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12th European Corporate Governance & Company Law Conference

Dublin 2013

Actions for Better Business

May 16th & 17th

2013

An Irish and European perspective on Corporate Governance

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Figure 1: The real challenge in getting Corporate Governance to work in any organisation lies in developing the right culture and behaviours?

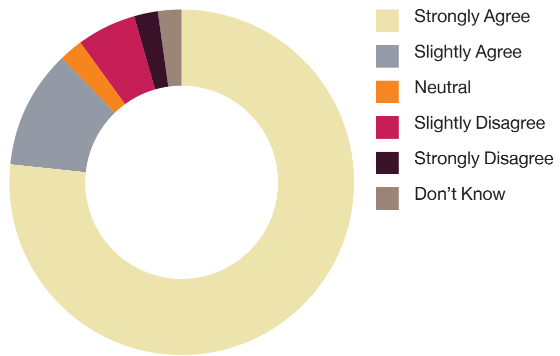


Figure 2: Businesses need to transform Risk Management from often being grudging compliance to actively realising tangible benefits?

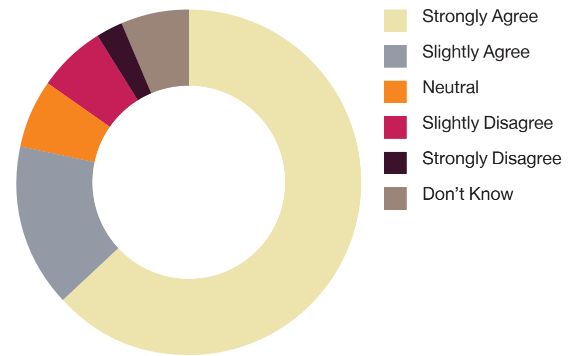
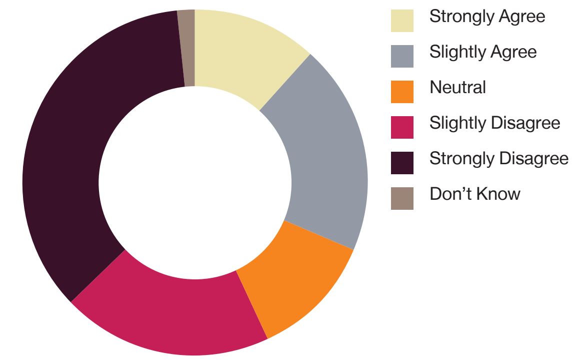


Figure 3: The only way to achieve appropriate diversity on Boards (in terms of gender, race etc) is to introduce mandatory minimum levels?



Results of survey carried out in advance of 2013 European Corporate Governance and Company Law conference

New survey points to importance of developing the right culture and behaviours for good corporate governance.

Nine out of ten survey respondents believe that the real challenge for corporate governance to work in any organisation lies in developing the right culture and behaviours (see figure 1).

Irish and EU delegates at a major EU Corporate Governance conference, facilitated by the Department of Jobs, Enterprise and Innovation as part of the Irish Presidency, were strongest in endorsing this view across a wide range of opinions canvassed in a special survey prior to the event. The event is supported by PwC, Arthur Cox and The Irish Stock Exchange. The survey was carried out by Amárach Consulting on behalf of the conference.

This view is consistent both with the findings of the Walker Report[i] in the UK and with more recent research in the area.

Time to re-think risk management: from grudging compliance to realising tangible business benefits.

The view receiving the next highest endorsement (only 3 percentage points behind) was that businesses need to transform risk management from often being grudging compliance to actively realising tangible business benefits (see figure 2).

Given the severity of the recent economic crisis, and the predictable increased demands from regulators, it is hardly surprising that businesses generally have been preoccupied with the downsides of risk. If economies are to be kick-started into recovery, however, companies will need to resist excessive risk avoidance and instead look for well-controlled expansion both of products and of markets.

Over half disagree with mandatory quotas to promote diversity.

A majority of delegates disagreed with the suggestion that introducing mandatory minimum levels is the only way to achieve appropriate diversity on Boards, in terms of gender, geography, race etc (see figure 3).

This topic has been hotly debated in recent times with strong views expressed both for and against the proposal for a mandatory minimum. Some delegates argued that changes are needed in the appointment process for all directors, insisting that there can be no improvement in diversity on boards where the appointment process lacks transparency. Diversity on Boards is essential, in their opinion, to ensure that appropriate challenge is maintained and that 'groupthink' is avoided. A number of respondents commented on the importance of ensuring that, however achieved, diversity on Boards truly delivers added value.

Corporate Governance viewed positively but opinion divided on how to promote improvement

Delegates strongly endorse the view that corporate governance requirements in the EU, properly implemented, should stimulate competitiveness and growth.

The majority of delegates (63%) also believed that Business Leaders were supportive of moves to strengthen corporate governance. Several respondents called for a far greater focus on realising benefits from good governance (and compliance) – for shareholders and for broader stakeholders.

Opinion was sharply divided on whether corporate governance could be legislated for (with 44% agreeing and 48% disagreeing) whereas a clear majority (77%) believed that EU initiatives on Corporate Governance should aim at a new drive to encourage general adoption of best practices in Corporate Governance in all Member States rather than imposing detailed legislation. In this regard, one respondent suggested that external evaluations be made mandatory to ensure that Boards continuously sought to improve their effectiveness.

Harmonisation of company law and corporate governance across Europe has been difficult to achieve. It was interesting to see that 48% of respondents to the survey believed that good corporate governance cannot be legislated for. This finding evidences a recognition amongst many that changing mindsets is harder than changing laws and that recommendations may be preferable to hard law in facilitating changes in corporate governance. By contrast, in relation to company law harmonisation, perseverance will deliver a significant prize for the EU if the barriers to cross-border operations can be removed, such as through the introduction of a Directive or Council Regulation to permit the transfer of seat between Member States.

Opinion was also divided on the desirability of a single pan-European Code (with 43% agreeing and 40% disagreeing). Respondents' detailed comments revealed a clear dichotomy between the advantages of a single Code, uniformly applied and enforced across the EU, and, more flexible arrangements, tailored to the circumstances and culture of each EU Member, with a proportionate approach for SMEs. One respondent suggested a compromise solution of de minimis rules together with 'comply or explain' principles.

Call for prioritising substance over form and for improved disclosures

A large majority (82%) are of the view that the approach to corporate governance should be changed to prioritise substance over form and that that more meaningful disclosures specific to the company should replace boilerplate corporate governance reporting. One respondent called for disclosures to be more relevant, entity-specific and understandable.

This is consistent with the UK's Financial Reporting Council's views about the 'fungus of boilerplate reporting' and the desirability of more meaningful disclosure.

More transparency and shareholder influence on remuneration

Two-thirds of respondents agree that more transparency is needed concerning remuneration of individual directors. At the same time, a majority (64%) also agree that shareholders need more influence over remuneration policies and disclosures.

A number of respondents called for additional measures in this area including more effective remuneration committees and increased accountability when things go wrong (especially in cases of corruption).

Minimum training for Audit Committees

There was strong support (67%) for the view that the corporate governance role of Audit Committees should not be expanded without providing guidelines on minimum training for members of Audit Committees. Some respondents proposed additional measures to improve the quality of those taking Director positions (especially in relation to integrity).

The expectations of Audit Committees have increased considerably in recent years, especially in relation to oversight of risk. It seems timely, therefore, to consider the need for more detailed guidance on training to address these increased demands.

Note 1: The survey was carried out in April and May 2013. About one third of those attending the Conference (approximately 400) participated in the survey.
[i] Walker, D, A review of Corporate Governance in UK Banks and other Financial Entities, November 2009.