, matters related to bonus, indemnity clauses and the balance between short and medium terms, as well as the management of risks were reviewed.

(vii) **Corporate Governance of Non Listed Companies**

- For the first time during a European Conference on Corporate Governance, the **relevance of the PYMEs and their company governance** was addressed. **The 21 million PYMEs existing in Europe against the 7.000 listed companies**, makes obvious that an improvement in their governance could have a very significant impact on the European economy.
- The lack of financing of the **PYMEs** makes that **good governance** becomes of **greater importance to be able to access to financing**. In the present situation, financing of the PYMEs and good governance are two sides of the same coin.
- The pioneer European initiative of ecoDa on corporate governance for PYMEs in Europe, the lessons and the experience of the Spanish proposal by IC-A was presented in Madrid.

(viii) **Reform of the Responsibility of the Board Directors**

Finally, the need for this reform was discussed. Amongst other questions, the need for an improved procedure to deal with conflicts of interest and the prohibition of competence was emphasized. Likewise, a clearer and larger space of immunity should be established for the board director's decisions and a differentiated treatment for the infringement of the duties of loyalty and of diligence. Lastly, the regime to challenge corporate resolutions should be improved along with the establishment of the precise consequences of the infringement of the obligation of fiduciary duties.

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Additional information on the event and its conclusions:

- On the website of the "9th European Conference on Corporate Governance" at www.iconsejeros.com one can access the [Conference Programme and CVs](#) of the speakers. Shortly the conclusions, the available presentations and additional materials will be available on the mentioned website.
- On the **Presidencia Española de la UE** website, on **Agenda de Actos** for [28 June](#) and [29 de June](#), if still available, one can access to this information.

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