



## **Spanish Issuers' Seminar Technical Guide on Audit Committees and Directors' Liability Insurance**

**Madrid - 4 October  
Speaking time: 15 minutes**

Good day to you all.

- I would like to thank the Spanish issuers for their invitation to open this seminar that deals with matters that I consider to be very relevant to Spanish companies.
- I would like to refer in particular to the issue which is the focus of these seminars, that of Audit Committees, to which I have devoted special attention as Vice-Chair of CNMV and ex-Chair of ICAC (the Spanish Accounting and Audit Institute).
- I am going to focus on the work that we are doing at CNMV regarding Audit Committees which may be of interest to those present.
- As you know, the Audit Act 2015 (LAC) introduced significant developments regarding which entities should have audit committees, their composition, functions and supervision.

- Through this Act the scope of the obligation to have an audit committee was extended to all public interest entities, although with some exceptions. Therefore, it is no longer limited only to issuers of listed securities.
- Basically, there are different types of financial institutions, although unlisted, which, one way or another, channel savings through various instruments (deposits, insurance contracts, marketable securities or investment funds and pension funds), as well as companies that exceed a certain size (4000 employees and a turnover of more than 2 billion euros).
- I can assure you, to give you an idea of what this means, that the number of public interest entities that are under the obligation to have an audit committee in place (not including CIS management companies and investment firms) is over 600.
- In addition, the Act has strengthened its functions by delegating it a more important role in the supervision of the preparation and presentation of financial information, risk control and management, internal control and the appointment and monitoring of the activity and independence of the auditor.

- In particular, as I have just mentioned, I would also like to draw attention to the fact that the Act has assigned the supervision of these committees of public interest entities to CNMV since 2016.
- I must say that this new task has been a challenge for the institution, which has traditionally focused on the supervision of issuers of listed securities and which now has to extend its scope of action to other types of entities.
- CNMV, in its supervisory role, has detected a certain disparity in existing practices in the audit committees of different companies. In addition, we have received queries raised by the members of the committees (directors who are mostly independent) on how to exercise the functions assigned to them.
- In order to understand what I am referring to, I am going to mention some of the practices detected in the performance of their duties that are not considered by CNMV as good practices:
  - Frequent attendance at the committee meetings by executive directors and even the entity's executive chairman without being previously called to attend them

- Low frequency of meetings held by the Committee (either biannually or annually)
  - Absence of justification for having knowledge and experience in accounting and/or auditing
  - Committees in which independent directors are not a majority.
- In response to this situation, in CNMV's Activities Plan for 2017 we have included as an objective the preparation of a **Technical Guide on the audit committees of public interest entities** which has been published on our website since 27 June.
- The aim of this Technical Guide is to disseminate a set of principles, criteria and good practices that CNMV considers adequate to ensure the proper functioning of these bodies, thereby making it easier for entities and groups to comply with the rules that apply to them.

- We hope that this Guide will be of interest to and useful for all public interest entities, especially those that until the entry into force of the Audit Act were not required to have an audit committee in place, nor had they set one up voluntarily, and, therefore, are taking their first steps in this field.
- Despite the fact that the Technical Guide is not mandatory, CNMV will take into account these criteria and good practices when carrying out its supervisory duties, considering also the principle of proportionality.
- To prepare it, we have analyzed the regulations, recommendations and good practices contained in the corporate governance codes and/or guides on audit committees of some countries, such as Germany, the USA, France, Holland, Italy and the United Kingdom, as well as recommendations from other European and international institutions, such as the OECD.
- The Guide is divided into two sections. The first one sets out the basic principles of action that audit committees should take into account in the performance of their duties and the second one includes a set of recommendations for the exercise of such functions.

- I am not going to go into the details of the Guide, which Eduardo Manso will explain afterwards, but I would like to briefly highlight some of principles and recommendations:
- Firstly, it highlights the **principle of scepticism**. This is a term coined in the Audit Act which the Technical Guide now requires of audit committees, so that in its supervisory role it adopts a critical stance and questions the data, assessment processes and previous conclusions reached by the entity's executives and directors.
- Secondly, **the independence of the audit committee with respect to the directors and the company** must be **ensured**. As I said before, the presence of senior managers and other directors, especially executive directors, at meetings is required occasionally and only when they are expressly summoned to discuss those issues for which they have been called.
- Thirdly, it is recommended that the **members of the audit committee** not only be **mostly independent directors**, as also provided for by the law, but **have the expertise required** to carry out the specific duties that have been assigned to them (it must not be just any director).

- I would remind you that the act provides that at least one of the directors that are part of the Audit Committee must have experience in accounting and/or auditing and that they must all have knowledge of the industry in which the company operates.
- In addition, depending on the size, complexity, and industry of each entity, the board of directors should consider the need to incorporate into the audit committee members with expertise and experience in the control and management of risks, both financial and non-financial, and in information technology (IT).
- Fourthly, it is necessary to ensure **adequate access to the company's essential information**, by providing channels for that purpose, and the possibility of being able to consult external experts.
- In addition, there are a series of recommendations on the **close relationship that the audit committee should have with the auditor**, in particular to strengthen its independence and maintain fluid communication at all times.

- Also relevant is the recommendation to implement a **channel for complaints in relation to irregularities**, under the coordination of the audit committee.
- Finally, it is recommended that the audit committee **have public operating rules**, for example, implemented through a Regulation, strengthen fulfilment of its functions and be accountable for its actions to the shareholders' meeting through the relevant activity report, which should be made available to the public.
- Well, almost a month after the publication of the Technical Guide, on 20 July of this year, we took a step further by publishing a **questions and answers document** in relation to certain aspects of audit committees in public interest entities, and which is also available to you on CNMV's website.
- The questions and answers published in the document reflect the main doubts and concerns raised by the public interest entities to CNMV since the entry into force of the Audit Act, several of them concerning the regulation of specific sectors (insurance, credit institutions, etc.).



- The aim of this document is to help in the understanding of the interpretive criteria that CNMV has issued with respect to the obligation of public interest entities to have an audit committee.
- At CNMV we have considered that the dissemination and publication of answers to the doubts raised and their clarifications are useful for the sector, since they make it possible to improve the implementation of the regulatory framework as well as its supervision.
- In this regard, I would like to highlight the following sets of questions and answers:
  - Firstly, those related to the obligation to form or exemption from forming a committee, as well as those linked to the possibility of assigning the functions to another body or to a similar one. In this set of questions specific cases and the criterion that CNMV has conveyed in this regard are addressed.
  - Secondly, those related to the exceptions to the requirement of independence in the composition of the audit committee. This set of questions and answers addresses the issue also according to the entity's size and type.

- As you can see, we have been actively working in this field in order to facilitate the application of the rules and fulfil our supervisory role diligently.

In short, I wanted to convey to you the tasks that we have carried out at CNMV since one of our functions is the supervision of audit committees. Also, the documents that we have approved and made public to improve their functioning and to clarify any doubts that those concerned may raise. And, finally, the proposals that we have made to continue with this work in the future.

I think all of this demonstrates the relevance that we should give to these bodies and our willingness to help and respond to the suggestions and requests of all involved.

Thank you very much.