



**BUFETE MAÑÁ·KRIER·ELVIRA**

ABOGADOS ASOCIADOS

**GOOD GOVERNANCE:  
A BUSINESS  
OPPORTUNITY**

*Barcelona, 17<sup>th</sup> September 2016*



**BUFETE MAÑÁ·KRIER·ELVIRA**



# **I. ONCE UPON A TIME...**



## Wow4you case

“Wow4you, S.A.” is a company established in Barcelona.

Its main activity is the production and trade of women’s underwear.

### - **Shareholders**

- Majority shareholder “W4Y Group BV” holds the 76% of the share capital
- Minority shareholder “Top BH GmbH” holds the 24% of the share capital, that has similar corporate purpose.

### - **W4Y Group**

- The company belongs to the W4Y Group, Inc., the head office in Atlanta, USA



- **Administrative body**

- Wow4you, S.A. has a Sole Director: Mr. Blancher. Mr. Blancher is a French Lawyer who lives in Lyon. Mr. Blancher is the legal counsel of W4Y Group.
- He visits the company in Barcelona twice a year. He does not have a real control over the Company.
- He receives no remuneration as it is foreseen in the by laws.
- He denies to report in the AGM how he is remunerated for his activity for the Company.

- **Transfer pricing**

- Wow4you has decided not to inform the shareholders about the intra-group transfer pricing.
- In the AGM the majority shareholder (W4Y Group) votes in favour of maintaining in force a loan contract, by which Wow4you lends W4Y Group about 50 Mio, all of it in spite of the opposition of our client, minority shareholder.



## **Final considerations**

- Wow4You had a small profit in fiscal year 2015
- Wow4You has not distributed dividends since 1995
- There are about 50 Mio in the equity as non distributed profits.



## **II. WHAT IS GOOD GOVERNANCE?**



**DO YOU KNOW SOME IDEAS OR  
CONCEPTS ABOUT GOOD  
GOVERNANCE?**

SAY ON PAY

TRANSPARENCY

BEST COMPANY INTEREST

ACCOUNTABILITY

RIGHT TO KNOW WHY AND WHO?

LAW COMPLIANCE

CULTURE OF BOARD EXCELLENCE



## **LET'S TRY A DEFINITION**

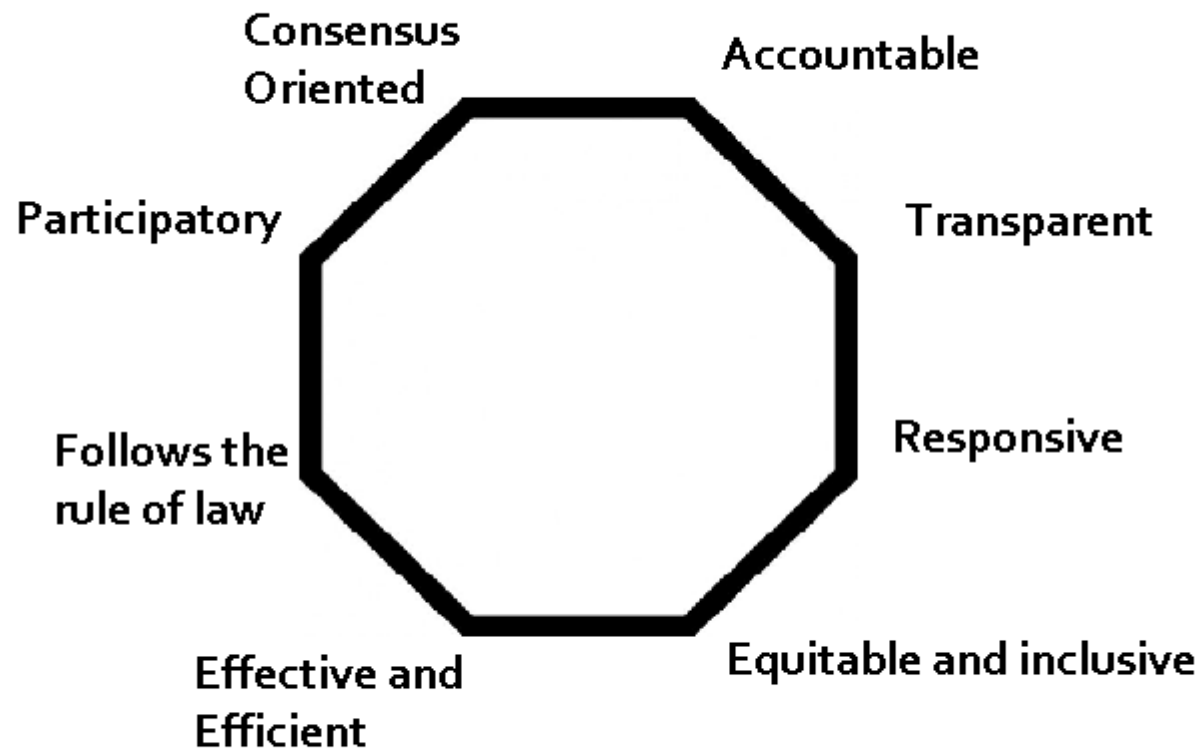
### **Governance:**

Corporate governance is defined as the system by which companies are directed and controlled and as a set of relationships between a company's management, its board, its shareholders and its other stakeholders.

**BUT... What's "good"?**



## UN ECONOMIC SOCIAL COMMISSION





# **III. WHY DOES GOOD GOVERNANCE EXIST?**



IS IT THE NEWEST IDEA OF LAWYERS TO  
EARN MORE?

DO CONSULTANTS IN OECD NEED TO JUSTIFY  
THEIR FEES?

OR IS THERE SOMETHING ELSE...?



# WHAT HAPPENED IN SPAIN?

## BLACK CARDS CASE

DIRECTORS RECEIVED A NON DECLARED “VISA” CARD

THEY COULD PAY

- RESTAURANTS,
- THEATRES
- GYM
- AND GIN & TONICS
- AND ANYTHING... 😊



## **IS SPAIN DIFFERENT?**

- CASE SIEMENS
- CASE ENRON
- CASE HBSC



**AND THEN THE FINANTIAL CRISIS...**

Subprime mortgage Crisis

Lehman Brothers

Merril Lynch



# **IV. REACTION TO BAD PRACTICES**



## **HARD LAW vs. SOFT LAW**

### **OECD**

- OECD Principles of Corporate Governance, 2004
- G20/OECD, Principles of Corporate Governance, 2015.

### **EUROPEAN UNION**

Green Paper, The EU corporate governance framework , 2011

Recommendations and Directives :

- Recommendation 2014/208/EU on corporate governance reporting, especially explanations companies should provide for breaking governance codes ('comply or explain')
- Recommendation 2009/385/EC makes recommendations about remuneration.
- Recommendation 2005/162/EC, on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board.






# **HARD LAW**

## **Spanish Corporate Law Reform**

- Law 31/2014, 3<sup>rd</sup> December, that amends the Companies Act to improve the Corporate Governance:
- Royal Legislative Decree 4/2015, 23<sup>rd</sup> of March, that approves the recast text of Securities Market Law.

## **EU Directives**

- Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies
- Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings
- Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms



**V. WHICH ARE THE  
MAIN GOOD  
GOVERNANCE  
PRINCIPLES AND  
RECOMMENDATIONS?**



# 1. TRANSPARENCY

- Information should be provided in understandable form, freely available, directly accessible.

Providing information so:

- Shareholders can exercise their rights.
- Confidence in capital markets is enhanced.



## 2. ACCOUNTABILITY

*Comply or explain*

**Spain: Uniform Good Governance Code**

Who is accountable to whom?

What information must be provided?



### **3. NEW POLICY FOR DIRECTORS REMUNERATION**

#### **Transparency principle**

- Say on pay principle
- AGM vote – binding or advisory
- Long term sustainability principle
- Anti-golden parachute principle

#### **Termination payments**

- Regard of limits
- Amount
- Time limit: 2 years
- No reward if failure in goals



## 4. MINOR SHARE HOLDERS RIGHTS

### **Consensus Oriented**

to understand the different interests of shareholders in order to reach a broad consensus

### **Active co-operation**

The Principles encourage active co-operation between corporations and stakeholders.



## **5. CORPORATE SOCIAL RESPONSIBILITY**

Movement encouraging companies to be more aware of the impact of their business on the rest of society, including their own stakeholders, environment, etc. Going beyond what is mandatory by law.

What is the difference with Good Governance?



## **IV. AND NOW MY QUESTIONS TO YOU**





## 1. Questions to Wow4you case

In which points can you see a breach of the principles and recommendations of good governance?

What would your advice be the minor shareholder on how to proceed?

What can you as a Lawyer offer to the Wow4you, S.A.?



## **2. WLN Good Governance Group Questions**

**Do you have any case about Good Governance in your Law Office to explain?**

**Which aspects of Good Governance can become concrete business for WLN?**



THANK YOU

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