



UNIVERSITAT DE
BARCELONA

Worthless Institutions?

The Protection of Minority Investors in Spain in a Long- Term Global Perspective

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Final Degree Dissertation
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Academic Year: 2015-2016

ABSTRACT

Financial markets have an important relationship with the economic development of a country. Developed countries are those who already have arrived to an economic stability and can obtain profits, while developing countries are those who are trying to achieve this economic stability, most of the times, by adapting its policies to the ones developed countries have. This is what Mauro F. Guillén explains and studies in one of its recent papers. He has investigated how state capacity (the administrative capacity and ability that a country has to formulate and implement policies) affects the institutional adoption of new policies.

In this paper what we will try to study is if the degree of protection investors have in a country is related with the level of development of that country. For doing that, we will compare data collected from Rafael La Porta, and we will analyze the criticisms and comments done to its work by Randall K. Morck and Mauro F. Guillén.

Besides, we will see the differences that exist in investor protection internationally and we will analyze why these differences arise. In order to do so, we will use data collected from the World Bank and we will state the differences that make the rank of one country better than the other.

Furthermore we will understand the structure that exists behind the investor protection in Spain. What are the main institutions and entities that are in charge to apply regulations and laws regarding this investor protection. We will see if there is any difference about protection inside Spain, among the four different stock markets.

Finally we will explain briefly what are the guarantee funds and investor associations, very related with investor protection. And we will focus on insider trading when talking about one of the most important cases of bankruptcy in the US, Lehman Brothers Holdings, Inc. The fourth-largest U.S. investment bank, initiated the largest bankruptcy proceeding in the U.S history in 2008.

RESUMEN

Los mercados financieros han tenido, y tienen, una relación importante con el desarrollo económico. Los países desarrollados son aquellos que ya gozan de una relativa estabilidad económica y por lo tanto pueden centrarse en obtener beneficios. Por otra parte, los países en desarrollo son los que están tratando de llegar a dicha estabilidad económica, y para ello, la mayor parte de las veces, adoptan las medidas utilizadas por los países desarrollados. Esto es lo que trata de explicar Mauro F. Guillén en uno de sus recientes estudios que más adelante mencionaremos. El autor, ha investigado cómo la capacidad del Estado (es decir, la capacidad administrativa y la flexibilidad que un país tiene para formular y desarrollar nuevas medidas políticas) afecta a la adopción de nuevas medidas políticas

En este trabajo vamos a tratar de estudiar si el grado de protección del inversor de un país está relacionado con el nivel de desarrollo de ese país. Para ello, vamos a comparar los datos obtenidos por diversos autores. Entre ellos, Rafael La Porta, el cual ha escrito varias veces sobre el tema. Además, analizaremos las críticas y observaciones hechas a su labor por Randall K. Morck y Mauro F. Guillén.

También veremos las diferencias que existen en la protección del inversor en el contexto internacional y analizaremos por qué surgen estas diferencias. Con el fin de hacerlo, vamos a utilizar los datos recogidos por el Banco Mundial (World Bank) y indicaremos las diferencias que hacen que unos países se encuentren más arriba en el ranking que otros.

Además, vamos a entender la estructura que existe detrás de la protección del inversor en España. Cuáles son las principales instituciones y entidades que se encargan de aplicar los reglamentos y leyes relacionadas con el tema. Veremos si hay alguna diferencia acerca de la protección dentro de España, entre las cuatro bolsas de valores que existen.

Por último, vamos a explicar brevemente lo que son los fondos de garantía y las asociaciones de inversores, ambos muy relacionados con la protección del inversor. Nos centraremos en el tema del abuso de la información, y la información privilegiada mientras analizamos uno de los casos más importantes de quiebra en los EE.UU, Lehman Brothers Holdings, Inc. El cuarto mayor banco de inversión de los EE.UU, el cual inició el proceso de quiebra más importante de la historia de U.S en 2008.

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1. INTRODUCTION

Investor protection is normally defined by the extent to which the commercial laws of each country and its enforcement protect investors from the possibility of expropriation by company insiders. Investor protection turns out to be crucial because, in many countries this expropriation of minority shareholders and creditors will lead to a situation of unreliability. There are many people who think that is better for countries to concern in investor protection, since by improving the systems that protect investors, the impact on firm's ability to raise external financing will have a positive effect.

Not only investors and creditors are the ones who think that the system will be better off by improving its protection, also the International Monetary Fund (IMF), the World Bank (WB) and the European Bank for Reconstruction and Development support this view. There are many papers published by the World Bank and the International Monetary Fund regarding this topic and in all of them we can see its concern about the improvement of investor protection. More precisely we can even say that, the first paper published in "Financial sector Discussion Papers" by the World Bank in September 1999 was regarding this topic¹. Furthermore, we can find more recent articles regarding this topic, like the one published in 2014 in which it suggested investor protection as the key for attracting private capital development².

All this information brings us to what Randall K. Morck published in November 2005 (Figure 1). This author has a lot of papers regarding our topic, he analyzed how the degree of investor protection in some countries, such as: Germany, India, Italy, China, Canada among others, affects the ongoing economy of the country, the corporate ownership and the financial control. Furthermore, we can see in many of its papers the idea that common-law systems protect often the weak from the strong even in the absence of explicit statutes. We can subtract from here that states and financial institutions will always protect the weak minority shareholder rather than the big one, but is this true? Or we are in the case that powerful individuals, the big ones, the ones who control the financial market, are the ones who also control the policing powers of the state?

Morck also studied deeply the analysis made by Rafael La Porta during the 1990s (La Porta, 1999). In one of its fundamental papers, La Porta argued that stock market development should be positively correlated with shareholder legal protection. So, the more protected are shareholders, the more improvement we will find in market development. This has totally common sense. Once shareholders, investors and creditors feel safety, there will be more prone to invest and to take risks, and this will increase profits and benefits in the country. La Porta finds that countries with stronger shareholder protection were characterized by larger stock markets and more large corporations, and the most important, these countries tend to have legal systems derived from British common law.

¹ La Porta, R., Lopez-de-silanes, F., Porta, R. La, & Lopez-de-silanes, F. (1999) "Investor Protection : Origins , Consequences , Reform Investor Protection : Origins , Consequences", *Journal of Financial Economics*, forthcoming, pp.1-41.

² Profitable Opportunities and Investor Protection Key for Attracting Private Capital for Railway Development, August 28, 2014

But, why these countries decided to adopt the systems derived from the common British law? We can find the answer in one recent paper published by Mauro F. Guillén and Laurence Capron³. In this paper what these two authors want to test, is how state capacity⁴ affects the institutional adoption of new policies by countries, and what happens if these new policies are related with the protection of minority shareholders.

Units the 1970s, the Anglo-Saxon countries were the only ones who have decided to adopt a legal framework highly protective with the rights its minority shareholders. The key features of current U.K were very good. There was a substantial institutional shareholdings, a hostile takeover market and an extensively minority investor protection. Meanwhile, continental European, East Asian, and Latin American countries were evolving in a different way. The models that prevailed in such countries were often emphasizing the roles of large controlling shareholders, banks, and employees (as we can see totally opposite with Anglo-Saxon countries).

In the early 1980s, the global map of shareholder protection began to change. The causes of this change were basically the spread of legal protections over the following three decades. There were many policies implemented, market reforms, regulations and deregulations. We can set as a shuttle of this change the Securities Investor Protection Act of 1970⁵. As Mauro F. Guillén states in its paperwork, the thoughts during this period were focused only to help companies to raise capital. If investor feel secure and protected, they will invest in companies, and thus these companies will increase its capital.

The global financial crisis suffered in 2008 gave a new prospective to investor protection. The worldwide adoption of minority shareholder protections is more than historical interest, is nowadays present in our lives. The crisis made some countries deal with corporate scandals and lost shareholders wealth affecting not just rich households but also pensioners and small investors. One of the most relevant cases was starred by Lehman Brothers Holdings, Inc., the fourth-largest U.S. investment bank who initiated the largest bankruptcy proceeding in the U.S history. Could we prevent this failure? Could we have minimize the damages suffered by minority investors?

This situation is not new for ourselves. The historians have found a very similar situation in 1929, when the famous “carck of 29” ruined lots of minority investors and savers who put its savings into the stock market. So, what were the changes applied in 1929 that made

³ Guillén, Mauro F., and Laurence Capron. 2015. “State Capacity, Minority Shareholder Protections, and Stock Market Development.” *Johnson University, Administrative Science Quarterly* March 2016, vol. 61 no. 1 pp. 125-160

⁴ “State capacity can be broadly defined as the administrative and organizational ability of the state to identify, evaluate, formulate, and implement policies” , ⁴ Guillén, Mauro F., and Laurence Capron. 2015. “State Capacity, Minority Shareholder Protections, and Stock Market Development.” *Johnson University, Administrative Science Quarterly* March 2016, vol. 61 no. 1 125-160, . This lead us to think that the more equipped a state is, the more easily and quickly it will be able to improve or implement new policies.

⁵ Securities Investor Protection Corporation (SIPC), which is an independent, government-sponsored membership corporation to which all persons registered as broker-dealers under the 1934 Act must belong. SIPC insurance provides protection for customers' cash and securities in the event of a broker-dealer bankruptcy

possible to avoid another crisis until 2008? Why did this crisis happen? We can find the answer if we go back until the application of the Glass-Steagall Act in 1934. This regulation minimized the risks for investors, but at the time it was abolished in 1999, problems began to start.

In this paperwork we will analyze the mechanisms and regulations that States and financial institutions have adopted since the Glass-Steagall Act in order to protect minority investors and we will suggest the possibility of implementing again this regulation. We will see what are the main international differences in investor protection in countries such as : Spain, UK, US and France. In order to make this analysis, we will be focused fundamentally in those institutions placed in Spain, and we will compare them with other countries, in order to see if there any difference among them. In this way, we will study the origins of the PIM (Protección Inversor Minorista), the Markets in Financial Instruments Directive (MiFID) and the figure of Investor Protector. Furthermore, we will discuss topics regarding the function of guarantee funds and investor associations in Spain in order to compare its performance with the one done by official financial institutions.

2. METHODOLOGY

This study was carried out in order to see and clarify how minority investors are protected around the world, and more deeply the efficiency and the functions done by the figure of the Investor Protector in Spain. To be able to gather all the necessary data, we have used the descriptive method, using quantitative data (information collected from Internet, books, papers, thesis, history and economic magazines). Relevant secondary literatures were also used to support all the findings.

The credibility and reliability of findings and conclusions depend basically on the quality of the research design, the data collection and the most important one, the data analysis. In this chapter we will take a look to the description of the methods and procedures done in order to obtain all the data, how we have interpreted that, and how we have arrived to our final conclusion.

2.1. Research Methods

To carry out this study we have utilized the comparative historical method of research. With this method we have examined some of the historical events that concern our subject (investor protection) in order to arrive to a final conclusion and valid explanations in a particular time and place. So, were focused on the Investor Protector. The dates and time in which we are focused are different; when talking about the Investor Protector in Spain, the topic is introduced by a conflict that is already alive with Bankia; when we talk about the world wide investor protection, we have been focused in the most important countries. At the end of the project, we have tried to make some suggestions of how to improve this situation by comparing the situation lived during the Glass Steagall Act and nowadays.

We have tried to use two types of sources: primary and secondary sources. The first ones derives from the answers of people significantly involved in the topic of this study. We have tried to talk with the different institutions regarding the investor protection in Spain, but we have not succeeded since the majority of them (except Barcelona) are outside Barcelona, and they did not want telephone conversations. The Bolsa de Barcelona did not answer our emails in order to have a meeting with Joan Hortala (current president of the institution).

The secondary sources on the other hand, were derived from the findings stated in published documents and literature related to our topic, some of them recommended by the Investor Protectors in Spain and others by the Grupo BME, as explained below.

A chronological list of the contacts established to obtain information follows below:

18 February 2016 - Email to the Borsa de Barcelona, asking for information related to the topic of the investor protection and the regulations of the “Borsa de Barcelona” since its creation. No answer by the institution.

23 February 2016 - Email to the Grupo BME asking for information regarding the topic of regulations in the different stock markets of Spain. Answer from the Library department, M.Paz Alonso Pardo (26 February 2016), with a huge list of books, papers, magazine and official regulations regarding the topic.

2 March 2016 - Telephone call to the “Borsa de Barcelona”, asking for some information of the schedules of visit of the library, and asking for the possibility to contact with Joan Hortala (actual president of the institution). No further answer.

14 March 2016 - Email to the Investor Protector of Madrid, asking for information related to the topic of the investor protection and the regulations regarding this topic since its creation. Answer from the department of the Investor Protection (17 March 2016), telling the year of creation and the regulations that concern the topic.

14 March 2016 - Email to the department of advice and help to investors of the Borsa de Barcelona, asking for information related to the topic of the investor protection and the regulations of this figure since its creation. No answer by the institution.

14 March 2016 - Email to the department of advice and help to investors of the Bolsa de Bilbao, asking for information related to the topic of the investor protection and the regulations of this figure since its creation. No answer by the institution.

14 March 2016 - Email to the department of advice and help to investors of the Bolsa de Valencia, asking for information related to the topic of the investor protection and the regulations of this figure since its creation. No answer by the institution.

14 March 2016 - Email to the department of advice and help to investors of the Grupo BME, asking for information related to the topic of the investor protection and the regulations of this

figure since its creation. Answer from Teresa Estruch (21 March 2016), she will look for information and sell it.

14 March 2016 - Direct email to actual Investor Protector of the Bolsa de Valencia (found its email in Internet), asking for information regarding the topic. Answer from Carlos Ochoa (15 March 2016), he will look more deeply for further information and will provide a scan of the first regulation regarding the Investor Protector in Valencia.

14 March 2016 - Email to the Grupo BME asking for information regarding the topic Investor Protector in Spain. Answer from the Library department, M.Paz Alonso Pardo (14 March 2016), with a huge list of books, papers, magazine and official regulations regarding the topic.

11 April 2016 - Email to Carlos Ochoa in order to verify if he has got the scan of the regulation of the Bolsa de Valencia. Answer from Carlos Ochoa (11 April) with an attached document with the regulation.

There are some Conclusions we can extract from the experience we have had regarding the research of information and the help received by the financial institutions that are related with our topic. There is relatively abundant digitalized information about the regulation published on the websites of the institution created to protect minority investor after 1990s. However, the efficiency of the mechanisms included in those websites is extremely low and not only the websites of the institutions do not provide help to University of Barcelona students but what can be really worse than that is that there is no real attention to clients and investors through this mechanisms. Is this really investors protection?

As we can see, most of the emails sent have no answer from the Investor Protector department, so we can say that this department is as efficient as they tell? If in this case instead of searching information for a paper, we would have been an investor with a problem we would not have had any answer from the Investor Protector. On the other hand, the library department of the Grupo BME is doing an active work answering all the emails and providing lot of information regarding the topic. Also, when we had direct contact with the Investor Protector of Valencia, Carlos Ochoa, we had an immediate answer, but when we contacted with the department of the investor protection of Valencia we had no answer.

This should make us think that there is something wrong in the communication facilities provided to the investors in case they have any problem, since if they try to contact them by email they probably will have no answer. The case of Carlos Ochoa is totally different, maybe exception, as we have found his direct email in Internet, but in case we had not found it, we would also have no answer. So, this is something that needs to change.

3. FIRSTS STEPS TOWARDS THE INVESTOR PROTECTION. INTERNATIONAL DIFFERENCES IN INVESTOR PROTECTION.

In 1929 one of the biggest stock market crashes in the history of the U.S was affecting a huge number of people. This devastating crisis was named “Crack of 29”. One of the main motives that make this crisis so devastating was the fact that the standard of living in the U.S was too high. People during the 20s has leveraged a lot, due to the good economic situation and pensioners and minority investors decided to put his money into the stock market. In this period, gain money in the stock market was seen to be very easy, and banks made it easier by putting together savings and investments. But, in 1929 this situation was anymore sustainable, and the market falls drastically.

In order to overcome this situation, Franklin D. Roosevelt approve what is known as “Glass-Steagall Act” in 1933. This regulation is one of the greatest exponents of banking regulation. On one hand, it changes the direction of the functions of banks by separating investment banks from saving banks. On the other hand it affects the economic issues of other industries.

3.1.Glass-Steagall Act, 1993⁶

The Glass-Steagall Act is the name under which it is generally known the Banking Act of the United States, which came into force on June 16, 1933. This law was established by the Federal Deposit Insurance Corporation of the U.S and introduced important reforms in the banking sector, some of which were designed to control speculation. Among its features, the most important that allows for the recovery of the Crack of 1929, was the separation between the deposit banking and the investment banking (stock exchange).

In 1932, Franklin D. Roosevelt was elected to become president of the United States thanks to its promises to end up with the Great Depression that the U.S suffered due to the Crack of 1929. The idea of Roosevelt was to implement a set of emergency measures in order to control as soon as possible the situation and since there, try to improve it. All this emergency measures were materialized through the famous New Deal policies. As we have said before, among other important measures adopted by this law, the most important was to restore the confidence lost by people in banks. In order to recover this confidence, the Glass-Steagall Act separated deposit banking from investment banking. This means, that people would have two different accounts (if they would like). One account will be only for making investment operations, such as buying shares, bonds or any other financial tool, and the other one will be for saving money for the future or money they usually spend in day to day purchases. By doing this, they will be secure that in case their investment operations fail, they will always have the other account to survive. Thus, depositors know that their deposits were safe, and that the bankers did not speculate with them.

⁶ Information analyzed and resumed from the following working paper: Carpenter, David H and Murphy, Edward V. , Murphy & M. Maureen (2016) *The Glass-Steagall Act: A Legal and Policy Analysis*, Washington, D.C, *Congressional Research Service Careers*.

We need to have in mind, that the aim of this law was not to prevent another financial crisis, as it is very difficult since we are exposed to a huge number of elements. The aim was to make it more manageable in case there would exist another financial crisis in the future, and minimize the risk of the deposits of investors. As we have said, they will only lose the money they would decide to invest. So, we can see that the Glass-Steagall Act is a proof of the concern about protecting investors and the concern they have about the relationship that existed between protecting investors and market economy. We can see that the view Mauro F. Guillén has nowadays is not as different as in 1933 (Guillén 2016). They all know that the failure of investors is related with the failure of the market.

The application of the law did not last forever, and in 1989 began its end. Due to the merge of two important U.S. banks, the Glass-Steagall Act saw its end. By 1999 the new president of the U.S., Bill Clinton approved its abolition. The problem arose when banks after its abolition return to the situation before the Crash of '29. They began to take more risks and they offered to its clients operations with a huge degree of risk. We can say, that banks return to its initial goal, that was gain as much money as possible without taking into account the damages of its client and without learning anything from the crisis.

However, the U.S. has learned something from the crisis, and the FED limited the amount of credit that the banks could issue, but this limit was too high. When investors saw that the operations they were involved in had a huge level of risk, they began to withdraw all their investments. This situation led to a "credit crunch". As the investors were willing to withdraw their investments at a time, there was a huge lack of liquidity in the market and this lack of liquid and confidence in the financial system had devastating consequences. Among these consequences we find the fall of the giants of the U.S. banking system, the Lehman Brothers Holdings, Inc., the fourth-largest U.S. investment bank who initiated the largest bankruptcy proceeding in the U.S. history.

By analyzing this situation we can put the Glass-Steagall Act as the starting point in the U.S. for investor protection, since as far as our knowledge there is no other official regulation regarding this topic as concerned about investor protection as it was. But, the greed of the State and fundamentally of banks to make money made this law part of the history. However we can see how during this period people began to be concerned about the relationship investors and the stability of the economic market had, and this concern had prevailed since nowadays as Mauro F. Guillén analyzes in its paperwork.

3.2. International differences in investor protection

We have analyzed the situation investors in the U.S. suffered during the 1930s by looking at the Glass-Steagall Act, but this law was only concerning the U.S., what happened to the rest of countries? It's important to take a look at the whole picture in order to understand better the situation we are living right now, and how the implementation of different strategies among different countries have affected their decisions. As we have said at the beginning of this paper, and as it is said in all the books of economy, when firms want to obtain credit they

have always several options. One of these options is by going public and asking to the investors and creditors to finance its projects. When this happens, investors obtain what we call “rights”, since they have bought part of the company by buying shares. We have also to keep in mind that depending on the percentage of shares an investor buys, it will have more or less power in the decision of the company. But, concerning our topic we will focus on those shares who give to investors different kinds and degree of rights.

These investors are called “shareholders”, and they get the right to vote on key corporate matters in case the shares they had bought allow them to do so. But, the most important is that they had the right to receive information about the company’s operations, investment decisions and capital structure. Maybe not all the investors are willing to know the financial statements of the company, or vote for the new director, or even go to the general meeting. Some investors want to get an extra amount of money at the end of the day, or the week, or the month or even the years when collecting its investments. We will call these investors, minority investors. They did not have too much economic power, they want to raise its profit without troubles and without knowing almost anything of the entity. So, we can say that these minority investors need to be somehow protected and need their rights to be also protected. One important thing is that these minority investors have the right to be treated in the same way as the most important investors in the company. But, not in all kinds of operations, since as we have mentioned there are different kinds of financial tools, only regarding dividend policies and securities issues.

It is pretty obvious that when we talk about rights we are indirectly talking about regulations and laws, and as the Glass-Steagall Act did during 1933-1999, nowadays there are laws that protect investors. Most of these laws and regulations, as we will see later, are concerned about providing the investor the necessary information (accounting balances, debt and equity), so that it can easily find the best decision.

We need to keep always in mind that investor protection encourages the development of financial markets, and we can see it by looking to and comparing different financial markets. Developed countries, those that have highly developed economies and advanced technological infrastructures relative to other less industrialized nations, present a higher concern in investor protection. This concern in protecting the investors is one of the factors that make them developed countries. When investors are protected against the risk of losing his money, are more predisposed to invest their money and thus to contribute to the growth of the country. But, on the other hand, when we look at developing countries, those that have a less developed industrial base, we see that its degree of investor protection is lower. But, it is true that these countries are trying to achieve the levels of the developed ones by adapting its policies to the ones used by the others. In the same way, Mauro F. Guillén says that “the more developed and sophisticated the State bureaucracy, the harder it is for the State to be influenced by specific group affiliations, including professional affiliations”. This means that those countries that have more resources have less need to follow the crowd or follow the leader. They can evaluate themselves and see if they need to improve its investor protection or not. Therefore we expect that those countries which have a stronger

administrative system (developed countries) will be less prone to adopt policies consistent with minority investor protection just because the other countries do so.

After taking a look at the different types of investors and countries we could find worldwide, if we want to compare the international differences of investor protection we need to focus on the studies made by Rafael La Porta during the 1990s (La Porta, 1999). As we have mentioned before, La Porta make a useful study comparing the differences among investor protection worldwide. In one of its studies the distinct between two types of investor protection: private and public. When talking about private investor protection, he referred on the private mechanisms based on standards for information disclosure and transactions approval (and also the ability minority investors have if they want to take court action). But, regulations and mechanisms can also be public. We say that they are public when they try to investigate actions that are contrary to minority interest.

In order to understand better the La Porta's study we need to understand what were the indexes that reflect the requirement of private protection in each country⁷ (figure 2):

- *Disclosure*: How much information does the controlling shareholder have to reveal before the transaction? Does the law require a review by independent accountants or other experts?
- *Approval requirements*: Can the controlling shareholder or the board of directors (which may have been elected by the controller) approve the transaction without consulting minority shareholders?
- *Access to redress in court*: How easy is it for minority shareholders to prove wrongdoing in court after the transaction? How easy is it for the minority shareholders to convince the court to void the transaction and hold liable for damages?/
- *Rule making power*: Can the supervisor issue regulations regarding primary offerings or stock exchange listings or does this power reside elsewhere (eg, with Parliament)?

The public protection index reflects the requirements applicable each country⁸ (figure 3):

- *Independence and focus*: Are there any restrictions on the ability of the central government to fire or hire the chief officers of the supervisory body? Is the supervisor able to focus on stock market regulation alone or is it also responsible for other issues such as the banking sector?
- *Investigative power*: Does the supervisor have the power to command documents and testimony from controlling shareholders, accountants or other relevant parties?
- *Orders*: Does the supervisor have the power to order market participants to undertake corrective action (eg, for insufficient disclosure)? Does the supervisor have the power to impose non-criminal sanctions (eg, fines)?

⁷ Investor Protection and the New Zealand Stock Market. International comparisons of investor protection <http://www.treasury.govt.nz/publications/research-policy/ppp/2007/07-02/05.htm> (Access date: 13/03/2016)

⁸ Investor Protection and the New Zealand Stock Market. International comparisons of investor protection <http://www.treasury.govt.nz/publications/research-policy/ppp/2007/07-02/05.htm> (Access date: 13/03/2016)

By looking at one of the publications of Randall K. Morck we find information about what La Porta was studying in this period (Morck 2005). La Porta found in the 1990s that countries with stronger shareholder protection were characterized by larger stock market and more diffusely held large corporations, and that these countries tend to have legal systems derived from British common law. The common-law countries that we can see in Figure 3 are Australia, Singapore, Hong Kong, Ireland, U.K, Canada, New Zealand and the U.S. They clearly do have more widely held large firms than the other countries. If we look for example at Mexico in this period all the companies were held by important families. So, La Porta concludes in 1999 that “diffuse ownership and shareholder capitalism require solid legal protection of public shareholders’ property rights in their investment”.

In order to have a more recent view of the situation of the investor protection worldwide we can take a look at the World Bank Ratings (Annex 2). In this document we can find the countries with the best and the worst investor protection, and thus we can compare with recent data if this situation has changed or not.

These ratings measure the protection of minority investors in conflicts of interest. The extent of conflict of interest regulation index measures the protection of shareholders against directors’ misuse of corporate assets for personal gain by distinguishing 3 dimensions of regulation that address conflicts of interest: transparency of related-party transactions (extent of disclosure index), extent of director liability index and access to evidence and allocation of legal expenses in shareholder litigation (ease of shareholder suits index). All these indexes as we can see were also used by La Porta when making his ratings. In Table 1 we can see what aspects are measured in this case in order to create the rating.

By comparing the results obtained by La Porta and the recent rating done by the World Bank Group, we can see some similarities and some differences, so we will analyze why these exist. First of all, we realize that the first country, if we take into account the information from private protection, that has the highest index in terms of investor protection is New Zealand in both cases. Why is this situation? What has New Zealand that does not have Afghanistan or Mexico?

The World Bank group qualifies New Zealand with a total score of 9,⁹ and if we analyze deeply each aspect measured in order to obtain this score we see that all the aspects have about a score of 9 points. The lower scores are obtained in the aspect of Extent of ownership and control index and Extent of corporate transparency index with a score of 7 points.

The first aspect is related with the governance safeguards protecting shareholders from undue board control and entrenchment, and we find that for example; the CEO is not prohibited from also being chair of the board of directors; that the Buyer does not have to pay dividends within a maximum period set by law after the declaration date and finally; that

⁹ This information was collected as part of the Doing Business project (World Bank Group), which measures and compares regulations relevant to the life cycle of a small- to medium-sized domestic business in 189 economies. The most recent round of data collection was completed in June 2015.

assuming that Buyer is a limited company, the Buyer does not have to pay dividends within a maximum period set by law after the declaration date.

The second aspect is related with corporate transparency on ownership stakes, compensation, audits and financial prospects. The reasons of this lower score is the Buyer does not have to disclose information about board members' other directorships as well as basic information on their primary employment, that a detailed notice of general meeting does not have to be sent 30 days before the meeting and finally that assuming that Buyer is a limited company, a detailed notice of general meeting does not have to be sent 30 days before the meeting.

As mentioned before, the higher the investor protection is in a country, the higher the developing level in that country (and viceversa). And this is very clear when analyzing New Zealand. New Zealand is also the first country in the ranking of starting businesses¹⁰, the first country in the ranking of registering property and the first country in the ranking for getting credit. This is not coincidence. All these aspects are correlated, the more the investor protection is in a country the more the investors are willing to spend his money in that country and therefore the more facilities to do that. This is why the facilities for getting credit in that country are better and this is why New Zealand is a country recommended if anyone wants to start a business. All this issues lead to a developed and growing country.

And now, let's take a look of what happens in Afghanistan (the worst rated country by the World Bank Group) or with Mexico (the worst by La Porta).

Afghanistan is rated with score of 1,7¹¹, we can see the huge difference between these two countries. This score is obtained as a consequence of low ratings in all the aspects studied. The extent of shareholder rights index¹² and the extent of ownership and control index its 0. This leads to a huge insecurity of investors and thus they are not willing to invest since the risk of the operations is very high, and nobody could guarantee their money. In the same way we can look at the level of development of the country. We see that Afghanistan is a developing country and the rating regarding starting a business is very low, and also the rest. This is why the country is not a developed country. The facilities given to investors in order to invest in that country are not enough, and thus investors see a high level of investment risk in that country, so the growing rate is very low.

¹⁰ Included are: the number of procedures entrepreneurs can expect to go through to start up and formally operate an industrial or commercial business, as well as the time and cost to complete these procedures and the paid-in minimum capital requirement as a percentage of gross national income (GNI) per capita.

¹¹ This information was collected as part of the Doing Business project (World Bank Group), which measures and compares regulations relevant to the life cycle of a small- to medium-sized domestic business in 189 economies. The most recent round of data collection was completed in June 2015.

¹² Shareholder's rights and role in major corporate decisions.

Mexico is a country situated in the middle of these two countries, as it obtained a score of 6 points¹³ regarding the investor protection. This country has an average of 6 points in each aspect taken into account, but in the one related with the extent of corporate transparency index it obtained a 3. This is because not enough information is presented to the investors and shareholders, there is very low transparency. Also, when looking at other rankings, we see that Mexico is situated in the middle also. This country is in process to become a developed country, but is still a developing country. This is because there are many aspects to be improved, but there are still good regulations and laws in the country that protect in a certain way investors. By improving these aspects, the country will grow faster, as investors will feel more secure and will invest more money.

As we can see, these analysis lead us to the same that Mauro F. Guillén says in its paperwork. Afghanistan is trying to improve its situation as it is a developing country and in order to become a developed country it will probably try to adapt the policies followed by other developed countries. On the other hand, the opposite case is New Zealand. As is already a developed country and it has already established its regulations and mechanisms regarding investor protection it is almost done in order to get a 10. It will probably try to improve in order to maximize its outcome but not by looking at the policies applied by Afghanistan. We can clearly verify that investor protection levels differ greatly among the world. This derives basically from the fact that legal rules are prepared taking into account the history and the level of development of each country.

3.3. International differences regarding the entities

Once we have analyzed the main differences regarding the regulations and laws applicable in investor protection worldwide we can focus more deeply on the differences regarding the entities that are in charge of applying this regulations. It is obvious that if the goal is to protect minority investors and nowadays countries know how can they do it, we should find more or less the same institutions in charge of that function in different countries. In order to verify if this assumption is true or not, we will take a look at the different entities that exists in Spain, U.S, U.K and France.

3.3.1. Spain

Investor protector in Spain is quite different from the other cases that will be analyzed below, since we find 4 stock markets in the same country, and each of them it's important by itself. We find the Bolsa de Madrid, Bolsa de Barcelona, Bolsa de Valencia and the Bolsa de Bilbao. Each of this stock markets have its own investor protector (figure that will be explain in section 2 and 3), but Spain has also bodies that are above this figure and that make the rules of the game.

¹³ This information was collected as part of the Doing Business project (World Bank Group), which measures and compares regulations relevant to the life cycle of a small- to medium-sized domestic business in 189 economies. The most recent round of data collection was completed in June 2015.

Founded in 1782 we find the Bank of Spain, which is the national central bank and the supervisor of the Spanish banking system. Its activity is regulated by the Statute of the Bank of Spain. It has several functions, some of them are raising from its membership in the ESCB (European System of Central Banks) and others are as a national bank¹⁴:

- Hold and manage foreign exchange reserves and precious metals transferred to the ECB (European Central Bank).
- To promote the good functioning and the stability of the financial system without prejudice the functions of the ECB (European Central Bank) of national payment systems. In this context, the operations of liquidity emergency by entities are hold by the Bank of Spain.
- To supervise the solvency and compliance with specific regulations of credit institutions, other financial institutions and markets whose supervision has been attributed.
- Putting into circulation the coins and play, by the State, the other functions assigned to him.
- Develop and publish statistics relating to its functions and assets the ECB in collecting statistical information.

We find also the CNMV (Comisión Nacional del Mercado de Valores)¹⁵, founded in 1988, which is the agency responsible for supervision and inspection of Spanish securities markets and the activity of those involved in them (we will enter more deeply in the following chapters of this paper). Briefly, the action of the Commission is mainly projected on companies issuing securities.

Created in November 1977, the FGD (Fondo de Garantía de Deposits de Entidades de Crédito) was aimed to guarantee deposits in cash and securities or other financial instruments made in credit institutions, with a limit of €100.000 for deposits in cash, or in another equivalent currency applying the corresponding exchange rates. It was created following the recommendations and experiences of some countries in the European Union and the United States, where there were already similar institutions.

Finally, introduced in 1998 and being regulated by the Securities Market Act, we find the FOGAIN (Fondo de garantía de inversiones)¹⁶, which is the general fund investment guarantee, whose purpose is to provide compensations to customers of securities companies, securities dealers in the case that they can not pay back the money for problems of insolvency.

As we can see very clear the creation of this four entities, which are the ones that are in charge of protecting in some way investors, were created very late. All of them were created

¹⁴ Information taken from the wen page of the Banco de España, <http://www.bde.es/bde/es/secciones/servicios/> (Access date: 16/05/2016)

¹⁵ Laws 37/1998 and 44/2002 have come to update the previous, establishing a regulatory framework adapted to the requirements of the EU, conducive to the development of Spanish securities markets in the European environment, and incorporating new measures to investor protection.

¹⁶ Existing fund investments in Spain whose function is to compensate and protect investors in the event of corporate insolvency services inversión. With the introduction of this figure is transposed into national law Directive 97/9 / EC of 3 March 1997. Its regulation is contained in Article 77 of the Securities Market Law.

from the 70s. This is very relevant in order to understand how this system works nowadays, since it is a relative new system. We say it is a relative new system because, as we will see in the next section when analyzing the U.S, the protection systems of that country were created many years before. This is why Spain is trying to copy them.

3.3.2. United States of America, the New York Stock Market

When we talk about the US in terms of financial operations, the first we have in mind is the New York Stock Exchange (NYSE). This is also known as the “Big Board” and it is by far the world’s largest stock exchange by market capitalization of its listed companies¹⁷. In this stock exchange products are commercialized, creates products, etc... We can say that it is the basis of the world market and therefore it is so huge that we can not think in its fall, since otherwise all the other markets will fall with it.

Created in July 2007 in the US, we find the FINRA (Financial Industry Regulatory Authority)¹⁸. This body is in charge that certify if companies and financial products are legal. It is in charge to guarantee to investors the reliability of what they are buying.

In June 1934 was created the first institution with an objective of protecting investors. We are talking about the SEC (Securities and Exchange Commission)¹⁹ and it is said to be the investor counsel. This body protects investors, maintaining market integrity and facilitates the creation and generation of capital. In Spain we will see later that it is “equivalent”²⁰ to the CNMV (Comisión Nacional del Mercado de Valores).

Also we find the CFTC (Commodity Futures Trading Commission)²¹, whose mission is to promote transparency, competitions and financially viable open markets, to avoid systematic risk and to protect market users and their funds, to protect consumers and the public from fraud, manipulation and abusive practices related to derivatives and other products that are subjected to the Law on the Commodity Exchange. In Spain we can compare it with the MEFF (Mercado oficial español de opciones y futuros financieros).

Finally we find the SIPC (Securities Investor Protection Corporation)²². The SIPC is responsible for the liquidation of the brokers when they enter bankruptcy or financial problems and the customer assets are missing. In a liquidation under the Investor Protection

¹⁷ "All of the World's Stock Exchanges by Size". *The Money Project*. Retrieved 17 April 2016.

¹⁸ Largest independent regulator for all securities firms doing business in the United States. Protect investors by making sure the United States securities industry operates fairly and honestly.

¹⁹ Three-part mission: to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation

²⁰ We will say that it is equivalent in some aspects, but later we will discuss if they are more or less serious than the Comisión Nacional del Mercado de Valores (CNMV).

²¹ Created in 1974, that regulates futures and option markets.

²² Created in 1970 to protect the customers of brokers or dealers subject to the SIPA from loss in case of financial failure of the member.

Act, SIPC and the trustee appointed by the court work together to return securities and cash of customers as quickly as possible. With certain limits, SIPC accelerates the return of the missing property by protecting the customer. Each customer protection is up to \$500.000 for securities and cash (including a limit of \$250.000 if it is only cash)²³. This body protects stocks, bonds, treasury bills, certificates of deposit, mutual funds, investment funds and money market investments and other certain values. SIPC does not protect investments if the company is not a member of SIPC, loss of market share, profitability promised investments, commodity contracts or futures (except under certain conditions). This body can be comparable to FOGAIN (Fondo de garantía de inversiones).

We should remark the importance of the U.S in the framework of investor protection. As we have said before, the U.S was the first country that created an institution with the mission of protecting the investors. Since 1934 the U.S is trying to improve its system in order to offer better protection to its investors and this can be seen by the creation in 2007 of another protecting body. The U.S was pioneer in investor protection, and this is why the rest of countries try to copy its system.

3.3.3.U.K. the London Stock Market

Founded in 1579 we find the London Stock Market. There are many sources that say it was officially created in 1801, but it is true that in 1600s there were exchanges of currencies and commodities. It is currently one of the largest stock exchanges in the world, as it has many international values but also many values of Births companies.

The London Stock Exchange (LSE) is located in the City of London. This market is considered the third-largest stock exchange market in the world²⁴. If we have any problem in the UK regarding investment projects we should first take a look at the FSA (Financial Services Authority). The FSA is an independent body that regulates financial services in the UK and that, in March 2015 was split into the following agencies:

In one hand we have the FCA (Financial Conduct Authority)²⁵. When we find companies that do not follow the rules, they intervene. This may mean intervening by imposing penalties to cease trading or to obtain compensation for those who had been worse off. Its aim is to ensure that consumers receive the information they need in the right way so that they can make the best decisions for themselves. We will compare this institution to the CNMN (Comisión Nacional del Mercado de Valores) in Spain.

²³ There is no requirement that a customer reside in or be a citizen of the United States. A non-U.S. citizen with an account at a brokerage firm that is a member of SIPC is treated the same as a resident or citizen of the United States with an account at a brokerage firm that is a member of SIPC. <http://www.sipc.org/for-investors/what-sipc-protects>. (Access date: 21/04/2016)

²⁴ "All of the World's Stock Exchanges by Size". *The Money Project*. Retrieved 17 April 2016.

²⁵ April 2013, operates independently of the UK government, and is financed by charging fees to members of the financial services industry.

On the other hand, we find the PRA (Prudential Regulation Authority)²⁶, which is responsible for prudential regulation and supervision of banks, savings banks, credit unions, insurance companies and major investment firms. In total, the PRA regulates about 1.700 financial firms. It seemed to the Bank of Spain, this body is a part of the Bank of England.

We have also other entities, like the FSCS (Financial Services Compensation Scheme, created in 2000). It is a compensation fund for customers in case they don't have more other options. The FSCS covers client funds of companies regulated by the FCA and/or PRA. When an authorized investment company goes bankrupt and can not pay back investments, the portion covered will include: stocks and shares, investment funds, futures and options and personal pension plans and long-term investments (such as mortgage or endowments). This entity becomes the FGD (Fondo de Garantía de Depósitos de Entidades de Crédito) and the Spanish FOGAIN (Fondo de garantía de inversiones).

From the UK Stock Market we can extract the fact that all its systems regarding the investor protection were created very late in comparison with the previous stock markets analyzed. And very related to this, we can see how much similarities are among its systems of protection and the Spanish ones.

3.3.4. France, the Paris Stock Exchange

Born in 1975 in France, we find the historical Paris Bourse, nowadays known as Euronext Paris from 2000 onwards. As in the rest of countries, we find some entities that have similar functions with respect to the other countries that would help an investor in case of some problem. Among them we find the AMF (Autorité des Marchés Financiers). This body regulates participants and products in the financial markets of France, authorize and monitor them and if it is necessary conducts investigations and issue sanctions. In addition it ensures that investors receive relevant information, and offers a mediation service to assist them in disputes. It is like the CNMV (Comisión Nacional del Mercado de Valores) in Spain.

In 2010 it appears the ACPR (Autorité de contrôle prudentiel et de résolution, which is responsible for overseeing the banking and insurance in France. It is an independent administrative authority attached to the Bank of France, it is in charge of preserving the stability of the financial system and protecting customers, insurance policy holders, members and beneficiaries under their supervision. This body is like the Bank of Spain.

Founded in 1999, the FGDR (Fonds de Garantie des Dépôts et de Résolution). This body is activated when a bank initiates the process of bankruptcy. It is responsible of paying compensation to depositors within 20 days, up to €100.000 per person per institution, if the institution that have entrusted its assets can not fulfill their commitments. It is also responsible for compensating investor up to €70.000 per person per institution securities (stocks, bonds, shares in mutual funds), and other financial instruments that the service provider investment could not return if it initiates the process of bankruptcy. It is like the FGD

²⁶ April 2013, limited company wholly owned by the Bank of England and is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms.

(Fondo de Garantía de Depósitos de Entidades de Crédito) and the FOGAIN (Fondo de garantía de inversiones) in Spain.

The situation of France is very similar to the U.K one. As we can see no entity regarding the investor protection has been created before the 90s. Many of its institutions were created after year 2000. This could make us think that they had not the necessity of this kind of institutions. The same way, they are trying to copy the already existing institutions of other countries, and thus take advantage of their knowledge.

3.3.5. Comparison regarding the different international entities

After looking at this financial institutions we can highlight some relevant aspects. The most important one is the creation of the SEC (Securities and Exchange Commission) in the US. This is important because it was founded in 1934. And why it was founded in this year? As we can see is the oldest institution among the countries studied, and this is not a coincidence. After its creation, the rest of the world began to think that this kind of institutions would be important someday.

The SEC was created as a response of what happened the previous years, exactly to what had occasioned the 1929 crack. As we have explained before the crack of 1929 was occasioned in part because people and the financial institutions were confusing the function of banks and therefore banks were acting as investment funds for people who only wanted to keep its savings safe. After that, the Glass-Steagall Act enters into the role. This act was approved in 1933 and its function was to try to avoid this situation repeats. So, one year after the approval of the Glass-Steagall Act, the SEC was created, and its main aim was to protect investors. We can say that its creation is a consequence of this act, and since its creation, other countries have tried to imitate this body (for example the CNMV in Spain).

In the US, after the creation of the SEC, about 30 years after, they created the SIPC (Securities Investor Protection Corporation), another body that aims to protect the investors. Four years later, in 1974 the US created the CFTC (Commodity Futures Trading Commission) in order to promote transparency. So, we see that the creation of this kind of bodies is following an increasing path, and that governments have seen its importance by promoting its creation.

The most surprising thing that we can extract from these entities is that almost all the entities (except the ones in the US mentioned before) are created very late. When we say very late we are saying that they are very recent. Why the US anticipated the need of these entities before the rest of the world? Why the rest of the countries decide to create them so late?

The answer to these questions is that, first of all, we can see and check that countries (and also people) only react and make changes if something bad has happened. And this is what has happened in US after the 1929 crack and the fall of Lehman Brothers in 2008. So, once the rest of the countries have suffered some problem regarding the protection of the investors, they have decided to create its own entities. Action and then reaction. Even the

previous case mentioned about the figure of the investor protector in Spain was created late, more or less in the year 1991 due to the reform in the “Ley del Mercado de Valores” of 1989.

4. ORIGINS OF MINORITY INVESTOR PROTECTION (MIP) IN SPAIN.

Following the objective of this paper, we will now focus more deeply in the tools used in Spain in order to protect investors. In Spain, one of the most important parts that are included in the regulation “Ley del Mercado de Valores” and concern our topic is the one that talks about the effective protection of the investor’s rights. As we have said in the section above, this function is integrated and done by many entities. The steps that need to be followed in order to achieve a good investor protection in Spain require an active participation of all the agents that are involved in the process (even investors, since they should know their rights and obligations). In order to have a good level of investor protection is essential to have a high level of transparency, a good level of juridic guarantee and simplified, a good level of development in the Spanish Stock market. By this, we mean that one of the facts that will give more confidence to investors is information. Information is power and investors want entities to be transparent in order to get as much information as they want in order to make proper decision. Furthermore, without a good juridic framework the application of this laws would not be possible.

This objective implies for some entities, like the Comisión Nacional del Mercado de Valores (CNMV), activities such as the verification and the administrative registration of the products that are offered to the investors, in the sense that all the products that will be offered to the investor need to be approved by the Comisión Nacional del Mercado de Valores (CNMV). The supervision of the activities done by the financial intermediaries (such as banks, brokers of financial funds) are also very important in order to control for transparency and good will. But the most important, is that all this financial institution need to follow the same obligations that are in the regulations and laws inside the stock markets, and this is what at the end make a kind of heterogeneous stock market as the Spain one, homogenous in some sense.

However it is not possible to guarantee the fully integrity of the investment operations. We need to take into account that stock markets are continuously changing, every second, and it they are evolving more and more every day thanks to new technologies. As in other European countries, it was the liberal revolution who laid the investor protection in Spain appear. The institutions of the old regime provided limited guarantees to investors and in case of conflict of interest among parties, juridical processes were not so clear. All this issues motivate the Spanish financial authorities to reevaluate the situation and change some policies as the Markets in Financial Instruments Directive (MiFID) that will be explained below.

4.1. Investor Protection in Spain

Since 1951, at the age of 31 years old, and with his oppositions for Exchange Agent approved, José Manuel Núñez-Lagos has published many books and articles related with

financial entities and stock markets from the E.U to the U.S (Núñez-Lagos, 1977) . We can say that Núñez-Lagos has been the Spanish pioneer in terms of investor protection. He was always concerned about the importance of teaching investors how to make operations and the power the information has.

This permanent desire of Núñez-Lagos of being in contact and to approach the minority investor, meet their demands and try to guide them, presided over not only the spirit of his literary works, but also in all of its collaborations with the media and the press.

In 1991, he was appointed by the Board of Directors of the Madrid Stock Exchange, Investor Protector, a position created at that time and for which his character and training were perfectly suited (as demonstrated throughout the decade in which he served in that position). It was the first Investor Protector at a time in which assistance to investors was not as widespread as it is right now. Therefore, he had to invent all the systems that nowadays are running the office of this figure.

During the 10 years he worked in that field, he and his team released reports, proposals, documents and resolutions, always with a huge judgement and clarity. Thanks to him, the assistance to the investor is instituted. The first one is very important and is related to the juridic aspect. It is very important to pose every case with a juridic point of view and taking into account the economic effects it will have. Secondly, the Investor Protector has to try to solve the cases by searching for an agreement good for both parties. Lastly, in case that no agreement has been reached, the investor protector will be the one who decide.

Not so long ago, approximately 25 years ago, the resolution of claims and complaints that clients made in Spain was managed by the department of complaints in the Comisión Nacional del Mercado de Valores (CNMV)²⁷. This department was formed by the investor defenders located in the four different stock markets that are in Spain and by the figure of the Client Defender ²⁸ that exists in determined financial entities.

As we can see, there was not a unique solution in the case an investor has a problem, and there was not a unique procedure in order to solve the problem since each of the four figures had different terms and conditions. These are the reasons of why investors were so lost when making complaints, they did not know exactly where to go. Furthermore, this situation still happens, since the situation in Spain, as we will see, is still confusing for some of them, because there are not many facilities and information as it should be.

Legislative measures imposed in the recent years oriented to reinforce transparency and the accomplishment of good practices in the markets, as the Markets in Financial Instruments

²⁷ The CNMV addresses complaints from users of investment services when they consider that their investments have been harmed by the conduct of persons or entities under the supervision of the CNMV.

²⁸ Law 44/2002 of 22 November on Measures to Reform the Financial System and Order ECO / 734/2004 of 11 March on the Department or Customer Service and Customer Ombudsman of financial institutions .

Directive (MiFID)²⁹, had come so solve the problem of heterogeneity. Nowadays we have a more homogenized system in the sense that the procedures that an investor has to follow in case of any problem are more or less the same in all the stock markets in Spain. We should make stress in that point, since this homogenization has helped the users in a world every day more advanced in terms of variety of products and the complexity of the financial services.

Specifically, the Markets in Financial Instruments Directive (MiFID) wanted to create a figure for the defense of the clients of financial services. At the same time, this normative would delimitate the processes and steps that the investors should do in order to make their complaints. All in a simple and guided way, which will increase the systems of investment protection.

4.2. Markets in Financial Instruments Directive 2004/39/EC (MiFID)

Entered into force in Spain in 2007, the Markets in Financial Instruments Directive (MiFID) is the European normative which harmonizes the regulation of the European stock markets, the financial instruments which are negotiated in and the organization and the relations that the financial entities have with their clients and the investor protection. In order to understand better what are the main functions of that European normative, we could ask ourselves some questions: First, are all the financial entities obliged to apply the MiFID? The answer is yes. All the financial entities that provide services and inversion activities of financial instruments (such shares, obligations, rights, collective inversion, derivatives) had to comply with the normative.

Second, the measures applied by the Markets in Financial Instruments Directive (MiFID) in terms of protection of the investors are the same for all kind of operations? For example, if an investor buys shares from an investment fund or if he/she buys futures? Then answer is no. Inside all the products that are treated in the MiFID there is a difference between simple and complex products. This distinction will determine the level of protection and information that the financial entity is obliged to supply. The more complex a product is, the more information and the more protection the investor will have.

Third, what are the main differences between the original and the new version of the MiFID? One of the main goals of the original Markets in Financial Instruments Directive (MiFID) is to ensure good levels of protection of investors inside the European Union. As we have said before, all the financial entities that are in the EU are required to provide their clients adequate information (transparency), and to comply with certain obligations. Also, there is a general duty for all this firms, which is to act fairly, professional and honestly, and always searching the best for its clients.

²⁹ The Markets in Financial Instruments Directive 2004/39/EC as subsequently amended is a European Union law that provides harmonized regulation for investment services across the 31 member States of the European Economic Area (the 28 EU member states plus Iceland, Norway and Liechtenstein). The directive's main objectives are to increase competition and consumer protection in investment services

The application of all these duties reflects differentiated protection for retail and for professional clients, and the transactions that are executed with eligible counterparts are only subject to some of these duties. Furthermore, those firms which only execute or act as a “bridge” between the clients and the investment they want to do, do not need to conduct a suitability assessment provided certain conditions are met. So, we find that there is a legal gap in this normative.

Once the Commission noticed about that, it started to review some provisions of the Directive. We have to keep in mind that the context of this period was the huge financial crisis suffered in 2008, and this crisis helped in some way to expose the weaknesses of the regime. The Commission published in 2010 a paper with some changes in the Directive. Finally, in 2011 they decided that the best they could do was make some changes, according to the changing and complex financial environment we were living.

The final version of the Markets in Financial Instruments Directive II (MiFID II) contains important changes to the investor protection regime, which is what concerns us in this paper. The new duties will affect the entire lifecycle of the investment products and services. The design, the promotion and marketing and the distribution and selling of financial products by investment firms must be tailored to the target market. Meaning that if the financial environment is good, financial entities could push clients to make investment, but if it is the opposite situation, firms must look for the wellbeing of the client and do not allow them to make operations with risk. So, we can resume the most important changes regarding the reinforcement in investor protection as follows:

As we can observe in the summary table in the Annex Section (Table 2), there are more sectors and products covered. While in the MiFID I, there is only the distinction between equities and other products, in the MiFID II, there is a more specific distinction. It distinguishes among equity, fixed income, commodities, structured products and derivatives. This is a positive thing for the investors, since the financial advisors who will help them will be more specialized and therefore possible problems will be solved quicker, and the advice provided will be better, as it will fit better in the client expectations.

How does the MiFID work?

When searching for information regarding the investor protection in Spain we find lots of documents and reports regarding the steps followed by the MiFID. These steps, after looking at various documents can be divided as follows:

a. Before investing

In this step, first the financial institution will classify the investor taking into account various conditions.

Usually, investors who are engaged in some investing process have already received a letter regarding the type of investor they are. The huge majority of investors are considered

minority investors (although there are professionals). This classification is very important in order to state the specific processes that will be followed in each case, since they are different for minority investors and for professionals³⁰. As we are concerned on minority investors we will try to resume only the steps for them.

The minority investors are those who have less knowledge and experience in the financial investing world, and this is why, as a minority investors they will receive a higher grade of protection. On the other hand, the professional clients, as they have more knowledge and experience will receive less protection.

After this first classification, the investor will be required, by the financial institution, to answer some questions in order to collect information, and thus help him when taking decisions and providing services. This set of questions, called Convenience Test, will allow the financial entity to decide if a financial product is good enough for the investor.

The Convenience Test tries to evaluate the knowledge and the experience of each investor, and the questions asked will be: types of products and services the investor is related with, frequency and volume of its previous operations and the level of studies and professional experience among others.

Once the financial entity gets the results, the advice round will come. Taking the results of the previous test another test, called the Suitability Test, will be done. This test consist in the good advice provided by the financial entity taking into account the personal situation and the knowledge and experience. The difference between this test and the first one, is that the Suitability Case will cover also the financial situation of the investor, the capital, liquidity, liabilities and the objectives of the operation (time, profile, risk).

After these two tests, the financial entity will send all the needed information to the client. This information has to be impartial, clear and without any type confusion. All this information should be sent with sufficient advance so the client can understand it and take a calm and not precipitated decision.

b. While and after investing

Once the client has taken the decision the financial entity will execute this decision as soon as possible. An important point in this step is that, the financial institutions should take what is called "the best choice". This choice has to achieve the best outcome for the client. So, lets imagine that an investor wants to buy shares from a company in the Stock Market. The most valuable inflation for the client will be the one regarding the price and the costs of the operation.

After this step, the entity will confirm that all the decision are transmitted will inform the client during all the process of the evolution of the operation. This continuous advice is very

³⁰ Professional clients can be banks, governments, investment funds, pension funds, enterprises and maybe some particular investors (with high level of knowledge and experience).

important. The entity should inform the client of any important change in its operation in order to led the client sufficient time to take a decision (if necessary).

c. During all the process

As we can observe, this instrument is more related with prevention than with protection. This is why during all the process the entity will try to avoid any type of interest conflict and will inform the client of the guarantee fund (explained in Section 4, point 5) in case of insolvency. In case of any claim for the bad performance of the entity, the client is in title for complaint. This complain is not the same that the one done to the Investor Protector. This complain is regarding the bad performance of the Markets in Financial Instruments Directive (MiFID) by the financial institution.

5. THE FIGURE OF THE INVESTOR PROTECTOR IN SPAIN.

Entering more deeply in the analysis of the investor protection in Spain we have finally arrived to the most specific figure we can find. We say it is the most specific since it is the one in charge of each of the different stock markets in Spain. We have seen the main differences regarding international investor protection, comparing all the countries by an index. Then, we have been more focused by analyzing the entities in charge of applying the regulations and comparing them worldwide. Afterwards, we have analyzed the main regulations that exists in Spain regarding the topic. And now we will be studying the figure in charge of investor protection in each of the four stock markets in Spain.

The figure of Investor Protector in the Spanish stock market appears very linked to the “Ley de Reforma del Mercado de Valores de 1989”. This law allowed to the modernization of all the processes and steps towards sock market transactions by simplifying and harmonizing them. Briefly we can say, that this law, together with the technological advances, gave rise to the substitution of the old models and mechanisms to the new ones. The most important of these new models and mechanisms is that there are almost all mede online. The old mechanisms were bored and very slow and thus if an investor has a problem it would take too long to solve it. Nowadays new technologies have allowed to many important changes in investor protection such as: direct contact with the institutions by mail or by telephone, a and huge number of documents and pdfs in Internet regarding the topic. We all have that image inside the stock market : stressed people everywhere, very noisy, too much bustle. Thanks to this this reform all this noise disappeared, and the silence of the computers began.

An important figure that we must keep in mind during this beginning period was Manuel Pizarro, who was the president of the Madrid Stock Exchange during two periods; the first from July 1991 to December 1992, and the second from July 1994 to December later exercise. His presidency was alternated with Antonio Zoido³¹ during the periods not mentioned above. In 1991, Pizarro appointed José Manuel Núñez Lagos Investor Protector

³¹ Actual presidente of the BME (Bolsas y Mercados Españoles) ; Spanish company that deals with the organizational aspects of the Spanish stock exchanges and financial markets, which includes the stock exchanges in Madrid, Barcelona, Bilbao and Valencia.

of the Madrid stock market since 2001. We can say that Pizarro was the one who really supported and launched the figure of the Investor Protector in Spain. Later on, this figure has been seen as an important factor in the good behavior of the Spanish Stock Market, since as we will see below since its approval it has improved a lot.

We should keep in mind, before going more deeply into the functions done by the Investor Protector, that this figure is based in the transparency between the financial operators and the clients. The general principles that inspire the actuation of the Investor Protection are the auto regulation, the conflict of a bad investment and equity among others.

Once the Stock Market is seen by the population as a tool open to everybody, not only reduced to a limited group of savers, the financial institutions saw the importance of establish the processes that this figure need to follow in order to cope with the complexities, risks and uncertainties that threaten the stock market of that time.

The process, the functions, the duration and the conditions to become an Investor Protection are collected in the "Circular 8/1991"³², we will explain below the most important points inside this paper.

5.1. Investor Protector: Process of selection and duration

In order to understand better the points that will be explained better later, we need to keep in mind what is the main function and the definition of Investor Protector. The Investor Protector is the figure of the Spanish Stocks Markets in charge of the attendance of the complains and reclamations that the investors could have in relation with financial operations effectuated in the four Spanish Stock Markets³³ (remark that each of the four Stock Markets has its own Investor Protector³⁴). This figure is designed by the Administration Council of each of the four Spanish Stock Markets among persons of recognized competence and experience in the stock market.

Having autonomy to perform their functions, without depending on any other department, this figure freely dispose of the material and administrative services necessary to perform its tasks. The designation lasts for a period of 3 years, and may be reappointed for successive periods. In case one of the reasons below happen, its operations will be ceased immediately:

First of all, and the most obvious, in case that the period for which it was elected ended. But keep in mind, that after this 3 years period it can be reelected. In case of waiver by the person in charge of the title during the period. In this case there will be another investor

³² Regulates the appointment, powers and mode of action of Investor Protector.

³³ Madrid was the first to create the figure of the Investor Protector and fulfill its characteristics in 1991, then Barcelona in 1995, Valencia in 2000, and the Bilbao unknown.

³⁴ By comparing the different papers and regulations, we have found that the functions, designation and performance of the Investor Protector in the four Spanish Stock Markets is the same, so we have taken the example of the Madrid Stock Market (the first in approving the figure in 1991) in order to explain its characteristics.

protector selected as soon as possible. Also it's obvious in case of death or incapacity to make the performance of the task. An finally in case that its performance is notoriously negligent in the operation of its duties and functions, when appreciated by the Board of Directors of the Stock Exchange, by a majority of three quarters of tis members. Meaning that if the Board of Directors thinks that the Investor Protector is not acting under what it is supposed to do, it will be ceased of its activity.

5.1.1.Functions

The functions that are attributed to the figure of the investor protection are in someway defined before, but this are the ones we can find specifically in its regulation. Firstly, the investor protector will be the one in charge of examining and solving the claims and companies that any investor or financial entity have. Always if this person or entity has relation with transactions in the Stock Exchange and actions directly related with these. When carrying out all its function the Investor Protector should, in particular:

- Examine the complaints and claims that individuals make in relation with the activities of the various departments of the Stock Market. Meaning that the Investor Protector will only be in charge of those complains that are in relation with the departments in the Stock Market, not others.
- Consider with the members of the Stock Market the claims that individuals submitted in relation to decisions taken by them. In case of any doubt about the decisions taken by the members of the Stock Market, the Investor Protection should consult them what had happened.
- Analyze, with the assistance of credit institutions, financial intermediaries, issuers and other persons and entities interested in the operations taken place in the Stock Market, claims that individuals make in connection with the initiatives and/or actions taken by such persons and/or entities. In cases where the Investor Protection is not sure about the numbers of some economic transaction it could have the assistance of experts.
- Prepare and submit to the Board of Directors of the Sock Market reports, recommendations, proposals, suggestions and initiatives that will benefit investors. In order to improve its function it is said to transmit all the claims and recommendations to the board of directors in order to make possible changes.

On the other hand, the functions that are excluded from the competencies and performances of the Investor protection are those related with claims and complaints which process and resolution could cause damages to third parties. Matters that are not yet solved by the Courts, in the sense that if there is some juridical process opened the Investor Protector could not intervene. Complaints that are pending to solve by another equivalent body of any entity, as for example the department of complaints of the Markets in Financial Instruments

Directive (MiFID). And finally complains that are pending to be solved by the Comisión Nacional del Mercado de Valores (CNMV) and the Complaints Service of the Spanish Bank³⁵.

5.1.2. Procedures

Those who are interested should contact the Investor Protector by letter including the name, surname, identification number (DNI) and address, or the equivalent information in case of being an entity or a juridic person. All the operations and performances done by the Investor Protector will be for free and without any cost for the users.

Once the Investor Protector receive the latter, it will be registered and processed. In case that the claim does not fulfill the conditions to be processes it can be refused : bad faith, manifest of lack of foundation and clear lack of pretension. In cases where the Investor Protector considers that the content of the claims done by the client are matters of another entity or institution, he/she will inform the client in order to change of entity.

In those cases where the complain can begin, the Investor Protection will do the claim and will go to the services, departments or entities in charge with the problem in order to let them know that a problem exists.

Investor Protector may seek for the cooperation of various departments and services of the Stock Market and its members, and coordinate their actions with the Commission develop Market Surveillance.

The performance of the Investor Protector will finish when he/she presents the final report.

5.2. Analysis of the number of interventions of the Investor Protector

After analyzing the main functions and the paper of the Investor Protector in the Spanish Stock Market we should make ourselves two questions. First of all, if all these functions are accomplished and the users are satisfied with its work, and secondly how many claims or complaints the Investor Protector have received in order to see if this figure is totally necessary.

We will begin first analyzing the number of claims received by the Investor Protector during the years 1992-2008 in order to see its necessity for then try to answer the first question.

In Figure 5 we have the information collected and classified by years and by the Spanish magazine "A fondo : Bolsa", regarding the claims of the investors. As we can see, there is a clear tendency to reduce the number of claims as we move forward in time. This means, between the second year after the creation of the figure of the Investor Protector in Spain

³⁵ Resolves claims and complaints made by users of the entities supervised by the Banco de España with the aim of securing their interests and legally recognized rights, as a consequence of alleged non-compliances by the entities against which the claims are made, of the regulations on transparency and protection of customers or of good financial practices and uses.

(1991) and 2001 there was a huge number of claims, but after 2001 this number has decreased a lot. The most surprising here is that in 2000 and 2001 we find the maximum number of claims found during this period, but just the year after, 2002, the number of claims had been reduced to a quarter. Why this difference?

Before commenting the activity of the Investor Protector during the years 2000-2001, we should take into account that in June 2001, Carlos Fernández González had been named Investor Protector in substitution to José Manuel Nuñez-Lagos.

During 2000-2001 exceptional circumstances had happened and had changed the framework of the economy. One of the most remarkable is the IPO (Initial Public Offering) done by Inditex during this period. This IPO was very expected by investors and was welcome by all of them. Maybe this situation is the guilty of the decrease in the number of interventions that have finalized with an agreement. We can see in Figure 5 that in 2001 we find 27 agreements finalized while in 1998 for example, we find 58. We could think that due to this IPO more people were engaged in investment operations and thus there were more claims, and thus also more of them not solved. In this sense, it's important to remark that the claims and reports received by the Investor Protector during this period are not relevant, since we can not base our analysis in a very specific situation. The lack of agreement had been reflected in the high number of final favorable reports to the user, that supposed 50% of the total claims done in front of the 16% in 2000.

If we take a look at the contentious consultations, we find a little decline in 2001 and since this year it decreased to its minimum in 2007. In this sector we take into account the claims that don't become a conflict, meaning that they are simply explanations or clarifications that the investor does not know, so they are solved by an explanation or a better interpretation of the Investor Protector. This is very important in the sense that every year investors know better their rights and obligations and thus they have less consultations.

In relation to the non competent claims, we see that there is also a decrease in 2001, which indicate that every year the investor has more knowledge about the existence and the performance of the Investor Protector. We see that in 2008 this sector only has 7 claims, which is a good new for the Investor Protector, every day more known by the investors.

Finally we can see also an important aspect that we will see more deeply when answering the second question. We see that the number of the pending claims has its maximum also in year 2000, and since this year it has decreased a lot, even with years with no pending claims.

We can find also in newspapers, hemeroteca ABC, news regarding this figure in 1993. This should make us think that this figure was well received by the investors and that was such important that even the newspapers talk about it. By looking in the newspaper ABC of the 15 of November 1993, we find that there is one page dedicated only to the Investor Protector. We see that this publication is done two years after the appointment of José Maria Núñez-Lagos as the Investor Protector of the Madrid Stock-Market. In this article they talk about the

increment of the number of claims received by this figure by comparing to the previous year. Also, they explain the methods and the steps to make a claim and what are the functions of this figure. This is very important, since by doing this article they make know this figure to the rest of investors that may not know that it existed.

Once we know the evolution of the number of claims and complain that the investor protector has received since its creation we are able to answer the first question: are all the functions accomplished and the users are satisfied about its performance? By looking at the tables shown in Annex (Table 3) we can clearly see that the number of favorable agreements have increase and the number of pending agreements has decrease. This could let us think that the figure of the Investor Protector is every day working better.

By looking at Figure 6, we can see the total number of claims solved by the percentage of reports favorables, unfavorables and agreements done by the Investor Protector since 1992-2008. By comparing these figures, we can conclude that the number of favorable reports and the number of agreements done is much higher that the number of unfavorable reports.

This means that every day people is more concerned about how this figure works, as they make less unsuitable complaints and thus there are less unfavorable reports. Also, we can conclude that this figure is working well, since the number of agreements and favorable reports is higher.

6. RESEARCH AGENDA

We have studied and analyzed different aspects regarding the Investor Protection internationally and more focused in Spain. When searching for information we have seen that there are still topic that have not been yet studied. One of this topics is why there still differences among the four stock markets that exist in Spain. This is a very good example of what we were saying at the beginning of the paper. Even if we have some homogenous regulations in Spain that regulate all the stock markets, we still have an heterogeneous framework between the four stock markets. Aa we have more or less analyzed by looking at the regulations of each of the four stock markets, the differences are very small, but still exists.

Another important topic that is very related with the protection of minority investors is Insider Trading as we will see. Directly it seem that this would not affect investors, one we are in front of a crisis or a process of bankruptcy of some financial institution we see how those who have privileged information are better off. And, as Randall K. Morck and Mauro F. Guillén stated in their papers, when an investor is damaged it damages all the market.

Guarantee Funds in Spain are also another little-known topic. When searching in documents related with investor protection, the information found regarding the functions and how investor could addresses itself to this institution is very poor. This institution are as important as the regulations and the other official entities when investors have a problem. We could

even say that they are more important, since they will be the ones that in case of any issue will provide a compensation for the damages (in case no juridical process is opened).

And finally, investor associations are nowadays growing more and more, in part thanks to internet since we can see many blogs and webpages where minority investors share their problems. However, these institutions are not official, there is not an official body in charge of regulating these institutions. They could be a good point of information for investors, and also a good support for those minority investors that have troubles.

6.1. Why there are still differences among the four different stock markets in Spain?³⁶

We can affirm that the Madrid Stock Exchange is the Spanish securities market where, by far, more securities and stocks are traded and, where there is a greater volume of business than in the rest of stock markets of Spain. But, we should take in mind that the Madrid Stock Market is not the only institution of Spain, we have also the Barcelona, Bilbao and Valencia Stock Markets with their own personality. Basically different path-dependent previous institutional developments, we will shortly indicate a few of them below.

6.1.1. The Madrid Stock Market

During all its life, the high trading volume, the high degree of liquidity and admission to trading for the most important companies in the country have led to the Madrid Stock Exchange to be the most important stock market in Spain.

Since its first trading session on 20 October 1831, the Madrid Stock Exchange has been characterized by its intense effort to lead all the reforms that have taken place in the Spanish financial context in recent years. We can say that today, when we are talking about the Spanish Stock Market, is to talk practically about only the Madrid Stock Exchange.

Investors go to this stock exchange attracted by the constant revaluation of the securities. The Madrid Stock Exchange is open to large investment companies, but also to small savers (minority investors) who put their trust in the high liquidity of it.

The minority investors often rely on markets that offer advantages such as achieving the minimum risk, get a high volume of daily trading, the quality of the emission and a high professional capacity of its intermediaries.

The Madrid Stock Exchange has currently one of the most advanced trading systems and information dissemination: the SIBE (Spanish Stock Exchange Interconnection System) electronic network. This system reduces or even eliminates the distance between the investor, broker and the stock market itself.

³⁶ Banco Inversis, *¿Cómo invertir en Bolsa? Recovered from: <https://www.inversis.com/ets/guiabolsa/4.htm>* (Access date: 17/03/2016)

6.1.2.The Barcelona Stock Market

The activity of this market has its origins in the “Antigua Lonja de Mar”, where the contracts were initiated in the late fourteenth century. The beginning of its official career as contemporary values market begin on 10 July 1915.

From the moment of its creation it has been characterized by its intense effort in boosting small and medium Catalan enterprises.

This commitment to the SMEs has reached its greatest achievement with the creation of the ARC Service (Advice for Restructuring of Capital). This organization aims to approach the stock market exchange of the SMEs in order to improve its financial structure by raising funds in the stock market.

In the recent years, the recruitment in the Catalan market has benefited from the new electronic system, launched in May 1994.

The creation of the BCN Global 100 index, in January 1997, had been an improvement in trading. This benchmark is composed of 100 securities totaling the IBEX-35 index, the Mid-50 Catalan (which groups the 50 main values of Barcelona), and the following 15 titles with more weight in the Catalan market.

6.1.3.The Bilbao Stock Market

Throughout its 110 years, the Bilbao Stock Exchange has been characterized as a market with a clear entrepreneurial spirit by their drivers, businessmen and traders who, over time, have helped to make the Bilbao market the second Spanish stock market by trading volume.

Since its birth, the Bilbao Stock Exchange has grown parallel to the evolution of the industrial activity in the Basque country, becoming a source of funding for major projects such as the construction of shipyard, shipping or mining companies.

6.1.4.The Valencia Stock Market

Shortly before the discovery of the New World³⁷, in 1482, a large commercial activity was developed on the Mediterranean. In those dates, the “Lonja de Valencia” was created. Centuries later, in 1980, numerous attempts to formalize the Valencia market eventually materialize in the creation of the Valencia Stock Exchange.

Today, the main activities of this market are centered in the tradition, in the agricultural market. Companies are related to the sale of vegetables, fruits and other food products which have more room in the younger of the markets in the Spanish territory.

³⁷ The New World is one of the names used for the Western Hemisphere, specifically the Americas (including nearby islands such as those of the Caribbean and Bermuda).

After taking a brief view to the history and the main activities that each stock market has in Spain, we can say that the differences that exist among them are due to the fact that they have different histories and they have been created according to different necessities. So, the answer may be that each stock market has been created due to the necessities of each territory: in Catalonia in order to help the SMEs, in Valencia for agricultural companies, in Bilbao for construction companies and Madrid has the biggest enterprises of Spain (it is the oldest market).

6.2. Insider Trading³⁸

At the beginning of this paper we have mentioned the huge crisis that suffered the U.S when one of its most important banks went into bankruptcy, we are talking about the Lehman Brothers case. In Spain we have a similar case that was done by Bankia due to an IPO not well studied. But, not all the people in this two cases were damaged, we can find some people that get profits behind. This is why the financial institutions are very concerned with the "insider trading". This practice led the minority damage while the big ones get profits.

When we talk about insider trading we are talking about the method of trading used by individuals with access to nonpublic information of the company, which consists in trading stocks or other securities of public companies (shares, bonds, stock options). We can clearly see that this is not fair to the other investor who do not have this privileged information, and this could lead to huge problems in case this information is really devastating.

In Spain, the article 82 of the "Ley del Mercado de Valores" (LMV), obliges to the issuers to tell to both the market and the Comisión Nacional del Mercado de Valores (CNMV), any kind of information that could be relevant, with the objective that all the investors have access, at the same time, to identical information that may affect their decisions.

When does this situation become a problem for the investors? A certain type of information becomes privileged when its divulgation would have changed the decisions of the investors, and therefore the values of the market. For example; a financial director of a company is preparing an IPO. It is totally forbidden for him to anticipate to this action and buying by himself shares of the company. This could be maybe the case of Bankia. It is possible that some of its directors and employees knew that the company will do an IPO, and they assure their positions by buying shares. It is obvious that they had not been harmed, but the rest of investors yes. In this case, the financial director has negotiated with advantage by using its privileged information in order to obtain a positive result for him, an assured benefit with the IPO.

The sanctions due to insider trading are very huge. The sanction to the infractor can be up to 300.000€ or five times the obtained benefit. The worst sanction is the one in which the

³⁸ Information analyzed and studied from the following article : Zunzunegui, F. (2006) "¿Qué es el insider trading?", *Revista de Derecho del Mercado Financiero*, published in *Expansion*, Madrid, Edited by Zunzunegui.

revenues obtained by doing this operation are higher than 600.000€, and it will be sanctioned with jail (up to 6 years).

For this case, the sanction is only for the people who are very conscious they have privileged information. This is the reason because there is no insider trading when an investor decides to make an operation taking into account rumors or information heard for causality or unknown people.

Insider trading is one of the problems the society is facing nowadays. Maybe there are every day cases in which people get better off by using privileged information, but as there is any problem nor any crisis, they are not investigated. In order to solve this problem we should not only be concerned about the sanctions. It is true that if people know how higher is the section they will probably think twice if it is worth it do practice insider trading or not, but maybe we could introduce new policies. By increasing awareness in people who have the power of privileged information, telling them the importance of making good practices we could solve many cases. As we have seen, when an isolated investor is damaged the rest of the world do not see it. When when the number of investors damaged is too large, the whole economy is affected.

6.3. Guarantee Funds in Spain^{39 40}

Another instrument that could be used by investors in order to protect themselves of possible processes of bankruptcy or insolvency are the Guarantee Funds. The Comisión Nacional del Mercado de Valores (CNMV) provides information regarding the guarantee funds in case of insolvency in one of its publications. In this publication is stated that in case of insolvency from the company which is providing investing services to the client, and in which the client had rely on, the client could request for a compensation.

It's very important that the financial institution inform to its clients that it exists a guarantee fund or compensation fund in case any problem happen. But, this sounds familiar, isn't it? The Markets in Financial Instruments Directive (MiFID) oblige to entities to inform of any possible service they could offer to its clients. So, it is obvious that entities should inform its clients that this entities exists. Furthermore, there is a point in the MiFID which talks very briefly about its existence and oblige firms to have one of them. But, this is not done in all cases.

If we are an investor and we have lost our money due to an insolvency or bankruptcy process what we really want to know is: first, what is a guarantee fund? And secondly and the most important, until where I am covered? What is the maximum compensation? But

³⁹ Salvador, V (2013) *Fondo de garantía de depósitos de todos los países* recovered from : <http://www.rankia.com/blog/mejores-depositos/1818675-fondo-garantia-depositos-todos-paises> (Access date: 03/04/2016)

⁴⁰ CNMV, (2016) *Preguntas y respuestas sobre los efectos prácticos de la nueva protección al inversor (MiFID) para los inversores minoristas.*

maybe once the worst has happened this question are totally useless, since guarantee funds should be hired since the very beginning.

Answering the first question, in Spain, the Guarantee Fund (FOGAIN) is financed by banks, savings banks, credit cooperatives and the Bank of Spain, in order to cover the losses of the clients of financial entities in case of insolvency.

Created in November 1997, FOGAIN has the objective of protecting the investors (and more important, the savers), and also with the objective to become a discipline instrument for the credit institution, so in case of insolvency they will know what they have to do. It was created following the recommendations and the experiences of some of the EU countries and also the US (where these funds already existed).

Until the year 2011, in Spain we had three types of different guarantee funds: one for the banks, another of the saving banks and another to the credit cooperatives. With the approval of the “Real Decreto Ley 16/2011”, of 14 October, all these entities had been unified thanks to the creation of the FGDEC (Fondo de Garantía de Depósitos de Entidades de Crédito, abbreviated FDG) as mentioned in Section 1.

Now, let's analyze the coverage of this fund, and see if there is any difference between Spain and other countries.

This fund (FDG, Fondo de Garantía de Depósitos) grants to the clients of a Spanish financial institution or an investing entity the recovery of the credit or the financial instruments they had given to the entity, with a maximum of 100.000 per entity and investor.

Inside the EU, it is required to all the country members to have a system of guarantee fund. For all the countries that use the Euro (€), the guarantee limit is 100.000€. With respect to the countries that are inside the EU but use their own currency:

- Iceland: They use the crown of Iceland, the guarantee fund insured up to the amount of 100.000€
- Denmark: They use the Danish Krone, but its deposit guarantee is up to 100.00€.
- Norway: The guarantee fund is provided by the Guarantee Fund Norwegian banks, it covers up to 2 million NOK:
- Belarus: Deposits are 100% guaranteed in the currency of the account of the client.

In US the guarantee funds (created before the Spanish FGD) can assure to the investors up to 250.000\$. In Canada, where the Canada Deposit Insurance Corporation (CDIC) was created in order to protect the deposits of the investor, they cover C \$ 100.000 and only in case the savings are in Canadian currency.

Since 2005, the cover in Japan has increased to ¥ 10 million and nowadays in Hong Kong they cover until HK \$ 500.000.

So, we can extract from this information that the member countries of the EU had reached a situation in which all the guarantee funds cover the same maximum amount in case of insolvency or bankruptcy. This reinforces the harmonization of the EU and the concerns all of the countries have with the protection of the investors. In the US the amount covered is higher than in the EU, this could be maybe because the creation of guarantee funds in the US is older than in EU, and also because the huge bankruptcy cases that they had suffered.

When viewing other countries that have not as much reputation in terms of financial investing, as the US and the EU, like Hong Kong and Japan, we can see that they have recently begun with this system of protection. This could lead us to think that these countries know that they are growing, and that people are more interested in investing money in shares, projects or investment funds. Also, they are trying to copy the most important financial countries in order to become also a huge country.

The first country that implemented a regulation regarding the insider trading is the US in the year 1934, with the SEC (Securities and Exchange Commission), as we have been analyzing in the first chapter. It is followed by Canada and South Korea, 1966 and 1962 respectively. The last country to implement it was Germany in 1994, which has no regulations until 1970 and since 1970 to 1994 there was only voluntary reporting guidelines. In Australia for example, the insider trading was not prohibited since 1970. So, we can find three different situations.

The first one, is the one of the more developed countries (in these years and nowadays), like the US and Canada, which were the first to put a regulation regarding the insider trading and some penalties and sections to those who practice that. This is because they were huge and developed countries in this period and they began to afford these problems earlier than the other countries. The second situation we find is the case of Germany. They did not have any official regulation regarding the subject since 1994. This could let us think that in this country they were not much concerned about this problem (maybe because they did not find too many cases of this practice). And the third case is about Australia, a country that has no regulation regarding the insider trading and that in 1970 decides to establish one. The reason to that may be that the rest of the world countries during this period were adopting this measure, and in order to arrive to the level of countries such as France, they made a regulation.

As said before, maybe we can find some insider trading in the worst cases of bankruptcy or insolvency and this is what had happened in the case of Lehman Brothers. If we search on Internet information about the case of Lehman Brothers we can also think several articles from the New York Times and the New York Daily News from 2008, regarding this topic. In this articles there are brokers that have been sanctioned due to insider trading.

6.4. Investor Associations in Spain⁴¹

Minority investors are placed before the majority investors, they have a situation of inferiority. Even though Mauro F. Guillén states in his recent paper that “the State should protect minority shareholders’ rights as a way to help companies raise capital”, most of the times this is not true, and entities are blinded by the money big investors have. This, as we have said during all the paper lead them to a prejudicial situation in which they are the most disadvantaged.

One possible solution in order to reduce this disadvantage could be the creation of associations for the stock market investor and the public investors in general. These associations would not be only used in case of troubles, the investors could use them in order to take information when doing a financial operation, or as a shield in case of conflicts. Taking into account that there are many types of investors, as we have explained in the Section of Markets in Financial Instruments Directive (MiFID), we could differentiate different types of investor associations.

In one hand, shareholder investor associations, which could lead them to a more fluid relationship with the society in which they take part of, and thus, they could create an association for each company that is in the stock market. On the other hand, general investor associations, in which all the investors could take part.

One of the main functions of this type of associations is the one related with the fluid communication between the investors or shareholders and the directives of the society. By doing this, the investor will really know the financial situation of the entity, its expectations and the strategies followed and thus he/she will take the best operation in a clear way.

Another important function of this associations is the judicial representation of its shareholder and investors in case of conflicts. Once the associations are created, they could bring a huge degree of reliability in case he has to act in a judiciary way.

We can say that the shareholder associations could be the path to follow in order to create a fluid communication with the financial entity, and a solid backrest for the investors in case they had follow a juridical process. But, can this associations be integrated in some of the juridical figures that already exist?

In first place, it is legally recognized the possibility that investors make a group when exercising some of its rights⁴². However, as there is not any relationship among the shareholders that take part in the association (especially when it is a general association), this associations could not become an official figure. This is because, the most important for

⁴¹ Zunzunegui, F (2005) *Hacia el reconocimiento oficial de las asociaciones de accionistas minoritarios*, Madrid, ACCIONIS ,Federación Europea de Asociaciones de Accionistas Minoritarios de Bolsa

⁴² This type of rights are called Minority Rights and are the normal individual rights applied to members of a group that share common characteristics. Also, the collective rights accorded to minority groups. Minority rights may also apply simply to individual rights of anyone who is not part of a majority decision.

this associations is arrive to the minimum number of shareholders in order to exercise some of its rights, but this would not let them exercise any other function.

We are talking since the beginning of this paper about the necessity of increasing the investor protection. The economic reality that we are living right now (there are many minority investors) and the juridic reality (there is a gap in the investor protection), claim for a change in order to protect the interest of this investors. Since there are many types of investors, it's important to take into account the necessity of make a juridical framework different for each type of investors, personalized, not general.

The degree of exigency for these associations has to be known by the investors, in order to provide them a greater grade of reliability, and thus investors will go to them searching for information or help. We have also to keep in mind, that these associations have to be controlled, since with its operations could damage the market, but nowadays the figure in charge of control this associations does not exist.

Let's look more deeply in the functions of the investor associations in order to see if there exists any similarity with the processes the Markets in Financial Instruments Directive (MiFID) has established when an investor want to operate in the market.

Informative function: they are in charge of providing information to the shareholders and to the investors. They have to facilitate the access to the information to the shareholders of a entity or to the investors in general. This is the reason for why the association has to provide information whenever an investor demands it. This function should be complemented also with informative campaigns and with the publication of newsletters. Only in case of a huge disaster (a global crisis), the association will be demanded to a general informative session for all the investors and shareholders.

But, this function will be different in case of a shareholder association or an investor association. The first one, is centered basically in information regarding the entity and its position inside the market. The second one, has to inform about the behavior of all the entities that are in the market (financial operations, solvency, etc...) and about the evolution of the market.

Defense function: there is any problem for the associations to act in representation of its members in a juridical process. Without doubt one of the problems that has to be solved is the protection of the shareholders and the investors in case of juridical actions. Nowadays this is one of the main motives of the helplessness of the investors, who had to pay the costs of the judgements and also carry with the long duration of them and thus, they do not claim for the damages.

We can see, that the informative function is the same as for the Markets in Financial Instruments Directive (MiFID), the only difference is that with investor associations, investors are protected by the association in case of any issue, so they feel more secure; while with the MiFID, there is no any legal process entities need to fulfill in case of trouble, each entire

should have the Claim department, but the costs of the judicial action (in case it happens) will be charged to the client.

So, investors associations had helped to grow up the grade of confidence investors have in the moment of investing. They feel more secure, since there is a entity that will support them.

7. FINAL CONCLUSIONS

This paper has briefly described how minority investors are protected in different countries and if there exists any similarity among them and why their protection is so important. After analyzing some of the papers of Randall K. Morck and Mauro F. Guillén we have been able to understand its importance. When investors are performing well, the economy of that country is also performing well due to the injection of capital to firms. By analyzing the main countries worldwide, such as the US, France, Italy and Canada among others, we have centered our study in Spain.

Bankia and Lehman Brothers are two of the most important cases that had proven that the methods, the organization, the entities and the figures that are in charge of protecting minority investors have still many shortcomings in some of its functions. By looking at these cases, we could see that there is a huge number of minority investors who were not well informed and mentored when these two crisis happened. But it is also important to keep in mind that there was not any financial institution who stopped the processes intimated by both entities when they saw it was not correct to did it.

We have analyzed the insider trading, and there are lots of cases where minority investors suffer damages and loses due to this practice. The case of Bankia in Spain is still nowadays being studied since there is no explanation of why the authorities had allowed the company to made an IPO. Insider trading had favored those who were “lucky” to obtain relevant and very important information before the collapse of the shares of Bankia, and those who were not so “lucky” are still claiming its money to the entity.

This is a proof that today we still don't have any official body in charge of studying those cases minutely, nor the Comisión Nacional del Mercado de Valores (CNMV) or the Bank of Spain were alerted about the IPO announced. Besides, the financial entities in charge of inform the investors about this IPO were not following to the very detail the steps put by the Markets in Financial Instruments Directive (MiFID), and thus a huge number of minority investors were really bad damaged since they put a lot of money into this IPO.

Lehman Brothers was more affected by insider trading. There are many news regarding this topic in which important charges took advantage of confidential information in order to get profits. So, its obvious that it is something that is being done wrong. Maybe the financial institutions are not doing well its functions, maybe there is lack of awareness of the important charges of these two banks, or maybe there is a lack of a institution only regarding this topic.

We have analyzed also the main differences and similarities regarding the investor protector and the financial institutions in charge of protecting them in different countries. We can conclude that there are many differences in how the processes are done, the steps to follow and the regulations that rule them, and this leads to different grades of investor protections in different countries (as La Porta has analyzed on the 1990s). The main conclusion we can extract from this is that, even if there are differences that are mainly due to the different cultures and traditions, politics and the financial situation that prevails in every country, all the countries analyzed had similar official bodies in charge of similar functions, even if the named them differently. So, we can say that we are in a global process of encouraging investor protection, but separately done by every country. But we should take into account, as Mauro F. Guillén states in its paper that “When all countries adopt similar institutional structures, they are affected by problems in the same way, making it harder for each of them to find a way out of the problem”(Guillén 2016). So, maybe this little differences (or huge in some cases) are necessary in order to continue improving and to solve problems, otherwise we will be probably stagnated.

More focused in Spain, we have studied the Markets in Financial Instruments Directive (MiFID), how it works and the functions it has. We can say that this regulation which tries to prevent minority investors from doing operations beyond their capabilities. The MiFID obliges all financial institutions to follow successive steps in order to inform, help and orientate the investor when doing an operation. However, we can say that there is still something wrong done, since we see every day people losing more money they have, or cases such Bankia.

The figure of investors protector in Spain had been (and still be) a body in which investors could claim in case of any trouble. Since its beginnings in 1991 and Manuel Pizarro as the investor protector, the functions and performances of that figure had not been changed. This is a proof that the figure is still performing well in a world of new technologies and changing policies. We have analyzed how the number of claims has evolved during the years, and we can conclude that over the years, the investor is more concerned about the operations he/she wants to do, so there is a fall in the cases performed by the investor protector. Also, we have seen that the number of consultations grew over the years, and thanks to this consultation the number of cases diminished.

We can conclude that there are not many differences in the functions and regulations followed by the figure of the Investor Protector in the different Stock Markets in Spain (Barcelona, Madrid, Bilbao, Valencia). But, we do not have a unique figure in charge of all the claims in Spain. We have arrived to the conclusion that it is because it would be very difficult for only one person to manage the claims of the users of four different stock markets. It is true that there are no huge differences among the functions of this figure, but there are differences between the stock markets. So, a figure in every stock market can be more precise and efficient in case of some claim. Imagine the difficulty for one person to know all the regulations and processes of each stock market and then apply them to every single claim case. This will be slow and inefficient.

Another point analyzed in this paper, are the guarantee funds. These funds are very related with the issue of investor protections, since they are the ones that could return the money lost by the investors in some operations, in case the entities had gone to bankruptcy or insolvency processes. We have seen that the implementation of this kind of funds is very different in every country and we can conclude that the degree of development of each country, which is very linked to the degree of economic development, had led to some countries to start these kind of funds earlier than others. Very related to the guarantee funds, the investor associations are kind of entities created in order to help and inform investors in case of any trouble. We can conclude that these two entities had incremented the grade of reliability investors have when operating, since they know that there is someone supporting them behind in case of any issue.

By taking a look at our own experience when doing this research, we can conclude that all these financial bodies in charge of protecting the investor and give them all the necessary information in case they demand it, do not work very well. After trying to communicate with them in order to request for information, only two of the financial institutions answered our emails.

Finally, we can ask ourselves if all these financial institutions are truly indispensable or if we can return to the times of the Glass Steagall Act and organize our society differently. Maybe, by applying the Glass Steagall Act, we could have avoided the Bankia case, since the minority investors had not put their savings into the IPO. The figure of the investor protector will be maybe reduced to only one person, since there will be less claims. All the financial institutions will be regulated by only one single rule and thus, no confusions nor misspecification will be made.

8. ACKNOWLEDGEMENT

First, I would like to express my sincere gratitude to Professor Paloma Fernández for allowing me to conduct this research under her auspices. I am especially grateful for her confidence and the freedom she gave to do this work.

As a TFG supervisor, Paloma Fernández supported me in all stages of this work. She is the initiator of this project and she always gave me consent encouragement and advice, despite her busy agenda. Without a coherent and at the beginning illuminating instruction, when deciding the topic of the work, this TFG would not have reached its present form.

I would like to acknowledge also the advice received from the professor Luis Castañeda, who offered me valuable suggestions for this study. At the beginning of the project he gave his thoughts about the topic and other possible topics of study, besides information and useful bibliography.

I wish to express my gratitude to the members of the library department of the Grupo BME for answering my emails and providing me very useful information and bibliography in order

to conduct this project. Also to Carlos Ochoa, who gave me advice and very valuable information regarding the Valencia Stock Market.

Last, but not least, without the support of all members of my family, I would have probably did not finished this project. All the courage they gave me have helped me to overcome the difficulties during this work.

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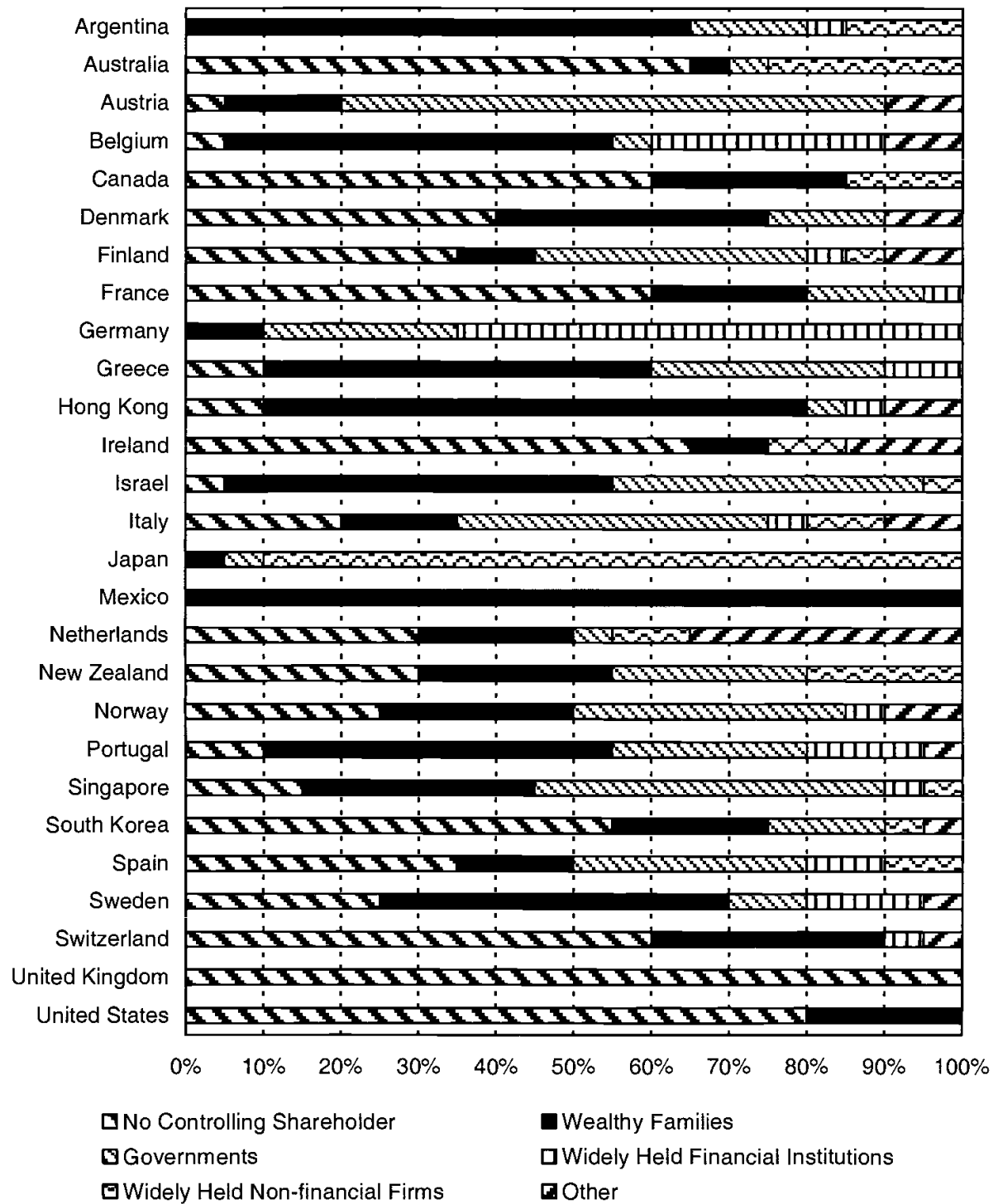
Zunzunegui, F. (2006). "Hacia un estatuto del inversor". *Revista de Derecho del Mercado Financiero*, working paper 1/2006, recovered from: <http://www.rdmf.es/2015/02/17/bankia-un-fraude-del-sistema-en-dos-etapas/> (Access date: 21/04/2016)

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10. ANNEX

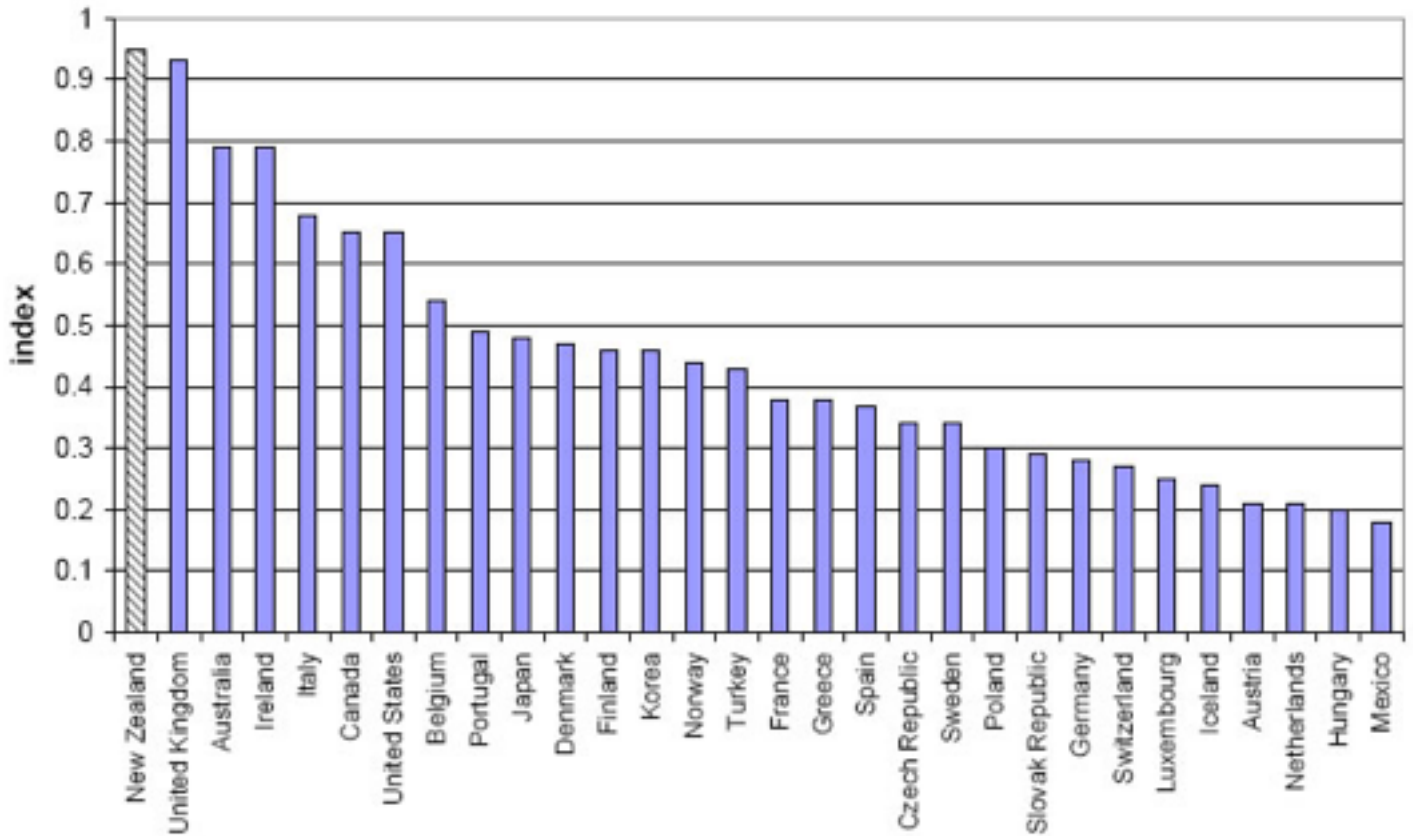
10.1 Figures

Figure 1. Who controls de world's great corporations? The Global History of Corporate Governance. An introduction. K. Morck



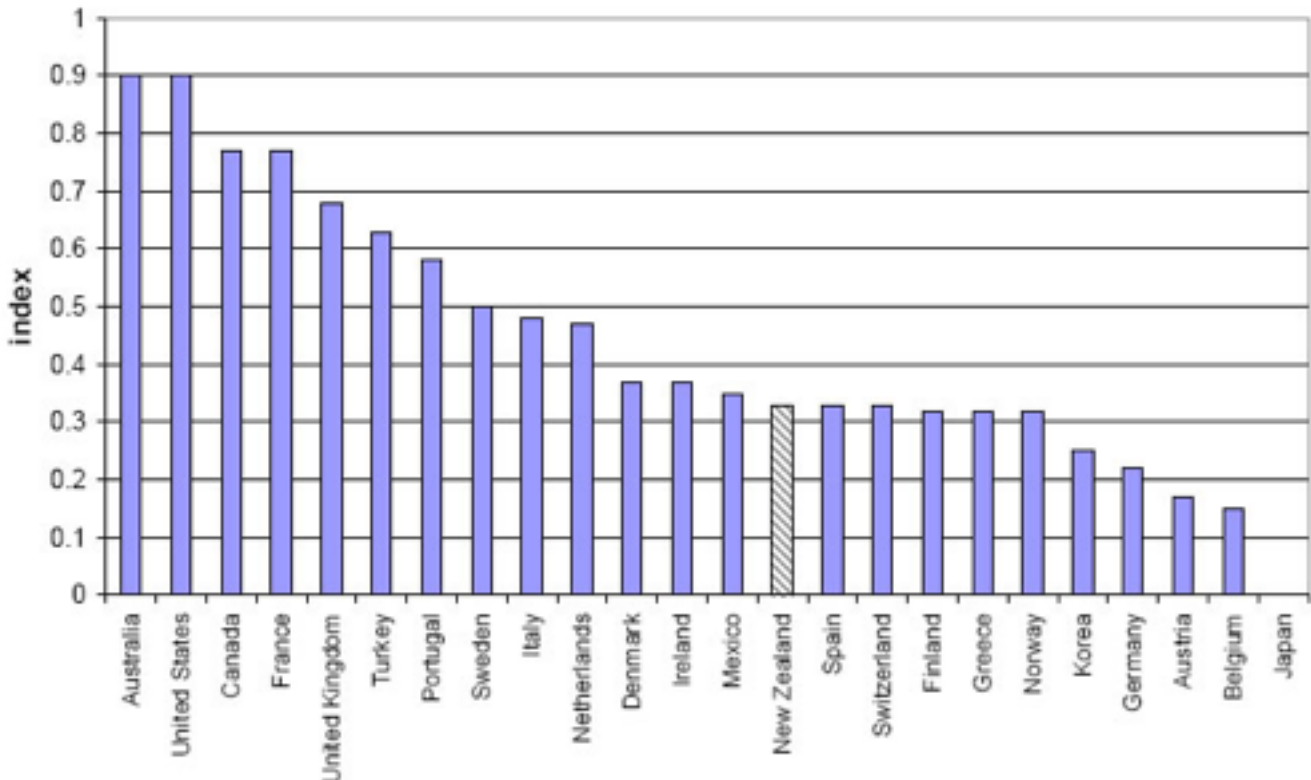
Source: Morck R. & Steier LI. (2005) "The Global History of Corporate Governance An Introduction" in Morck ed.: *A History of Corporate Governance around the World: Family Business Groups to Professional Managers*, National Bureau of Economic Research, Inc. University of Chicago Press: pp.1-59.

Figure 2: La Porta's private protection index: OECD Countries (2003)



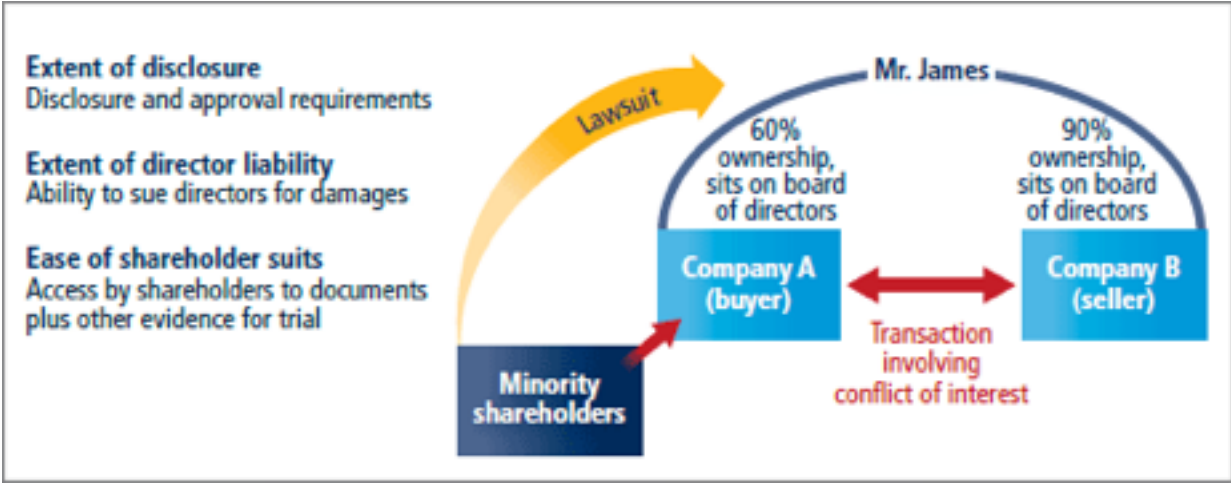
Source: Cameron, L (2007) *Investor Protection and the New Zealand Stock Market*. New Zealand Treasury, New Zealand, Policy Perspectives Paper 07/02

Figure 3: La Porta's public protection index: OECD Countries (2000)



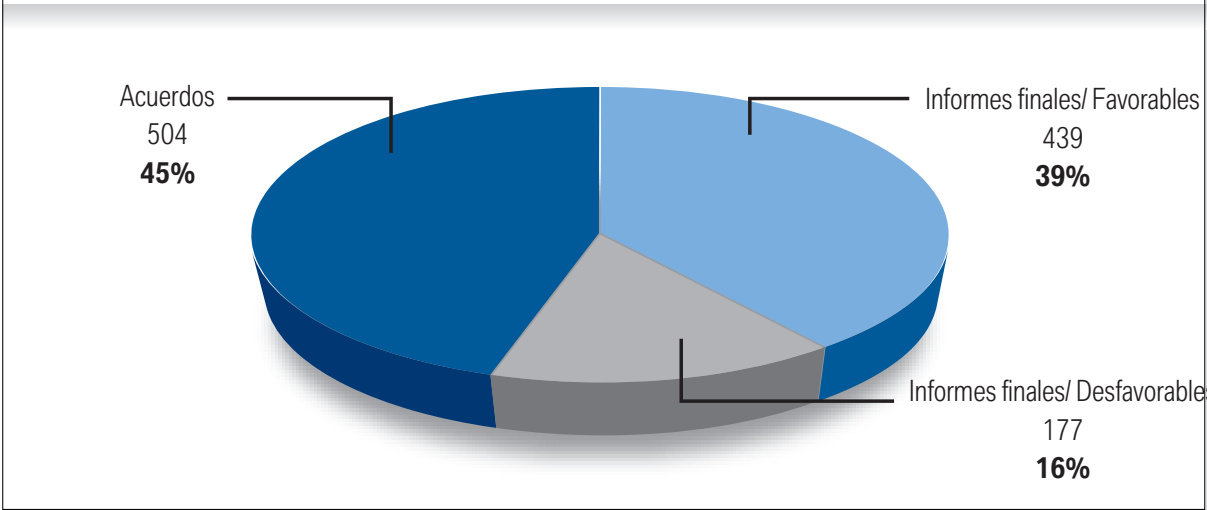
Source: Cameron, L (2007) *Investor Protection and the New Zealand Stock Market*. New Zealand Treasury, New Zealand, Policy Perspectives Paper 07/02

Figure 4: World Bank Group, Doing business Protecting Minority Investors, How well



Source: World Bank Group. (2014). Doing Business. *Protecting Minority Investors*. Recovered from <http://www.doingbusiness.org/data/exploretopics/protecting-minority-investors> (Access date: 18/04/2016)

Figure 5: Interventions of the Madrid Investor Protector during 1992-2008, claims solved



Source: Fernández, C. (2009). “El Protector del Inversor de la Bolsa: Origen, principios inspiradores, funciones y procedimiento de una institución a la que José Manuel Núñez-Lagos dotó de una estructura de funcionamiento pionera.” *Revista Bolsa: A Fondo Tercer Trimestre 2009*, 36-39

10.2 Tables

Table 1 - What do the protecting minority investors indicators measure?

Extent of disclosure index (0–10)	Extent of shareholder rights index (0–10)
Review and approval requirements for related-party transactions	Shareholders' rights and role in major corporate decisions
Internal, immediate and periodic disclosure requirements for related-party transactions	
Extent of director liability index (0–10)	Extent of ownership and control index (0–10)
Minority shareholders' ability to sue and hold interested directors liable for prejudicial related-party transactions	Governance safeguards protecting shareholders from undue board control and entrenchment
Available legal remedies (damages, disgorgement of profits, fines, imprisonment, rescission of transactions)	
Ease of shareholder suits index (0–10)	Extent of corporate transparency index (0–10)
Access to internal corporate documents	Corporate transparency on ownership stakes, compensation, audits and financial prospects
Evidence obtainable during trial	
Allocation of legal expenses	
Extent of conflict of interest regulation index (0–10)	Extent of shareholder governance index (0–10)
Simple average of the extent of disclosure, extent of director liability and ease of shareholder suits indices	Simple average of the extent of shareholder rights, extent of ownership and control and extent of corporate transparency indices
Strength of minority investor protection index (0–10)	
Simple average of the extent of conflict of interest regulation and extent of shareholder governance indices	

Source: World Bank Group. (2014). Doing Business. *Protecting Minority Investors*. Recovered from <http://www.doingbusiness.org/data/exploretopics/protecting-minority-investors> (Access date: 18/04/2016)

Table 2 : Main differences between MiFID I and MiFID II

MiFID I		MiFID II				
EQUITIES	OTHER PRODUCTS	EQUITY-LIKE PRODUCTS	FIXED INCOME	COMMODITIES / ENERGY	STRUCTURED PRODUCTS	DERIVATIVES
Best Execution		Greater formalization expected/applied for quote-driven and OTC markets				
Reporting to clients		Greater formalization expected for all investors (not just retail-classified)				
		Complex product focus				
Treatment of inducements		Extends to other asset classes (revision of independent advice)				
Requirements on marketing and sales material		Extends consistently to cover other asset classes (complex products)				
Suitability and appropriateness tests		Extends consistently to other asset classes				

Source: Own elaboration

Table 3: Interventions of the Madrid Investor Protector during 1992-2008, claims.

	INFORMES FINALES/ FAVORABLES	INFORMES FINALES/ DESFAVORABLES	ACUERDOS	CONSULTAS CONTENCIOSAS	NO COMPETENTES	DESISTIMIENTOS	PENDIENTES	TOTALES
1992	42	14		40	53	8	5	162
1993	33	30	41	78		3	16	201
1994	10	20	42	75		1		148
1995	10		10	51	10	5	6	92
1996	13	9	7	50	20	3	9	111
1997	20	28	49	68	30	3	24	222
1998	27	14	58	97	37	4	10	247
1999	44	3	98	93	33	7	26	304
2000	55	3	116	68	50	11	38	341
2001	166	45	27	44	43	4	4	333
2002	3	2	8	26	31		3	73
2003	2	2	21	21	26	3	4	79
2004	4		4	19	12	1	2	42
2005	6	2	5	15	26	1		55
2006	1		4	18	10		3	36
2007	3	1	5	7	11	2	2	31
2008		4	9	10	7	1	1	32
TOTAL	439	177	504	780	399	57		2.356

Source: Fernández, C. (2009). "El Protector del Inversor de la Bolsa: Origen, principios inspiradores, funciones y procedimiento de una institución a la que José Manuel Núñez-Lagos dotó de una estructura de funcionamiento pionera." *Revista Bolsa: A Fondo Tercer Trimestre 2009*, 36-39