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THE INCREASING ROLE PROFESSIONAL SERVICE FIRMS PLAY IN THE REFORM OF SHAREHOLDERS' MEETINGS

José Luis Alvarez*
Joan Enric Ricart**

* Professor, Instituto de Empresa
** Professor of General Management, IESE

IESE Business School – Universidad de Navarra
Avda. Pearson, 21 – 08034 Barcelona. Tel.: (+34) 93 253 42 00 Fax: (+34) 93 253 43 43
Camino del Cerro del Aguila, 3 (Ctra. de Castilla, km. 5,180) – 28023 Madrid. Tel.: (+34) 91 357 08 09 Fax: (+34) 91 357 29 13

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Abstract

The purpose of this paper is to analyse the role of consultants, professional service firms and knowledge intermediaries in articulating the collective action of shareholders. The regulatory background is the current proposals for the reform of General Meetings of Shareholders in Spain. General Meetings are particularly revealing of shareholder activism, as they are the forum in which shareholders' actions can be most effective. We believe that our arguments are, to a very large extent, equally applicable to other European countries, as these proposals have been put forward in Spain within the context of the wider governance reforms promoted by the Winter Report in Europe and other national and supranational regulatory efforts.

Keywords: shareholders' meetings, corporate governance, consultants.

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Introduction

In the first months of 2005, there were reports in the Spanish business press of the launching of several associations for the defence of shareholders' economic interests. While some of these associations were specific to particular large companies or sectors (most notably banking), others were open to minority shareholders of all companies or industries. Some of the reports revealed that the Executive Committees of these associations were led by lawyers who were partners of Madrid's most prestigious law firms, with the backing of some well-known executives, many of them retired. It seemed, then, than most big firms had their own association. Often, that sponsorship was not clear in the press and had to be uncovered by further inquiry.

The simultaneous public launching of these associations became so noteworthy that one of the most prestigious Spanish corporate governance experts published an article on the phenomenon in *Expansión*, the economic daily with the largest circulation (Trias Sagnier, March 23, 2005). Because of its interest, we reproduce here the first and last paragraphs of that article:

> The launching of associations for the defence of minority shareholders should be applauded, even if it is motivated more by the private interest of the associations' promoters than by genuine concern for the interests of shareholders. After all, Reason used an ambitious, unscrupulous character such as Napoleon to expand the idea of freedom and tear down the barriers of ignorance. So we should not be alarmed if some professionals look after their own interests in this arena. In doing so, they may breathe fresh life into our system of corporate governance. The problem is precisely that they may be too blinkered in their pursuit of short-term profit and avoid the main battle.
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> Any initiative by third parties to favour these associations should be welcome, even if the motives of their promoters are less than altruistic. In fact, the same scheme has been working in other countries. So, this trend is no bad thing for the lethargic Spanish system of corporate governance. All the same, it is better to be transparent and call a spade a spade than to use the guise of shareholder associations to offer professional services.

The author of this piece exposes the artificial nature of these associations while ultimately accepting their usefulness, with the argument of the beneficial public consequences of selfish private behaviour. That these associations are a front for legal consulting is obvious, yet they have a very interesting distinctive peculiarity: together with the strictly legal advice that they provide, they also claim to –indeed they have to– develop the collective will of minority shareholders. That makes them a new and unusual type of consulting venture. And what drives them to develop their practice in that direction is the very same circumstance that puts minority shareholders at the mercy of their agents: ownership dispersion. Ownership dispersion leads to a deficit of information and a deficit of social connections, posing almost insurmountable challenges for collective action. Those two deficits are linked: to compensate for a structural weakness in information, minority principals should act together, but their very dispersion makes collective action highly unlikely. They need help to become aware of common interests, develop the will to act, and detect and exploit action opportunities. That is what defines social movements. Associations in defence of minority shareholders claim to be the catalysts of those movements. Obviously, shareholders with large shareholdings do not need to engage in collective action in the same way, because most often they are composed of a very small number of individuals or even just one. The kind of consulting they need is mostly of the traditional legal kind.

The purpose of this paper is to analyse the role of consultants, professional service firms and knowledge intermediaries in articulating the collective action of shareholders. The regulatory background is the current proposals for the reform of General Meetings of Shareholders in Spain. General Meetings are particularly revealing of shareholder activism, as they are the forum in which shareholders' actions can be most effective. We believe that our arguments are, to a very large extent, equally applicable to other European countries, as these proposals have been put forward in Spain within the context of the wider governance reforms promoted by the Winter Report in Europe and other national and supranational regulatory efforts.

General Meetings, and the attempts to reform them, are a clear illustration of a fact that applies equally to other institutions of governance: business and the economy are always a few steps ahead of, and invariably are more complex than, whatever legal mechanisms are in place to promote good corporate governance. Legal reforms, including quasi-legal professional regulations such as those based on good governance codes, may guarantee a certain minimum level of control; but good decision making, which is the essence of good governance, cannot be prescribed by law. As we will see, the consulting needed for active and decisive shareholder meetings requires more than legal advice.

General Shareholders' Meetings in Spain: the disconnect between the law and the real world

Under Spanish law, the General Shareholders Meeting is the forum for the expression of the will of the company's owners. It is corporations' supreme and sovereign body, and as such it has the power to alter the corporation's bylaws and to appoint and remove directors. The General Meeting is defined as a meeting of shareholders, called in due form to deliberate and decide by majority on important company matters, to approve the annual accounts, and to appoint directors. It is not a standing body, but General Meetings are held at least once a year, in ordinary session, while Extraordinary General Meetings may be held at other times, subject to certain requirements.

It is widely acknowledged by legal experts, management scholars and the business press that the legal definition is at odds with the way General Meetings actually work in practice. For instance, in large listed companies in Spain, the General Meeting has gradually become ineffectual and has de facto ceased to act as a sovereign assembly, even for the most important issues. In practice, it is no longer a forum for debate but essentially a formality required by law to rubber-stamp the decisions of the company's Board, which in turn may be influenced by the top management, to a very varying and company-contingent degree. Accordingly, its decision-making function has become secondary and merely formal, and geared primarily towards confirming decisions that have already been taken. Also, over the years, the Annual General Meeting has turned into a mega-event held in a blaze of publicity, a show (Vives, 2005). External consultants specialized in media; communications and event organization are already involved in staging these corporate shows. And, so far, the vast majority of those consultants have been working for the same side: directors and executives (the agents), who are appointed not by the minority shareholders but by the control groups (the dominant principals). In Southern Europe, these dominant groups are often called the "hard core". They reinforce their power in General Shareholders' Meetings by profiting from the mostly unresolved challenge of democracy –political, corporate, any kind of democracy– when large groups come together, especially large uninformed groups, often at the mercy of closely knit, well organized minorities.

Some Spanish authors writing on legal issues, such as Roncero Sánchez (1996), have openly acknowledged the problem as follows:

The legal framework remains divorced from reality, particularly in large public companies whose shares are traded on the capital market [...] and whose shareholders consist mainly of investors holding a small share of the company's equity, generally as part of a diversified portfolio, whose main concern is to earn a high return on their investment and who are uninterested in the company's business. Consequently, the General Meeting does not in practice perform the role assigned to it by law. As a result, decision-making power is concentrated in the hands of a small group of controlling shareholders and/or in the hands of the company's administrators, who act basically without any supervision.

It is surprising how long the current rules governing General Shareholders' Meetings have remained unchanged, despite the overwhelming evidence that the real world is quite different from the legal fiction – and not precisely for the good of corporate governance. This is all the more unfortunate if we bear in mind that the General Shareholders' Meeting ought to play a particularly important role in the internal or intra-organizational governance systems typical of continental Europe and Japan, where large banks are the chief source of finance and also have significant shareholdings in the main industries. In these business systems it falls to the company's internal bodies –the General Shareholders' Meeting and the Board of Directors– to oversee the work of the company's management. Unlike the Anglo-Saxon model of external controls based mainly on market control, they tend to feature a high concentration of share ownership, a high participation of banks in company ownership, and a slow rate of transfer of controlling interests. It is also common to have the representative of the controlling shareholders sitting on Boards of Directors. Clearly, therefore, the General Meeting has a vital role to play in corporate governance in Spain and other countries with analogous governance systems, as a balancing body of the often all-too-powerful dominant shareholder groups. In the Spanish context, as we already said, banks have traditionally been the main source of financing for large companies, and as a consequence the capital market system is still relatively small, in spite of the increasing presence of institutional investors in the past decade. Any reform proposal will naturally involve strengthening the participation of shareholders in the governance of companies through their representatives, in order to establish a balance within the structure of power and decision making.

The General Meeting was completely absent from early discussions on corporate governance in Spain. What little attention it received in the corporate governance literature focused on isolated and highly technical aspects such as proxy voting or the information provided to shareholders.

The debate on General Meetings did not really get under way in Spain until the publication, in 1998, of the Olivencia Code on the good governance of listed companies, and above all in 2002 under the influence of more demanding corporate governance legislation in the United States, the United Kingdom (Higgs Report), the EU (Winter Report), and the publication in Spain of the Aldama Report, which is part of a wider movement to reform corporate governance.

The 1998 Olivencia Code launched the first phase of corporate governance reform in Spain. It questioned the effectiveness of certain policies designed to strengthen shareholder participation in the General Meeting, noting that "the capacity of the shareholders' meeting of listed companies to act as a supervisory and decision-making body is subject to many structural limitations". The pessimistic assumption of the Olivencia Code, and of similar codes in other European countries, that the supervisory role of the General Meeting could never be fully and effectively exercised, has been highly criticized by various authors. According to Alonso Ledesma (1999), this readiness to relinquish the authority of the General Meeting is particularly surprising in Spain, where company ownership is highly concentrated and there is good reason to strengthen the role of the General Meeting. It was precisely the recognition of the inability of the General Meeting to impose discipline that served to justify the Olivencia Code's decision to sideline the General Meeting in favour of the Board of Directors as the leading supervisory body.

The second wave of corporate governance reform in Spain, epitomized by the Aldama Report, officially published in January 2003 but whose results were already available at the end of 2002, likewise included numerous proposals to improve the effectiveness of Boards of Directors, although these were assumed to be insufficient and, as a consequence, the report also included proposals for the reform of the General Shareholders' Meeting. The Aldama Report**,** unlike the Olivencia Code, maintained that one of the primary goals of corporate governance reform should be to reinforce the role of the General Meeting as "a vital decision-making and supervisory body for protecting the health of the company and the interests of the shareholders". It proposed that listed companies should lay down rules of conduct for General Meetings, just as they do for the conduct of Boards of Directors. The procedures and powers of the Annual General Meeting of Shareholders should be subject to approval by that very same body as a subject of corporate sovereignty, and always with constituent powers. These regulations should cover:

1. Advance and public call of meetings, agenda, proposed resolutions and information to be made available to shareholders during the preparation period:

    - General Meetings must be called with sufficient notice to allow shareholders to gather information or issue voting instructions.

    - The text of any proposed resolutions and a statement of the purpose for which the meeting is convened must be published on the company's web site.

2. Proceedings at General Meetings:

    - The Aldama Report recommended, but did not require, that mutual and investment funds, financial institutions and financial intermediaries, which increasingly represent large groups of individual shareholders or investors, should take a more active role in shaping the company's decisions. Moreover, they should publicly state their intention to participate or not in the decisions of the companies in which they invest.

    - The Regulations should contain rules governing the procedures of the General Shareholders' Meeting, regarding chairmanship, information, Q&As, duration, order and number of speakers, attendance and participation of the external auditor and chairs of Board committees.

    - Efforts should be made to standardize the documentation issued to shareholders to attend meetings.

3. The Report proposed, as a matter for self-regulation rather than for compulsory compliance, that companies should determine the procedures allowing the announcement and debate of proposals not the on the agenda drawn up by the Board, so that the Board of Directors may decide, state and justify its opinion as to whether the proposal should be included or not, justifying its decision if the proposal is rejected; and for introducing systems to calculate the quorum electronically. Other rules should deal with proxy voting, voting by mail or electronic voting, and other technical issues concerning the participation of "large numbers" in decision-making.

The Securities and Stock Exchange Act of July 2003 made obligatory many of the measures just mentioned. The aim was to breathe new life into the General Meeting in listed companies and give it a new vitality. It also opened a huge opportunity for legal advisors, who jumped in to help companies comply with a wealth of complex new regulations.

However, many of these regulations had a limited impact, as the case of Banco Santander Central Hispano, one of the largest banks in Europe and Latin America, illustrates. At the General Shareholders' Meeting of Banco Santander Central Hispano held on June 21, 2003 an interesting situation arose: the Board of Directors, following the recommendations of the Aldama Committee, included in the agenda, under item seven, a resolution to establish, precisely, a set of regulations for the General Meetings of the bank's shareholders. At the same time, the representative of a recently formed association of minority shareholders put forward an alternative set of regulations. The main differences between the two sets of regulations were as follows:

- Adding items to the agenda: the regulations proposed by the shareholder association allowed shareholders holding a minimum number of shares to demand that new items be included on the agenda, after the call of the meeting, which the Board's regulations did not allow.

- Shareholders' right to address the meeting: the shareholder association's proposed regulations followed parliamentary tradition in setting limits to speeches, which should be of a reasonable length, no more than half an hour, although the chairman of the meeting could authorize an extension if considered appropriate. The shareholder association's regulations also included a five-minute right of reply by shareholders, with the chairman having the last word. In contrast, the regulations proposed by the Board of

> Directors allowed five minutes maximum for each speech, with the chairman having the option of granting a five-minute extension. No right of reply for shareholders was envisaged.

In the end, the shareholder association's alternative regulations were rejected, despite the fact that Banco Santander Central Hispano likes to present itself as one of the champions of corporate governance reform in Spain.

Thus, the new regulations increase the demand for legal advice in several regards. Like any more detailed regulation of an economic or social phenomenon, it draws in lawyers, to deal with that increased legal complexity. In the field of corporate governance, the new regulations of shareholder meetings come on top of regulations in accounting and transparency. So, for legal firms already advising the top management and Boards of corporations in the stock market –usually expensive, top notch, high-fee firms– these new regulations mean more business of a similar nature. Since the new rules also open up opportunities for litigation by minority shareholders, smaller, less prestigious and less expensive law firms make take on projects with a new angle: going against the corporate status quo. Even more, both types of law firms may go after a new type of client –associations of shareholders, which are able to pay by pooling resources, paying higher fees– on condition that those law firms also act as social organizers of those interests, a new type of consulting activity that also includes the promotion of media impact of their class actions, and other actions aimed at visibility and publicity to put social pressure on corporations.

Inadequacy of reforms of formal proceedings of General Meetings and reliance on social actors: shareholders and General Meeting activism

Even the advocates of reforms of General Shareholders' Meetings admit that such reforms will not be sufficient on their own. Some economic actors –e.g. minority shareholders– will need first of all to mobilize themselves to be able to restore the role of the General Shareholders' Meeting as the highest functioning body of corporate governance. Trying to improve the various channels of participation in the General Meeting will have no effect if shareholders are unwilling to take an active role, or if it is taken for granted that all shareholders want to play an active role, which is not always the case. As in politics, in corporate governance there could be a "silent majority". Hence the need to distinguish between different types of shareholders: depending on their capabilities for activism, whether they are individual, institutional or significant shareholders, etc.

- Individual shareholders: These are individual investors who have acquired shares in different companies. Also known as minority shareholders, because of the small size of their holdings and dispersion, they need self-awareness, political organization, knowledge of rights and interests, and persistence of action. This activism cannot be enacted without the intervention of an agent as social organizer (Tarrow, 1994).

- Significant shareholders: Normally companies or institutions that hold a significant proportion of the company's shares on a long-term basis, with the intention of supervising and having a say in shaping the policies pursued by the companies in which they have invested. In Spain, they tend to be banks or large industrial groups. Because they most often have seats on the Boards, they can act on their own, and have the capability to form alliances with other significant shareholders and act in unison. They just need more of the same type of external or even internal legal advice. And they do not need external help to organize themselves. That is easy for them, because of their small numbers and experience. They have the advantages elites have.

- Institutional shareholders: These are organizations whose business involves trading in the securities market. They include mutual funds and investment trusts, pension funds and insurance companies, securities firms, banks and credit institutions. They have access to a large volume of funds, which they diversify in different securities in order to ensure the highest possible return for their clients. Institutional shareholders are assumed to have more investment expertise than individual shareholders. The size of their shareholdings and their professional acumen allow them to put more pressure on the management team. However, their focus on margin makes it expensive for them to exercise "voice", and so they rather prefer the solution of "exit" (Garrido, 2002; Pozen, 1994).

Another way of classifying shareholders is according to their motivation towards activism, whether they are active or passive. The purpose of this distinction, far from discriminating among investors, is to acknowledge each shareholder's differentiated contribution to the long-term welfare of the corporation, based on their legitimate interests. Active shareholders constitute a "monitoring group" and may, if they act in concert, exercise a more direct influence over the company's management. However, voices have been raised warning of the risk of conflicts of interest that may affect such monitoring activities by active shareholders. That is why in Spain, for instance, the Aldama Report recommends that companies should make public, in an annual good governance report, all information about commercial relations or other situations in which directors or major shareholders are involved and that the Board of Directors has considered non-controversial or a benefit for the company.

Passive shareholders, in contrast, see the company as no more than a transitory, low-commitment investment opportunity and have no desire, and sometimes no capacity, to exercise any more direct control over company management beyond the simple "exit" option. The norm in the Spanish securities market is for companies to issue ordinary shares that carry certain financial, voting and other non-financial rights, including the right to attend General Meetings and vote on resolutions. The problem is what to do about passive shareholders who by law are also owners and have rights that they do not intend to exercise, and in practice never do, thus creating the opportunity for a power play to secure their proxy votes. While voters in a political system cannot, at least not easily, leave that system (emigration being one possibility), it is much easier for shareholders to leave a corporation and invest in another business opportunity. The easiness of exit is one of the main differences between corporate and political democracies.

The importance of the distinction between passive and active shareholders requires criteria for differentiation. Relevant parameters for activism may include:

Ownership of a significant percentage of the company's shares

As the size of an investor's investment increases, the difficulty of disinvesting may also go up and investors are therefore likely to tend towards a more active attitude. On this basis, ownership of a significant percentage of a company's shares could be regarded as a pointer to the nature of a shareholder's interest in the company.

Maintaining the investment for a certain period of time

The fact of holding shares for a certain length of time could be taken as a sign that the investor is interested in becoming involved in the company, given the stability and constancy of a medium to long-term investment as opposed to a speculative short-term investment.

Also, the stability of the investment may indicate the strength of the investor's desire to supervise the company's management, so as to ensure a satisfactory return and prevent substantial changes that could put his investment at risk.

A declaration of intentions on investment policies

Another criterion that might help to measure the extent of an investor's willingness to participate would be an explicit declaration by the investor of its investment policy. The Aldama Report recommended that investment trusts, financial institutions and intermediaries publish a statement, as is standard practice in the United States, setting out their policies with regard to participation in the company's decisions, thus making a more active contribution to governing the company and assuming a more participative role.

This recommendation, by encouraging investors to declare a policy of active participation in the company, is intended to discourage the "hands-off" attitude of some investors, who feel free to invest or disinvest whenever it suits them. However, it seems unlikely that much progress will be made in that direction in Spain or continental Europe as a whole. Merely drafting such declarations is a financially and legally risky exercise that investors will shy away from, and that in any case is costly and will demand much legal consulting (Garrido, 2002).

Regular exercise of rights with respect to General Meetings (attendance and voting) for a certain period

Whether a shareholder exercises his rights or not is another criterion for assessing his role. Failure to exercise the right to attend and vote in General Meetings, either in person or by proxy, for a certain period may be construed as a sign that the investor is unwilling to participate.

Attending and voting in General Meetings is time-consuming and will only be efficient from the investor's point of view if it has a favourable impact on his earnings. A shareholder's supervisory role is closely linked to expected earnings, so the greater the expected earnings, the more willing the shareholder is likely to be to shoulder the costs of supervision, including consulting fees.

Companies treat each type of shareholder differently. Listed companies have tended to give priority to significant and institutional shareholders over individual shareholders. This difference is reflected in the way, in true contingency-theory fashion, differentiated structures or units are set up to deal with different shareholders separately. Thus, Investor Relations departments tend to oversee intense and continuous relations with institutional and significant shareholders, while Shareholder Service offices, much more in a public relations mood, handle relations, often discontinuous and more superficial, with minority shareholders.

Institutional and significant shareholders have traditionally received preferential treatment, which is reflected in the quantity and quality of the information they receive. In

Spain, as in other countries, meetings or presentations by top management to analysts and investment funds, the so-called “road shows”, are quite common.

On the other hand, communicating with small shareholders is much more difficult, because of their sheer numbers. A wide range of tools is available to recruit and retain minority shareholders, including magazines or newsletters, shareholder clubs, bonuses and prizes, free gifts in the run-up to General Meetings, even the offering of the company’s products to shareholders at special prices. These are a whole variety of potential activities, to be provided by another whole variety of experts.

Respect for shareholders’ right to information is crucial to build confidence in the capital markets. Disclosure and transparency is particularly important in corporate governance, above all in connection with General Shareholders’ Meetings, as it can be a means of encouraging greater shareholder participation. That is why the reforms in Spain have tried to establish mechanisms to ensure that companies fulfil their duty to inform their shareholders. This duty is particularly strict in the stock market, where listed companies must meet certain minimum security and liquidity requirements, combined with information transparency.

As mentioned earlier, the different treatment given to the different types of shareholders has traditionally been reflected in the information they receive. The tendency today, however, particularly with respect to disclosure, is for a more uniform treatment, facilitated by the new technologies. As the Aldama Report suggests, corporate web sites can be a channel (though with no guarantee of effectiveness) for informing and interacting with shareholders, offering fresh content and communication tools (chat rooms, e-mail, user registration, mobile Internet). The Aldama Report also gives a list of the information that companies should publish on their web sites, as a basic minimum, which includes the rules governing General Meetings, the stable shareholdings held by different shareholders, directors’ shareholdings, and details about the General Meeting.

However, all these reforms do not go so far as to directly help dispersed minority shareholders to organize their collective action. That is left to them; they are on their own. That is the void, and the need, that associations of shareholders sponsored by professional service firms aim to fill.

The role of institutional investors

Despite the regulatory reforms and other formal proposals concerning the holding of General Meetings, the regulators in Spain, as in other countries, have recognized the need to recruit the efforts of other social actors, other than the formal institutions of corporate governance, to help improve corporate governance practices. Specifically, it has turned to institutional investors to fill this role. Institutional investors are increasingly well represented among the shareholders of Spanish companies, as the extensive study by Trias Sagnier (1998) shows. Traditionally, in the Anglo-Saxon countries, public companies have gone to the stock market to raise capital, whereas in continental Europe the main providers of capital for large listed companies have been the banks. Whereas in the United States and the United Kingdom institutional investors hold more than 50% of all listed shares, in Spain and other countries in Europe the proportion is smaller. Nevertheless, since the mid-1990s institutional investors have become more important in Spain, partly due to foreign investment, which is largely institutional. For instance, foreign institutional investors currently own more than one third of Spanish shares. Foreign investors have traditionally maintained a hands-off attitude towards company management. In fact, the most significant characteristic of foreign investors is said to be their absenteeism and lack of participation.

Although institutional investors have traditionally shown no interest in exercising the influence that in theory they could have, given the size of their shareholdings, there have been a few instances recently where they have shown signs of activism. A striking example was in 1999, when for the first time ever in Spain a group of institutional investors that included Société Générale and Beta Capital called for the resignation of the Board of Directors of the company Duro Felguera because they were dissatisfied with its stewardship. Their example has been followed by others such as Union Investment and DWS Investment of Germany, which at the last meeting of Telefónica shareholders declared that they were not interested in the distribution of 30% of the shares of the Spanish television channel Antena 3 TV in the form of a special dividend. The General Meeting of Shareholders is becoming the preferred channel of shareholder participation, as an alternative to the more direct involvement that comes with Board membership, or with direct influence channels, such as those exemplified by the road shows (Vives, 2005).

Given the increasing importance of foreign investment in Spain, the question arises of how foreign shareholders can exercise their right to attend and vote at General Meetings. This brings us to the complex issue of cross-border voting, which has been analysed in several country comparative studies. A report published in 2002 entitled “Cross Border Proxy Voting”, published under the aegis of the International Corporate Governance Network, analysed issues relating to proxy voting and attendance at General Meetings in five different countries: United States, United Kingdom, Germany, Italy and Japan.

As already mentioned, the shareholder structure of listed companies in Spain includes a contingent of significant shareholders, though institutional investors have been gaining in importance. This trend is most apparent in Spanish banks, such as the BBVA group, 44.1% of whose shares are owned by institutional investors, or the BSCH group, with 56.11% of its shares in institutional hands.

Could institutional investors be the drivers of a revitalization of the General Meeting as a governing body? The growth and consolidation of institutional investment in Spain has drawn attention to these investors’ traditional absenteeism. Unlike in the United States, where pension fund managers are required by law to exercise their right to vote in all the companies in which they own shares, in Spanish law there is as yet no obligation for institutional shareholders to exercise their voting rights. This is a relatively recent issue in Spain and it remains to be seen how it develops in the light of future changes in the law aimed at encouraging greater participation.

What is left for small shareholders?

The small investor seems to be left with few options to contribute to the improvement of corporate governance. The reforms in many countries fall short of really empowering shareholders so that they have the instruments to effectively control governance bodies. There has been an increase in transparency, more information is being provided through corporate websites, and most corporations even have a specialized unit to deal with shareholders interests. But the impact is still minimal.

In continental European countries, where ownership is quite concentrated, we have seen that controlling blocks and institutional investors are not always the keepers of shareholders’ interests. An extensive “democratization of ownership” may surely change things as the market for corporate control can get more important. Steps ahead have already been made in countries like Spain, but they do not seem to be very definitive, as the stock exchange returns receded and money flowed very fast towards real estate again.

It is at least a curiosity to observe that the democratization of ownership has not yet developed into a real democratization of governance structures. The key question, then, is whether we can come up with ways to give shareholders voice and participation. We have seen that current General Shareholders' Meetings are not fully effective for that purpose. As indicated, there are some possibilities for improvement; for instance, technology plays an important role here, as it drastically facilitates the necessary information transparency, which is fundamental in order to move forward in this respect. Another step ahead, if only a small one, might be the creation of a Board committee to establish a dialogue with minority stakeholders. In the complex world we live in, we have no doubt that corporations could learn a lot from such interaction, difficult though it may be. In any case, we would at least get a more informed shareholder.

Also, it might be possible to establish some direct means of participation, such as electronic voting, or even direct voting on certain specific decisions. Some companies are already trying to implement electronic voting, but mostly as a way to support current governance.

If we establish an analogy with political systems, we can see that information –via the Internet, the media or both– and voting procedures are important instruments, but they are not enough. The voter is still too small, too far away to have any real impact. Democracy will require some way of organizing the different views through different types of shareholder associations. And we have seen some "interested" associations. However, it is still difficult to imagine small investors trying to organize when they can simply sell the stock. Firms may eventually get a lot from listening to small shareholders, but most CEOs have no interest in doing so. And government is unlikely to start financing associations of small investors when there are so many other, more urgent needs. We will have to wait for democracy to impact firm governance.

Conclusions

The main proposals of the Aldama Report, as in most continental European corporate governance reform efforts, summed up in this paper, are aimed at giving the General Shareholders' Meeting a more useful role in corporate governance. It remains to be seen whether the adoption of these recommendations by listed companies and institutional shareholders becomes just another formality, given that the existing power structure of the General Meeting and Board of Directors and the custom of holding purely formal, "rubber-stamp" General Shareholders' Meetings are deeply ingrained in Spanish business culture. Similarly, investment funds are accustomed to pursuing a flexible and independent approach to portfolio management, without any involvement in company affairs beyond what is strictly necessary to administer their assets.

To make the General Shareholders' Meeting an effective governing body with deliberative and decision-making power, a new format will need to be found, nothing like the overblown media spectacle to which we are accustomed. Shareholder associations and groupings of institutional investors may have a prominent role to play in this respect. Also, the new technologies may bring major changes to the existing system with the introduction of electronic voting. Other proposals might include setting up a shareholder committee, on an analogy with the various other committees of the Board of Directors, but made up of shareholders representing the entire body of shareholders on a proportional basis.

All these changes are aimed above all at making the General Shareholders' Meeting a more effective supervisory body. They are unlikely, however, to bring any substantial improvement to its strategic, decision-making function. There is even a danger that reforms based on stricter control and regulation of governance procedures will end up making the decision-making process more rigid. This is the old problem of direct or participatory democracy. Forcing it deteriorates its very essence. Laziness in participation is a democratic right. This is even truer in business polities, where exit is often much easier than from countries.

To avoid this risk, the active presence of knowledge workers or professional service firms, such as consultants, seems important. Throughout this piece we have identified several types of them, some already present in the field, who because of the new regulations will have more business. They include media, communication and public relations experts, so far working mostly for the status quo of corporate governance. Of course, in the same group are lawyers specialized in corporate law, now with a new client to add to their traditional portfolio (Boards, chief executives, etc.): institutional investors, and perhaps also individual investors with substantial personal assets.

And a new client is emerging, disenfranchised shareholders, who legally, economically, and socially need to act collectively to efficiently pursue their interests. The same reasons –lack of information, coupled with isolation– that make these principals candidates for being exploited by their agents require that the experts helping them perform two tasks, one of judicial substance and the other of political process: organizing collective action.

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