

## The Corporate Governance Structure of Companies Incorporated in Spain

### The General Meeting (*Junta General*)

Shareholders can take decisions on matters related to the management of the Company through the General Meeting (*Junta General*). All shareholders, including those who did not attend the General Meeting and/or are disagree with the decisions made by the General Meeting (*Junta General*) are subject to the said decisions.

In general terms, for the General Meeting to be validly constituted, the following steps are required:

- a) A President and a Secretary for the session shall be appointed, who will constitute the *mesa de la Junta*<sup>1</sup>.
- b) The President shall draw up an attendance list taking into account the members who have attended as well as the capital and the number of votes that each of them represent.

In order for the decisions adopted by the General Meeting to be valid, a quorum is required. The composition of the quorum depends upon the matters addressed because some of them are required to be approved by a majority of votes where others would not.

Spanish law defines two types of General Meeting as follows:

- a) Ordinary General Meeting (OGM): which should compulsory take place within the first six months of each corporate year to approve the social administration and the accounts of the company for the previous year.
- b) Extraordinary General Meeting: is any General Meeting that is not an Ordinary General Meeting.

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<sup>1</sup> Article 191 Spanish Companies Act.

## Director Or Board Of Directors (*Órgano De Administración*)

The Director/Board of Directors are appointed by a General Meeting and must observe the decisions adopted by the shareholders at the General Meetings.

The Director or the board of Directors manage and represent the company.

The corporate governance of a company, can be performed by another company<sup>2</sup>, one or various individuals, and if the later, they can operate and be organized as follows:

- a) Solidary administration (*Administración solidaria*) where any director can operate with full effectiveness and legitimacy, within the limits established by the law and the General Meeting (*Junta General*), without for the need of the expressed consent of the other directors.
- b) Joint management (*Administración mancomunada*) where all directors must expressly give their consent for the decision to be effective.
- c) Board of directors (*Consejo de administración*) where decisions are taken by the majority of the directors.

With regards to a public company (*sociedad anónima*), can either have two individual directors operating jointly or three or more individual directors forming a Board of Directors automatically.

In relation to a limited liability company (*sociedad limitada*) it is possible to establish in its company's articles of association, different types of structures to organize its organization. By holding a general meeting (*Junta General*) they can decide which type of structure they require, without it being necessary to modify its articles of association.

## Remuneration System Of The Director Or Board Of Directors (*Órgano De Administración*)

The directors of the board of directors will not receive any remuneration unless a remuneration system is established in the articles of association of the company. Indeed, the articles of association must establish accurately, the remuneration system assigned to the directors/board of directors.

The terms of the said remuneration system can be, among others, as follows:

- a) A fixed salary

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<sup>2</sup> In this case, the company will appoint a natural person who will act in its behalf in order to perform the duties of Director of the company.

- b) Attendance allowance, where the remuneration is based on the number of attendances to committees, meetings etc.
- c) Profit sharing where the director/board of directors are remunerated based in the company's profit either by:
  - c.1) A fixed percentage of the profit of the company.
  - c.2) A variable percentage of the profit made by the company
- d) Linked to the company's shares by:
  - d.1) Giving shares to director/board of directors.
  - d.2) Giving the director/board of directors the option to buy shares (stock options) in the company.
  - d.3) Making remuneration dependent on the share price. Therefore, as the share price increases the Director/Board of Directors will receive a higher salary.

## The Duty Of Diligence And Loyalty Of The Director / Board Of Directors

The duty of diligence and loyalty of the director/board of directors of a company, are regulated at Articles 225 to 232 of the Spanish Company Act<sup>3</sup> and, in broad terms, are the following:

- a) General duty of care:

It refers to the material performance of the director/board of directors which has to be in line with the aim to achieve major benefits for the company, by complying with the Law and the articles of association.

- b) Duty of loyalty:

The director/board of directors cannot take advantage of their position for his/her own benefit and the only economic compensation that the director/board of Directors will receive for his/her performance of duties is the one established in the company's articles of association.

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<sup>3</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2010-10544>