Board effectiveness review
A decade of change in GCC boardrooms
Progress and challenges ahead

Prepared by GOVERN
The Economic and Corporate Governance Center
for GCC Board Directors Institute

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This report has been prepared by GOVERN,
The Economic and Corporate Governance Center.

GOVERN is a niche advisory and research center specialising in economic and corporate governance in emerging markets generally and in the Middle East and North Africa specifically.

Alissa Amico, Managing Director of GOVERN, is the author of this report. Until 2015, Alissa was responsible for overseeing OECD's work on financial markets and corporate governance in the Middle East and North Africa. In this capacity Alissa provided technical expertise to a number of governments in the design of regulatory initiatives and institution building, including in particular to stock exchanges, securities regulators, central banks, ministers of finance and economy, as well as corporate governance centers.

Alissa has authored a number of books including The Role of MENA Stock Exchanges in Corporate Governance (2012), State Owned Enterprises: Engines of Development and Competitiveness? (2013), Corporate Governance Enforcement in the Middle East and North Africa (2014) and the Role of Institutional Investors in MENA Capital Markets (2015).

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GCC Board Directors Institute
Office 2201, South Tower,
Emirates Financial Towers,
DIFC, Dubai,
UAE
PO Box 507007

Tel: +971 4554 7967
Email: getinvolved@gccbdi.org
Website: www.gccbdi.org

About the GCC Board Directors Institute

GCC Board Directors Institute (GCC BDI) is the pre-eminent organisation in the Gulf for boards and directors. It is a registered not-for profit company and was launched in 2007 by a combination of four leading corporations: Saudi Aramco, SABIC, Investcorp and Emirates NBD; four leading advisory firms: Allen & Overy, Heidrick & Struggles, McKinsey & Company and PricewaterhouseCoopers; and with the support of regional regulatory authorities: The Emirates Securities and Commodities Authority, The Capital Market Authorities of both Saudi Arabia and Oman, the Central Bank of Bahrain and the Qatar Financial Centre Regulatory Authority.

The Institute's mission is to make a positive impact on the economies and societies of the region by promoting professional directorship and raising the level of board effectiveness. Its main objectives are:

- To enhance GCC board member capabilities and further their understanding of best practice board governance;
- To create a regional network of board members;
- To disseminate high quality corporate governance knowledge; and
- To put corporate governance higher on the region's agenda.

GCC BDI is a member of the Global Network of Director Institutes.

GCC BDI has now built up an exclusive network of over 880 individual alumni members, probably the most influential group of senior board directors and business leaders in the Gulf. Our members are our greatest ambassadors.

GCC BDI is celebrating its 10th Anniversary this year and has a successful and proven track record of working with the top companies in the GCC. We work with a large and talented pool of top international, regional and local experts, providing a mix of best international practice and actual board experience, combined with specialist knowledge and experience of corporate governance and director's issues in the Gulf. We would like to take this opportunity to thank them all for their collaboration and support over the past 10 years.

We would also like to take this opportunity to thank our Founders, who continue to support and nurture GCC BDI, as well as our Corporate Affiliates, who enable us to achieve our mission and objectives to support GCC Companies.

Over the last 10 years, GCC BDI has developed a unique combination of local experience and understanding, strong Corporate Governance and regulatory knowledge, practical director expertise, and tried and tested programmes, and we look forward to continuing our mission to make a positive impact on the economies and societies of the region.

Foreword by Mohammed Al Shroogi

I am proud to present to you this report which marks the tenth anniversary of the GCC Board Directors Institute's (GCC BDI) important work on advancing board effectiveness in the region. A decade of change in the region where corporate governance as a discipline is still relatively young marks an important milestone of change and of progress, both in the regulations and in the quality of their implementation, especially by companies with public listed equity and by banking organisations.

A decade ago, notions of good corporate governance in the Gulf were nascent. Today, good governance is one of the top priorities of board chairs and executive management as they realise it is critical to the sustainability and investment attractiveness of their companies. As a result, the role of GCC boards has shifted considerably over the past decade from largely collegial bodies aimed at approving company strategy to a key governance organ meant to challenge and inspire strategy, address risk management and deal with succession planning.

Some of this change has been prompted by the evolution of domestic economies, whereas in other respects policymakers and companies have been affected by international corporate governance developments and notably lessons learned from the last financial crisis. The region is now in the process of absorbing and adapting to this change which – as highlighted by this report – is posing new challenges for boards.

Boards need to remain more vigilant in the challenging macro-economic climate in the region and globally. To do so, they need to evaluate their effectiveness and keep an eye on governance tools and mechanisms such as board evaluations which can help them remain agile. Boards in the GCC need to continue promoting diversity, addressing conflicts of interest and working in the interests of all shareholders so as to protect and enhance the value of the region's leading companies.

The competitiveness of the GCC economies is conditional on the long term sustainability of our companies which in turn rests on solid succession planning, separation of family from corporate governance and the introduction of ethics and governance practices. I believe this report provides useful recommendations on how GCC boards can further enhance their effectiveness and we look forward to providing support to companies across the GCC to implement these suggestions.

Mohammed Al Shroogi
Chairman
GCC Board Directors Institute

Introduction by Jane Valls

This is GCC BDI's 5th report on board effectiveness in the GCC. Board effectiveness and corporate governance have come a long way in the past 10 years. Corporate and system failures globally, and an increasingly complex regulatory environment regionally, have sharpened the focus on good governance. From being an honorary role a decade ago, the report shows that director responsibilities are taken more seriously in the region today.

In response to these changes, GCC BDI has stepped up its research efforts into what makes boards effective, how board directors feel about the new environment and their increased responsibilities. Our research, both quantitative and qualitative, conducted through surveys and individual interviews, on corporate governance and board effectiveness in the region, is a useful means of aggregating information from diverse respondents about fairly granular attitudes or activities, such as detailed governance practices, the need for board evaluations, views on board diversity and board composition. The majority of respondents have several years of board experience which makes this research even more relevant.

For the first time this year we asked respondents what board effectiveness meant to them and the majority thought that effective boards govern successful companies. The majority also felt that with the growing regulatory burden imposed on board members in the region, especially for banks and listed companies, board effectiveness has improved over the last 2 years, and that there has been a steady pace of change over the decade. However most respondents also believe that more needs to be done and particularly in terms of the understanding and application of corporate governance as a key driver of board effectiveness and company performance, and not simply a matter of compliance. More needs to be done also to improve the governance of large family businesses and many State Owned Enterprises to bring them to the same standards as those in the private sector.

While there has been much improvement in the last 10 years, there is still more to do and our survey shows that the key area of focus for improvement is still board composition and directors' capabilities. In a rapidly changing business climate, a high-performing board requires agile directors who can grasp concepts quickly. Directors need to be fiercely independent thinkers who consciously avoid "groupthink" and are able to challenge management – while still contributing to a productive and collegial boardroom environment. A strong board includes directors with different backgrounds, and individuals who understand how the company's strategy is impacted by emerging economic and technological trends. Diversity is a key element of good board composition. Diversity includes not only gender, race, and ethnicity, but also diversity of skills, backgrounds, personalities, opinions, and experiences. However, the pace of adding more independent directors and more diversity, and particularly gender diversity, to GCC Boards has been slow. Gender diversity on boards in this region is still stubbornly one of the lowest in the world, although there are some encouraging signs of change.

In addition to better board composition, regulators are increasingly recommending that boards introduce the role of a professional board secretary and conduct annual board evaluations. These are both subjects that need more focus and attention as boards still do not fully understand the benefits of a professional board secretary and a well-executed external board evaluation as key drivers of board performance and effectiveness. Also in line with international standards, regular annual professional director development is another area that regulators are focusing on, in order to ensure better awareness of board roles and responsibilities. And finally, the majority of respondents agreed that the regulatory framework is evolving and getting tougher, but that oversight needs to be strengthened.

We do hope you enjoy reading this report. As we celebrate our 10th Anniversary at GCC BDI, we look forward to continuing to support GCC board directors and GCC companies in their efforts to be better directors and to have more effective Boards, and we are excited about the next decade.

Jane Valls
Executive Director
GCC Board Directors Institute

Summary and Recommendations

This tenth anniversary survey of GCC boards has highlighted significant progress realised in the institutionalisation and effectiveness of boards in the region, fostered primarily by the evolution of the regulatory standards for listed companies and banks and of the Companies Law for privately held companies. The governance standards introduced by banking and securities regulators, notably with respect to board composition and director responsibilities are generally in line with international standards, notably the G20/OECD Principles of Corporate Governance.

While there has been a convergence in the regulatory standards, which in the future may facilitate initiatives aiming to unify regulatory frameworks across the region, the challenges facing directors across the GCC remain diverse. They vary not only by sector and company ownership, but also based on the legal responsibility placed by local regulators on boards. The approach of regulators in terms of rule-making and enforcement has also been an important determinant of the effectiveness of GCC boardrooms.

Based on the results of the survey and interviews conducted by GOVERN on behalf of GCC BDI in preparation of this report, the following recommendations are proposed for both regulators and board members to guide governance reform in the region. As such, while some recommendations are policy-oriented, others are aimed at boards to help guide further governance improvements. Ultimately, these recommendations are thought to advance the state of corporate governance implementation in the region, to facilitate capital raising by companies and to attract investment.

Regulators should maintain dialogue with the private sector

While the body of corporate governance regulations has been developing impressively over the past decade, board members feel that regulators should maintain an active dialogue with boards and senior executives to ensure that governance requirements produced by securities, banking and other regulators are aligned and to seek private sector feedback on specific provisions. While recent revision of corporate legislation in some GCC countries has eliminated some discrepancies, **board members feel that inconsistencies remain, notably in regulations applying to listed companies and banks.**

In particular, directors are concerned that in some countries, **the speed of governance reforms has been excessively rapid for boards to effectively integrate the required changes**, especially in the current context where boards have to also ensure compliance with a number of other regulatory requirements concerning tax, labour and other laws. In this regard, **the transition of corporate governance codes from comply-or-explain to a mandatory approach has its risks** as board members are concerned that not all provisions are relevant and appropriate for companies of all sizes and sectors.

These observations underscore the need for **better public-private dialogue which can be facilitated by regulatory consultations** allowing companies and industry associations to provide feedback. Such consultations may help address specific concerns of board members such as remuneration limits. In addition, survey participants thought that **enhanced dialogue among regulators is necessary to ensure regulatory expectations are aligned**.

Family-owned companies need to be better incentivised and supported

The governance of private, family-owned companies has been much discussed, but remains largely unaddressed except in the recent revision of corporate legislation in the UAE, Saudi Arabia and Kuwait which strengthens provisions bearing on board level governance as well as shareholder rights and transparency. At the same time, **many of these companies in the GCC remain "too big to fail"** and the consequences of their governance deficiencies might have an impact not only on their own sustainability.

Further measures are needed to improve the governance of family companies by creating positive incentives for families to adopt good governance and integrity practices. Considering many large family-owned companies interact with the government as suppliers or contractors, **governments have an opportunity to request that its suppliers have appropriate governance structures in place, including at board level**.

Non-binding recommendations and toolkits to support the implementation of such practices, ensuring their compliance to domestic laws, can be produced by government entities or governance NGOs operating in the region. For instance, board evaluation templates can be provided to boards of family companies through Chambers of Commerce or industry associations. **Case studies of leading family companies** that illustrate how the adoption of good governance practices is implemented by boards and at the operational level would be useful.

SOE governance requires custom governance approaches

While some state-owned enterprises in the region, especially those with publicly listed equity, operate according to world class governance standards, others lag significantly behind the private sector, especially in terms of their transparency. Many state-owned enterprises continue to operate without boards or do not constitute boards for their subsidiaries (Amico, 2017). In order to encourage private sector development in the region, **governments need to ensure that SOE boards are subject to standards similar to those prevalent in the private sector**.

State-owned companies, whether wholly or partially state-owned, should be encouraged to adopt formal governance structures and processes which are explicit about board nomination processes.

Summary and Recommendations continued

Directors on boards of state-owned companies should be appointed subject to a rigorous qualifications standard and it might be useful to limit the number of mandates that a given board member might hold on SOE boards as has been done for listed companies.

As recommended by the OECD, the incidence of public servants and high level decision makers such as Ministers and Secretaries of State serving as directors on boards of state-owned enterprises should be limited. However, to the extent that they are appointed to represent the interests of governments on boards of SOEs, they should be remunerated [1]. Furthermore, directors appointed by the state shall be equally responsible before the law as any other directors and SOEs should not be exempt from the relevant governance standards that apply by virtue of their listing or other activities.

Board diversity in the GCC needs to be proactively fostered

As highlighted by the survey results, **GCC boardrooms remain quite undiversified**. The persistently low representation of female board members in the GCC, as well as lack of diversity from the perspective of age and nationality, is noteworthy. Whilst GCC companies are increasingly operating beyond their borders in order to conquer new markets, the composition of their boards is rarely international with the exception of blue chip listed companies that have realised the benefit of international expertise.

As large GCC companies are increasingly operating across the region, it is advisable for them to recruit talent from other jurisdictions. Indeed, despite the close cultural similarity of GCC countries, the presence of GCC country nationals on boards outside their home country is rather low. This is unfortunate considering the limited pool of directors in individual countries and the potential benefit boards could derive from the expertise of nationals of neighbouring countries as well as international experience.

Seeking to address gender imbalance remains an important corporate and policy objective as female representation on boards in the GCC remains one of the lowest globally. While some progress has been realised due to the efforts of organisations such as the 30% Club and Reach Mentoring, most jurisdictions in the region have decided not to introduce quotas requiring female representation on boards. **Requiring boards to demonstrate that they have considered female candidates for any new board openings can foster a culture of gender inclusiveness** and this approach is currently being experimented with in the UAE. **It is recommended that other regulators in the region adopt similar non-binding approaches, including voluntary quotas and reporting, and requiring companies to disclose measures they have adopted to improve board diversity, including in terms of gender.**

Board and executive appointment, remuneration and succession planning requires attention

Aligning executive and board remuneration with corporate performance has been an important governance topic in the wake of the financial crisis. Although given the controlled structure of GCC companies, compensation arrangements have been less controversial in the region than internationally, **a number of regulators in the region have introduced limits on board member compensation which the private sector feels constraints the recruitment of qualified board members** who are increasingly expected to be held accountable.

Board members feel that limitations on board remuneration are detrimental to attracting qualified talent to the region's boards. Considering that the majority of board representatives on boards are appointed by or are indeed the controlling shareholders, the agency risks are relatively low. On the other hand, significantly **constraining the remuneration of board members can limit the ability of GCC boards to recruit international talent**, especially in light of the growing legal responsibilities placed on board members.

On the other hand, **succession planning for executives and board members requires more careful reflection**. As regulators have introduced additional provisions that link board tenure and independence, at least for listed companies and banks, the relatively long tenure of GCC board members will likely shorten. This will require an **active approach by GCC boards to recruit talent and will require putting in place board evaluation mechanisms to determine gaps and proactively seek board members with the required profile**.

Risk management processes need to be reviewed and reinforced

Risk management involves the establishment of accountability for managing risks, specifying the types and degree of risk that a company is willing to accept in pursuit of its goals, and how it will manage the risks it faces. In light of the multiplication of risks that board members say they face, **it is critical that suitable and scalable risk management processes are introduced**. In high tech and sophisticated industries such as banking, further processes to manage risks may be necessary and **it is recommended to introduce the role of a Chief Risk Officer reporting to the board**.

1 In some GCC countries such as Kuwait, legal provisions prevent civil servants appointed on boards of SOEs from being remunerated.

Board charters and manuals should clearly set out board responsibility in overseeing the risk management system to ensure companies comply with the applicable laws and regulations, including environmental, labour, tax and other sector specific requirements. **The responsibilities of Audit and Risk Management Committees should be made clear** and these committees should feature a sufficient number of non-executive and independent directors in line with international best practices.

For companies with international operations, **charters and manuals should specify how risks will be addressed and reported enterprise-wide, including in subsidiaries**. A number of large SOEs and family conglomerates have established subsidiary boards in order to cascade the responsibility for strategy and risk management. It is important to empower these boards in order to hold them accountable for performance at the subsidiary level.

The ownership structure of GCC companies requires strong conflict of interest provisions and disclosure

The controlled ownership structure of GCC corporates necessitates the introduction of strong conflict of interest provisions which need to be integrated in board charters and other relevant documents governing the board interactions. While conflict of interest situations have been addressed in detail by regulators for listed companies and banks, further attention is required to ensure that board members are not conflicted and that when conflicts of interest emerge, adequate procedures are in place to address them. **The introduction of rules governing related party transactions (RPTs) is crucial in this regard as is the role of the Audit Committee in overseeing RPTs. The introduction of a lead director role is also a potential way forward to reinforce board independence in the GCC.**

For these provisions to be effective, members of the board, key executives and controlling shareholders should have an obligation to inform the board where they have a business, family or other special relationship outside of the company that could affect their judgement with respect to a particular transaction or matter affecting the company. Disclosure of the ownership structure, as well as the profile of the board, including executive and non-executive members, is critical in this regard as it allows shareholders to get insight into the company governance practices.

Improving disclosure of privately-held companies is important as it remains limited to financial information only and often does not include management discussion and analysis. **Large companies and those operating in regulated sectors should be required to produce a corporate governance report** which does not merely indicate board and committee composition but presents, in a meaningful manner, key corporate decisions and the rationale underpinning them.

Conduct of board meetings requires further formalisation and support by a board secretary*

Although board dynamics cannot be regulated and need to stem from a corporate culture conducive to good governance and accountability, **it is important that board interactions are structured around key issues that the board is accountable for, while limiting any intervention of the board in the day-to-day operations**, which should remain the prerogative of the management. As a result of the recent revision of corporate governance codes and corporate laws in the region, the minimal frequency of board meetings is set by the relevant legislation.

While the actual dynamics and conduct of board meetings are difficult to control through regulatory provisions, **the introduction of a dedicated Board Secretary professionalises the interactions among board members** and ensures that the board remains focused on crucial issues. Directors report that in light of the challenging global macro-economic climate and region specific challenges, they are required to spend more time on the exercise of their duties. It is therefore important to channel their time to the most value-adding activities.

A dedicated Board Secretary who is not a member of the executive team (i.e. Head of the Legal Department) **can help professionalise board discussions and other crucial functions such as organising board evaluations**. As highlighted in this report, **board evaluations are increasingly being introduced across GCC companies and need to be harnessed as a method to identify weaknesses in board performance and actively address them**, not only by provision of training to board members.

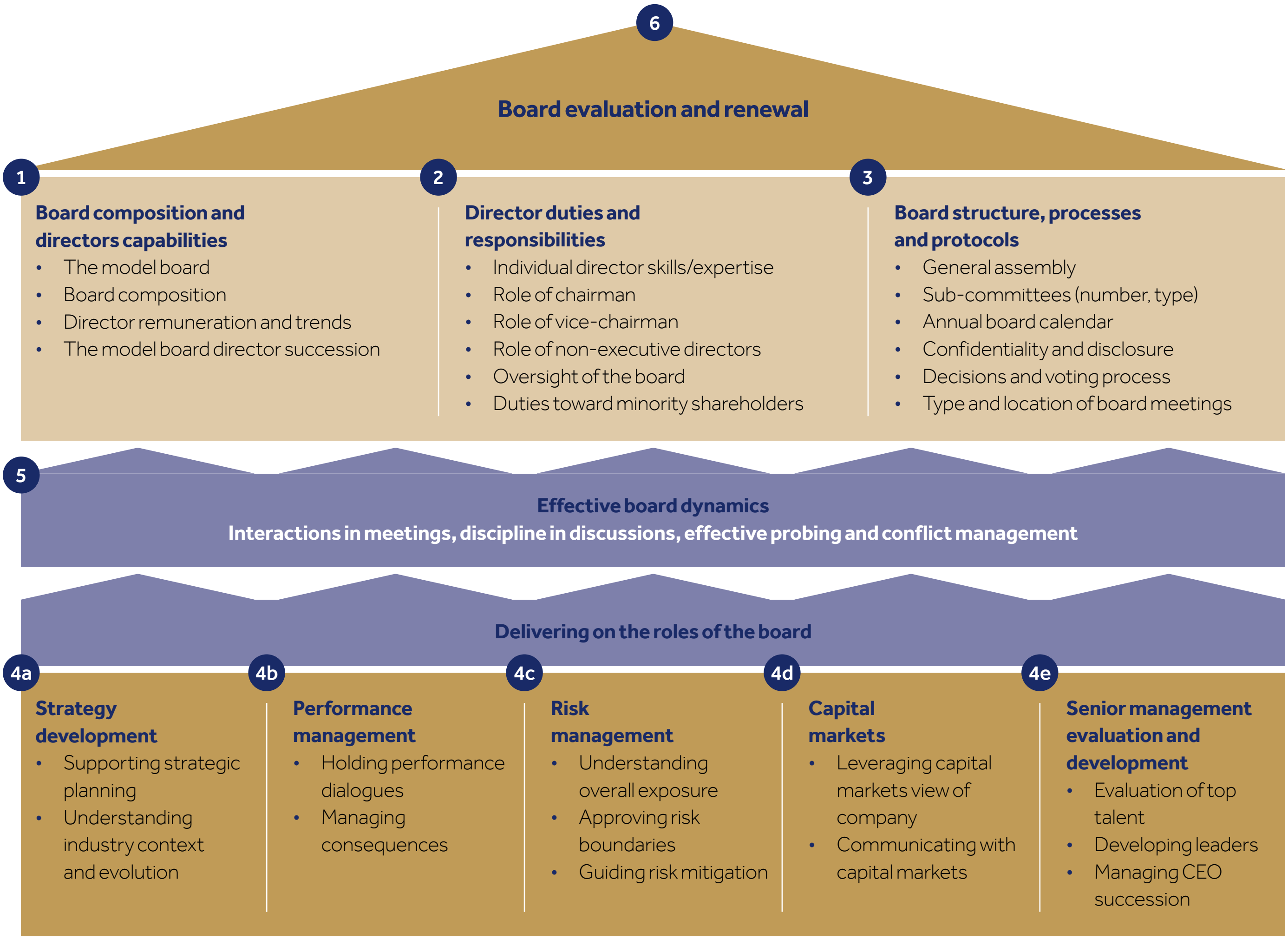
* In this report we assume the term Board Secretary and Company Secretary to have the same meaning.

About the Report

Board effectiveness is critical to the performance and sustainability of GCC companies, and yet, like elsewhere in the world, its achievement has been elusive and difficult to attain in practice. This fifth report on board effectiveness in the GCC seeks to highlight the improvements made over the past 2 years since the publication of the last Board Effectiveness Survey in 2015, as well as over the past decade since the GCC Board Directors Institute (GCC BDI) started to conduct surveys of boards in the region.

The report is based on a survey designed by GCC BDI and GOVERN and is based on the GCC BDI Framework for Board Effectiveness, which focuses on the following elements: board composition and director capabilities, director duties and responsibilities, board structure, processes and protocols, effective board dynamics, delivering on the roles of the board and board evaluation and renewal. This GCC BDI proprietary framework enables the evaluation of board effectiveness in the GCC in a structured manner, while allowing for flexibility to highlight emerging trends emanating from GCC BDI's work in the region.

Figure 1. GCC BDI Framework for Board Effectiveness



About the Report continued

This year's survey comprised 65 multiple answer questions disseminated to all GCC BDI members and board directors to seek their views on board effectiveness and challenges. Responses from 63 members were collected, reflecting a diversity of board members' and executives' views based on their role, company type, industry and country. In addition, open-ended interviews were conducted with 15 individual senior GCC board members, executives and other experts, to discuss the survey results and to probe into specific issues highlighted as being of concern to board members.

The largest number of survey responses (46%) came from non-GCC nationals, followed by Saudi nationals (36%) and UAE nationals (10%), whereas other GCC jurisdictions were less represented in the pool of responses. The majority of respondents (61%) serve on boards of Saudi companies, followed by Emirati (40%) and Bahraini companies (19%), whereas other GCC jurisdictions had less than 10% of respondents each.

While there was diversity in respondents' profiles, they nonetheless reflected a certain homogeneity in the GCC director pool. For instance, 83% of respondents were male. The low rate of response from female board members reflects the current situation in the region where recent research estimates that female participation on GCC boards remains stubbornly low at approximately 2%.

Close to 64% of respondents indicated they are board members of privately held companies and a further 25% of family-owned businesses, 30% of state-owned companies, 34% of listed companies and 33% of not-for-profit boards. This reflects the ownership structure of companies in the region which is heavily dominated by family and government ownership. On the other hand, respondents represented a diversity of sectors, with financial services (39%), industrial companies (37%), oil and energy (28%), and healthcare (22%) being most represented.

Most board members held 1 to 3 board functions, a figure that was lower for board chairs, 40% of whom reported to have a single board post. Likewise, the majority of non-executive and independent directors surveyed – 30% and 50% respectively – held only 1 post. Only 2% of respondents held 10 or more mandates and only 8% 6-9 mandates, whereas the vast majority held 1-5 mandates (89%). This reflects the gradual tightening of regulatory provisions, especially for board members in listed companies who are generally prohibited from accumulating more than 5 parallel mandates.

Over 50% of directors reported having 10 or more years of experience, which indicates the seniority of GCC directors but also the fact that they frequently accumulate successive mandates. At the same time, almost half of the directors surveyed thought that the average tenure of a board member in the GCC was 4-6 years [(2)]. Indeed, a number of regulators in the region have recently stipulated that accumulating consecutive mandates compromises director independence and have required boards to either confirm director member independence or report to the regulator any circumstances that might compromise independence. The regulatory trends that have affected boards in the region are explored in further detail in the following section.

2 This is indeed in line with international trends. The majority of OECD jurisdictions set a maximum tenure for independent directors, ranging from 5 to 15 years (OECD, 2017).

The Regulatory Environment

Revised requirements for listed companies and banks

A decade has gone by since GCC BDI began working with board members across the countries of the Arabian Gulf: Saudi Arabia, Kuwait, Oman, Qatar, Bahrain, and the United Arab Emirates. Since the establishment of GCC BDI in the region, the rapid pace of regulatory change in corporate governance has forced board members to adapt to significant change which has affected listed, privately-held and state-owned companies in different ways.

While governance codes in the GCC were initially introduced by the securities and banking regulators as largely voluntary mechanisms designed to inspire a shift towards greater transparency, long-term orientation and responsible conduct towards shareholders and stakeholders, they have been substantially amended in recent years. Over the years, securities regulators in the GCC have moved towards comply-or-explain or mandatory approaches.

Table 1. Corporate Governance Codes for Listed Companies

Country	Name of Code or Regulation	Last revision	Status
Bahrain	Corporate Governance Code	2011	Comply-or-explain
Oman	Code of Corporate Governance for Public Listed Companies	2015	Comply-or-explain and mandatory
Kuwait	Rules on Corporate Governance	2015	Comply-or-explain and mandatory
Saudi Arabia	Corporate Governance Regulations for Listed Companies	2017	Comply-or-explain and mandatory
Qatar	Corporate Governance Code for Companies Listed in Markets Regulated by the QFMA	2009	Comply-or-explain
United Arab Emirates	Decision on Corporate Governance Code for Joint Stock Companies	2016	Mandatory

Source: GOVERN research, 2017.

Note: Additional governance codes and regulations have been developed and apply in the financial free zones such as the Dubai International Financial Center (DIFC) or the Qatar Financial Center (QFC). In addition, the Central Bank of Bahrain (CBB) has added a series of regulations in 2016-2017.

Unsurprisingly, the focus of most governance regulations or codes has remained on the composition and functioning of boards as well as how boards deal with conflicts of interests, matters that directly affect GCC boardrooms. Regulators are increasingly asking boards to publicly disclose board composition relative to the national code or regulations, along with key indicators of board performance including the attendance of board and committee meetings as well as – more recently – results of board evaluations and remuneration.

Recent regulatory measures empower the board as a key governance organ of companies by giving them the tools to be effective in the exercise of their duties, but equally to allow regulators and shareholders to hold them to account. Regulators in the GCC are increasingly asking board members to sign governance reports and certify corporate reporting. While these regulations fall short of the stringent Sarbanes-Oxley approach adopted in the United States, they nonetheless have had the impact of increasing board accountability.

This is especially so in the banking sector where directors are subject to further requirements stipulated by the Central Banks. All countries in the region except for Bahrain [3] have introduced governance codes and regulations specifically for banks to address industry-specific concerns notably in the area of risk management, anti-money laundering and financial stability. Bank board members are subject to higher requirements notably through "fit and proper" rules, whereby the Central Banks approve appointments according to established criteria.[4]

Table 2. Corporate Governance Codes and Regulations for Banks

Country	Name of Code or Regulation	Last revision	Status
Bahrain	Corporate Governance Code	2011	Comply-or-explain
Oman	Islamic Banking Regulatory Framework (2012) CB Circulars 989, 919, 932, 119	2014 2011-2014	Comply
Kuwait	Corporate Governance Guidelines for Banks Corporate Governance Guidelines for Islamic Banks	2012 2016	Comply-or explain
Saudi Arabia	Corporate Governance Code for Banks	2014	Comply
Qatar	Corporate Governance Guidelines for Banks and Financial Institutions	2015	Comply-or-explain
United Arab Emirates	Corporate Governance Guidelines for Banks	2009	Comply-or-explain

Source: GOVERN research, 2017.

The revision of corporate governance codes in Oman, Kuwait and Saudi Arabia in the past 5 years has ushered a new wave of corporate governance requirements in the region which are increasingly in line with the G20/OECD Principles of Corporate Governance as well as the Basel Committee Corporate Governance Principles for Banks. In some respects, these standards are at least as rigorous as regulations in leading jurisdictions. This is evident in particular with respect to board independence requirements which have been subject to significant evolution in past years.

Today, all GCC jurisdictions have moved to majority non-executive and a third independent boards which is broadly in line with best practice standards.[5] In OECD jurisdictions, the most common standard is to recommend – usually on a "comply-or-explain" basis – that the majority of the board be independent. Indeed, considering the recent revisions to national corporate governance codes, the majority of directors surveyed believe that the region is either mostly in line with global developments (40%) or partially in line with global developments (38%).

3 Bahrain has a unified regulator model whereby the Central Bank of Bahrain (CBB) is the regulator of both banks and listed companies. Therefore, in Bahrain the code for banks and listed companies is one and the same, whereas in most other jurisdictions, banking governance requirements apply in addition to the requirements for listed companies for listed banks.

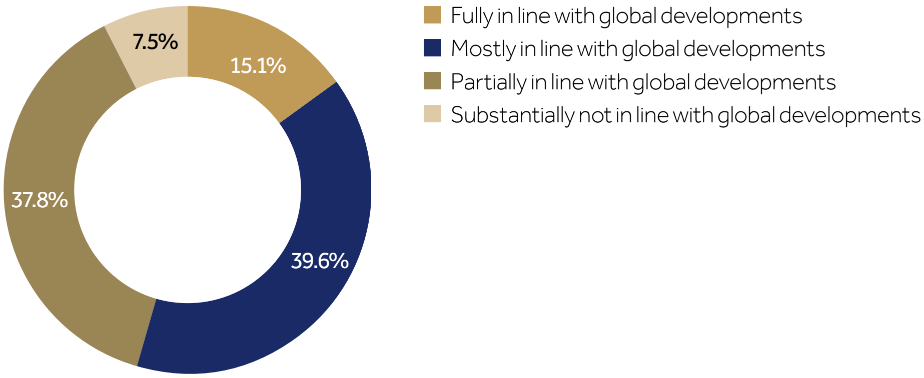
4 In some respects, rules applicable to bank boards are more stringent than those applicable to listed companies: for instance, in Saudi Arabia, members of bank boards can only sit on one board of a bank (and 5 listed companies), whereas board members in listed companies are permitted by CMA regulations to sit on boards of up to 5 companies.

5 Except in Oman where all board members in listed companies are required to be non-executive. This is similar to the Nordic governance model where generally only the CEO is represented on the board.

The Regulatory Environment continued

Figure 2. Alignment with Global Standards

To what extent do you believe that rules and regulations on corporate governance in your country have kept pace with global regulatory change?



New requirements for privately-held companies

While the evolution of corporate governance codes and listing requirements has affected only the listed companies and banks, the revision of corporate laws has also affected privately-held companies. In the past 5 years, corporate laws have been revised in half of the GCC countries, including Kuwait, Saudi Arabia and the United Arab Emirates. Corporate governance has been a key focus of the revision of corporate legislation as policymakers in the region have recognised the importance of good governance for the sustainability of large family-held conglomerates.

For instance, the new Saudi Companies Law (issued in 2015 replacing a 1965 law) now requires a separation of Chair and CEO posts and the establishment of an audit committee in joint stock companies, whether they are listed or not. In Kuwait, the new Companies Law sets out limits on board members' ability to serve on multiple boards and addresses conflicts of interests at the board level. Finally, the law allows the company or shareholders directly or on behalf of the company to hold directors accountable for any deficiencies.

While the professionalisation of private company boards has been fostered by the new requirements of the company laws, it has also been impacted by company-specific parameters. Key among them has been the passing of family companies to the next generation whereby it is estimated that in the next 5-10 years, over 1 trillion USD of assets in the hands of family companies is expected to pass from one generation to the next (the Economist, 2015). This succession is where the greatest destruction of value has occurred in the past with, on average, only 30% of family businesses surviving beyond the third generation.

Factors such as the ongoing sectoral diversification and internationalisation of GCC companies – requiring new skills and objective oversight of strategy – have also fostered a renewal of GCC family boards which need to bring in additional members with knowledge of the broader MENA region and global markets as required. This process has been slower than the evolution seen in listed companies as family founders are reluctant to open boards to outside views and to adopt the rigorous transparency required of publicly listed companies. At the same time, policymakers in some countries have also used the revision of the Companies Law to lower the standards for family-held companies to access capital markets and improve their governance.[6]

6 For instance, the revision of the Companies Law in the UAE in 2015 has fundamentally altered the requirements for family companies to raise capital by lowering the minimum equity to be floated from 55% to 30%.

State-owned enterprises: a different chapter

State-controlled enterprises contribute significantly to the GDP of the region and – despite some discussion on privatisation in recent years – are likely to remain an important feature of local economies. According to GOVERN analysis, 62% of market capitalisation of Arab stock exchanges relates to companies in which sovereign shareholders have block holdings (Amico, 2017). Government ownership is even more prevalent in larger companies, with governments having a considerable stake in 89 of the 100 largest listed companies in the region (ibid).

The pace of regulatory change affecting the governance of state-owned enterprises has generally been less rapid, except for state-controlled companies with listed equity such as SABIC or Oman Telecom that have been subjected to the listing rules, including corporate governance regulations [(7)]. Corporate governance of partially listed SOEs is generally equivalent to that of other listed companies, and in some countries such as Saudi Arabia, the regulator has been impartial in its enforcement approach.

On the other hand, governance in unlisted SOEs remains variable depending on their ultimate owner and reporting lines. The recent transfer of SOEs to the sovereign wealth funds (SWFs) such as the Public Investment Fund in Saudi Arabia and Mumtalakat in Bahrain has positively affected their governance especially at the level of board composition. Notably, in recent years, SWFs have moved to appoint qualified directors to represent government shareholdings, replacing civil servants who previously dominated SOE boards.

This has led to important governance changes in fully- and partially-privatised companies that were previously not subject to formal governance recommendations. At the same time, unlike their peers in the broader MENA region (i.e. Egypt and Morocco), policymakers in the region have not introduced corporate governance standards specifically for state-owned companies for a variety of reasons generally linked to the fragmented ownership of these companies. State audit courts, on the other hand, remain an important motor for improving governance in SOEs.

Director perceptions of regulations

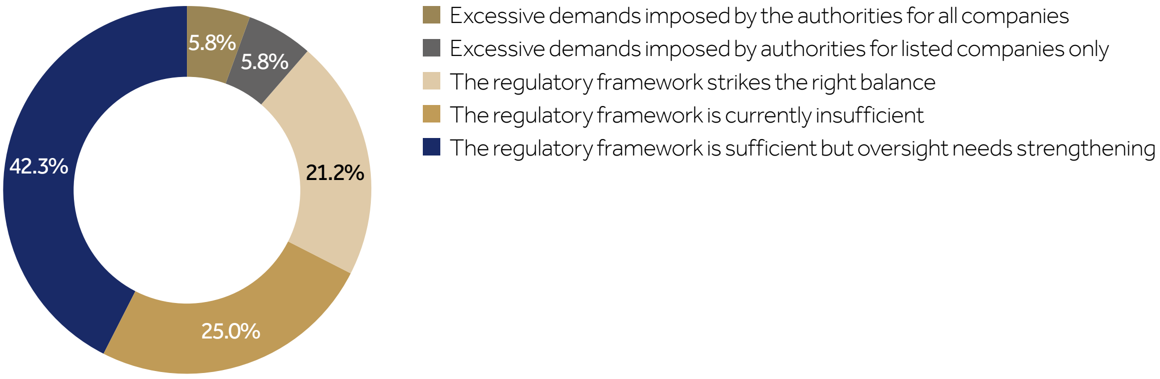
Considering this fast pace of regulatory change in corporate governance, it is of little surprise that directors, especially in listed companies and banks, feel a growing regulatory pressure and hence the need to keep a close eye on corporate governance requirements. While a significant number of respondents (42%) felt that the regulatory requirements for listed companies are excessive, views on the quality of regulatory frameworks appear divided. However, perceptions on this question were quite varied with 25% believing, to the contrary, that the current frameworks are insufficient. Directors in Saudi Arabia and Oman, where regulatory requirements were recently revised, are generally among those who believe that domestic requirements are excessive.

7 Except for the UAE where state-owned enterprises and banks are exempt from the SCA governance regulations.

The Regulatory Environment continued

Figure 3. Directors' Perceptions of Governance Requirements

How do you qualify the regulatory requirements as far as corporate governance is concerned? (including board composition, disclosure, etc.)?



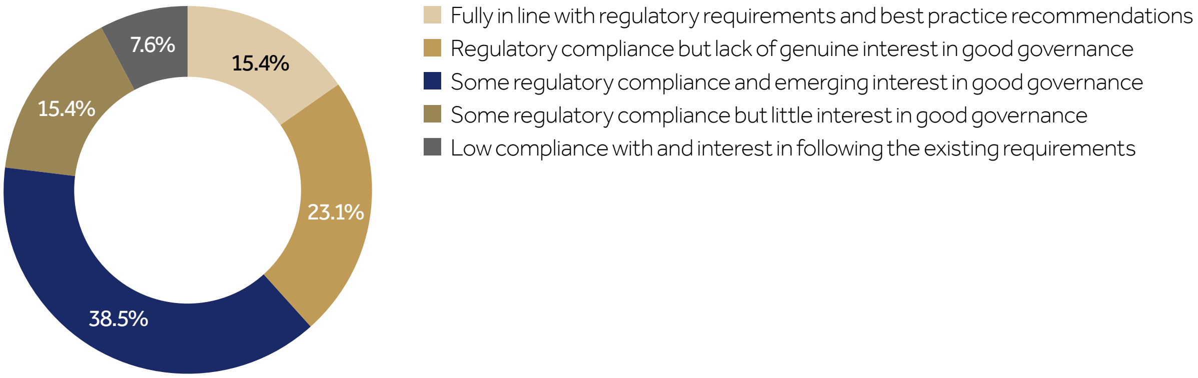
The perceptions of the quality and appropriateness of regulatory requirements also reflect variable supervisory methods and the transparency of regulators regarding corporate governance oversight. In particular, whether regulators issue regulations with a consultation period is critical to allow companies to comment on them and ultimately, to assimilate the requirements. Securities regulators and Central Banks in the region are increasingly subjecting governance standards to public consultations: for example, the Saudi Corporate Governance Regulations issued in 2017.

Transparency over enforcement decisions is equally important. For instance, the Saudi CMA is one of the most transparent regulators in the region, providing disclosure about its enforcement actions and companies' compliance with its regulations. Likewise, the Dubai Financial Services Authority (DFSA), the DIFC regulator, is also transparent in issuing penalties and regulatory judgements, including as they relate to corporate governance infractions.

While some board members perceive existing regulatory standards as being excessive and lacking adequate mechanisms for private sector consultation, others believe that implementation is lagging behind. While 39% of respondents believe there is a degree of regulatory compliance and emerging interest in good governance, 23% believe that regulatory compliance is not a reflection of a genuine interest in corporate governance. Overall, views on the regulatory regimes and quality of implementation appear divided, reflecting national differences and company-specific factors.

Figure 4. Implementation of Corporate Governance

To what extent do you believe that the implementation of corporate governance rules and recommendations in your country is reflected in actual corporate governance practices?

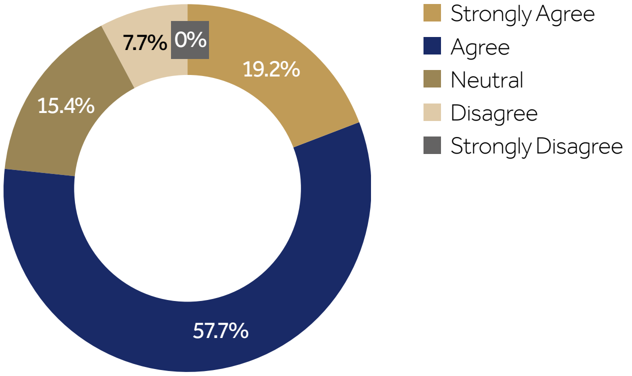


In the background of the growing regulatory burden imposed on board members in the region, especially for banks and listed companies, the majority of directors (58%) believe that board effectiveness in the GCC has been improving. A further 19% believe strongly it has improved, whereas few respondents believe boards in the region have not become more impactful over the past decade. In this regard, we note a considerable evolution from past GCC BDI surveys.

The Regulatory Environment continued

Figure 5. Board Effectiveness Improvements in the GCC

Do you believe board effectiveness has improved in the GCC over the past decade?



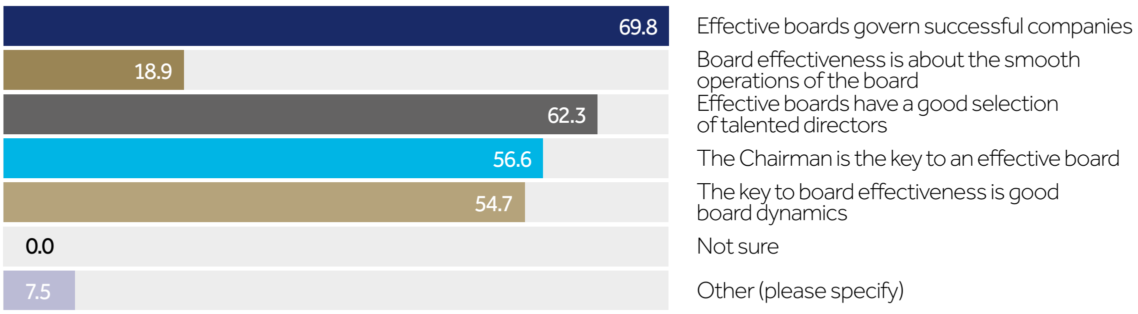
This perception is underpinned both by incremental improvements realised over the past 2 years since the last GCC BDI survey and a steady pace of change accomplished over the past decade more generally. These views echo an important positive sentiment considering the growing legal responsibilities placed on directors by regulators, growing compliance requirements globally as well as the increasingly challenging geopolitical and macro-economic outlook in the region.

> *"With the rapid pace of regulatory change in the GCC, not only in the area of governance, there is a risk that boards are not moving fast enough to keep up with the regulatory landscape and also with the new macro-economic landscape to oversee key risks." Walid Shukri, Board member, Saudi Arabia*

When asked what board effectiveness represents to them, the majority of respondents referred to the selection of talented directors (62%) and effective Chairs (57%) as being the most critical factors. Incidentally, this reflects the direction of regulatory change in the region, whereby for regulated companies the role of the Chair and the board composition has been at the heart regulators' efforts to improve corporate governance.

Figure 6. Characteristics of Effective Boards

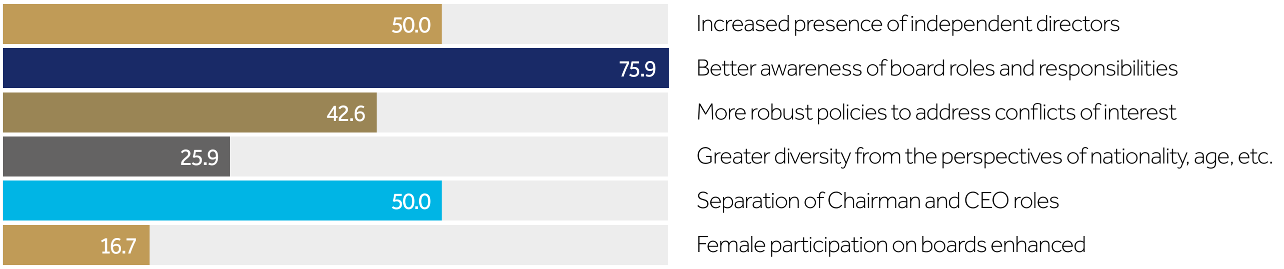
What does board effectiveness mean to you? Select top 3 answers



Better awareness of board roles and responsibilities is clearly an area where survey respondents believe most progress has been realised. Increased presence of independent directors, the separation of Chair and CEO roles and more robust policies to address conflicts of interest were also highlighted as important areas where progress was realised. Indeed, in light of the concentrated ownership structures in the region, addressing conflicts of interests and assuring board independence are of utmost priority.

Figure 7. Progress of GCC Boards

In what areas has progress been most notable in terms of functioning of GCC boards in the past decade? (please select top 3)

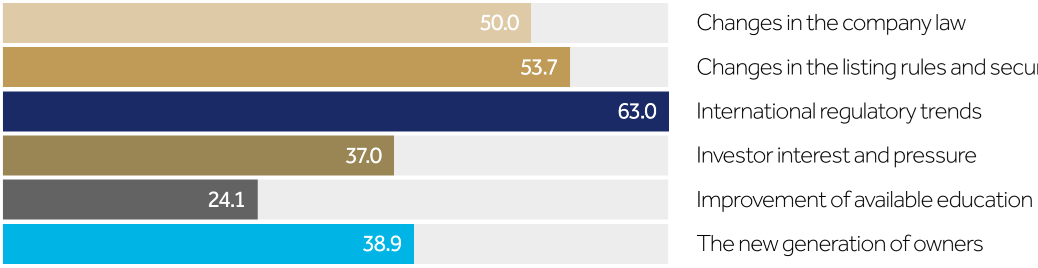


Board members felt that international regulatory trends have been key in encouraging board effectiveness in the region. Changes in company and securities laws as well as listing requirements were also ranked as important motivators of change, estimated by more than half of the respondents to have been important instigators of change. This is not surprising as governments in the region have significantly revised the body of corporate and securities law to bring it in line with international standards.

The Regulatory Environment continued

Figure 8. Factors Encouraging Board Effectiveness

What are the factors that have most positively impacted on board effectiveness in the region? (please select top 3)



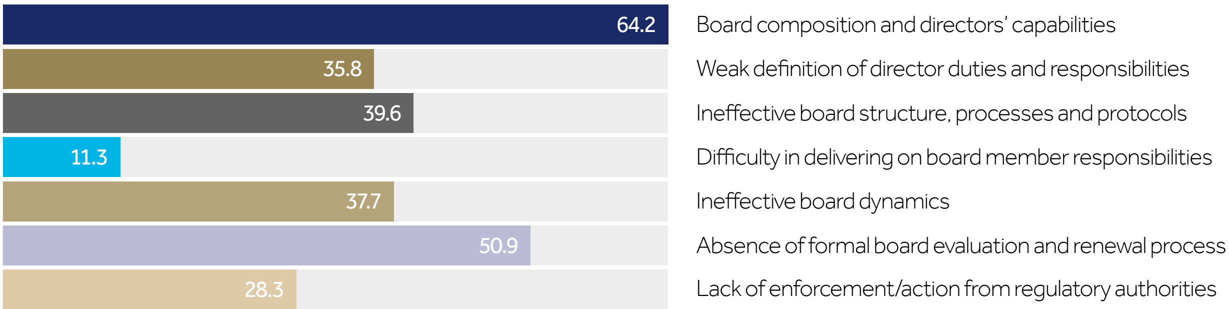
Respondents felt that top barriers to board effectiveness in the GCC are board composition and director capabilities (64%), followed by the absence of board evaluations and renewal (51%). Indeed, board assessments have only recently been included in the requirements for listed companies and banks, with regulators adopting variable approaches in terms of the frequency and disclosure of results of these evaluations. While board evaluations can be considered as a recent trend in the region, they appear to have been an important instigator of change, forcing a structured reflection on the skill gaps.

> *"The single most powerful mechanism for improving board effectiveness in the GCC in recent years has been board evaluations." H.E. Abdullatif Al Othman, Chairman Dussur and Chairman of SAIIC, Saudi Arabia*

Other impediments to board effectiveness which were raised include inadequate definition of director duties and weak enforcement. Indeed, a recent OECD report assessing the quality of corporate governance enforcement regimes in the MENA region noted that while securities regulators have been effective in penalising companies for late or inadequate disclosure, this is not the case for other areas of corporate governance (Amico, 2014). Evolving precision in the regulatory standards with respect to independent director definitions, related party transaction rules and other aspects will facilitate better enforcement going forward.[8]

Figure 9. Barriers to Board Effectiveness

What are the top barriers to improving board effectiveness in the GCC? (please select top 3)

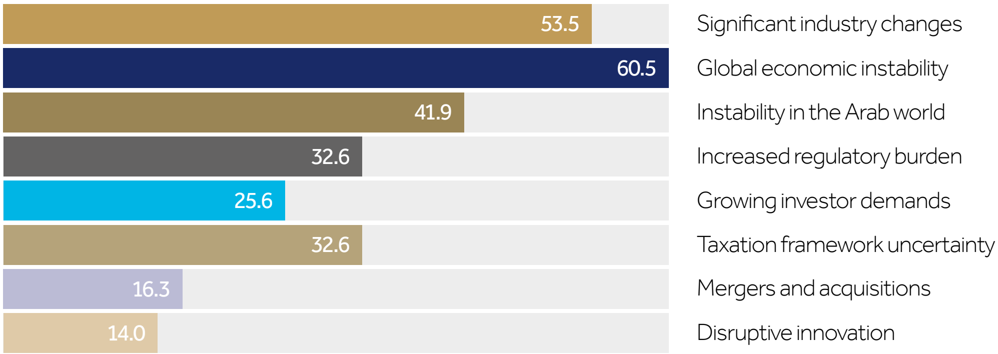


Broader economic developments are expected to have a significant impact on GCC companies and – by extension – on boardrooms in the region. Indeed, global economic instability was ranked as being of most significant concern to GCC boards, ahead of regional instability and industry changes, which were among the top three factors of concern for GCC boards. This is a reflection of two trends: first, the impact of global economic developments on the region through various channels (e.g. currency peg etc.) and second, the direct impact on GCC companies operating internationally.

8 Recent developments, such as the move by the Saudi CMA to issue class action suits regulations also supports shareholder enforcement.

Figure 10. Significant Trends for GCC Companies

Which of the following trends do you foresee as having the most significant impact on your company in the next year? (please select top 3 issues)




GCC Board Directors Institute

Board Composition and Director Capabilities

The convergence to a common governance standard among the GCC countries is evident when examining regulations governing board composition. For illustrative purposes, the requirements on board composition of publicly listed companies in the GCC are provided below, highlighting that recommendations bearing on board composition in the GCC have become substantively similar. For instance, all GCC security regulators now recommend or mandate for Chair and CEO posts to be separated and all (except for Oman) require the majority of the board to be comprised of executive directors and a third to be independent (except Kuwait).

Table 3. Board Composition Requirements

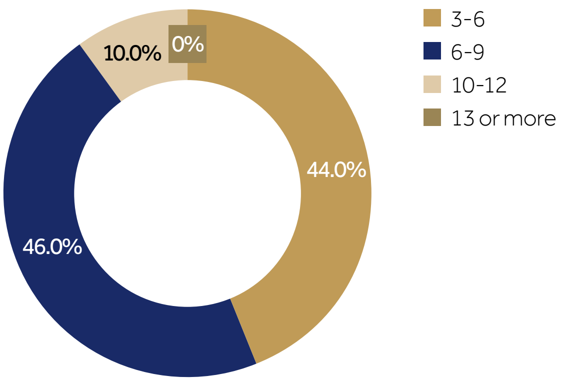
Country	Board size	Non-executive directors	Independent directors	Chair/CEO separation	Committee requirements
UAE	3-15	Majority	33%	Yes	Audit, nomination and remuneration
Saudi Arabia	3-11	Majority	33% or minimum 2 members	Yes	Audit, nomination and risk
Kuwait	No less than 5	Majority	1 member and no more than 50%	Yes	Audit, nomination and remuneration
Oman	5-12	All	33% or minimum 2 members	Yes	Audit, nomination and remuneration
Bahrain	5-15	Majority	33% or minimum 3 members	Yes	Audit and nomination
Qatar	5-11	Majority	33%	Yes	Audit, nomination and remuneration

Source: GOVERN analysis, based on the overview of national corporate governance codes and laws.

Survey results demonstrate broad consistency of prevailing board structures with regulatory requirements for listed companies, though a number of the companies surveyed were privately-held. The majority of board members surveyed sit on boards comprised of 3 to 6 (44%) or 6 to 9 (46%) members, whereas no boards surveyed exceed 13 members. This is broadly in line with the regulatory requirements placed on listed companies, whereby Bahrain and the UAE allow the largest boards in the GCC.

Figure 11. Board Size in Surveyed Companies

How many board members sit on the main board on which you sit?

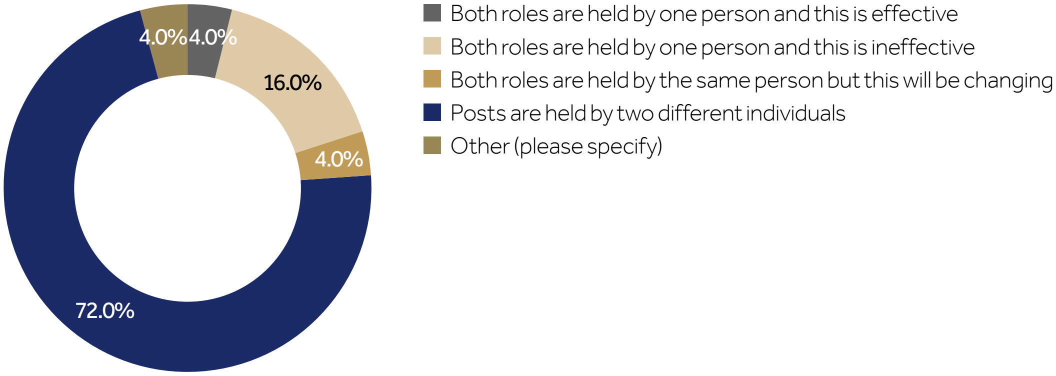


In terms of the separation of Chair and CEO roles, 72% of the companies confirmed that these posts are held by different individuals and a further 16% noted that while the posts are held by the same individual, this is in fact ineffective. The requirement for the two roles to be split is consistent with international trends whereby nearly two-thirds of OECD jurisdictions with a one-tier board system require or encourage the separation of the Board Chair and the CEO roles (OECD, 2017).

Board Composition and Director Capabilities continued

Figure 12. Separation of Chair and CEO Roles

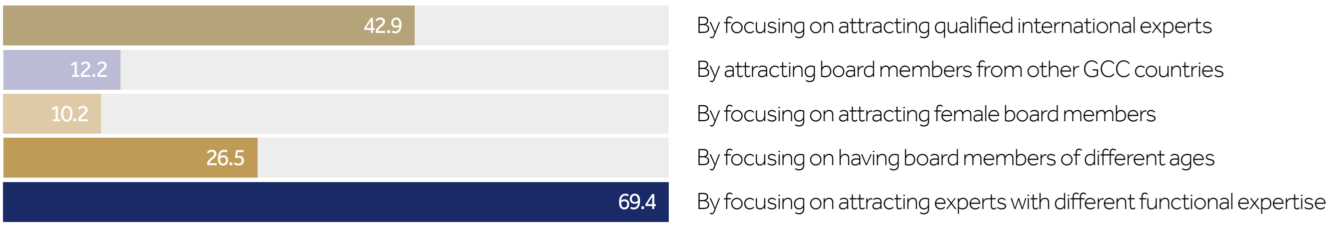
Is the role of the CEO and Chairman held by the same person and evaluate the effectiveness of such arrangement?



Diversity has been climbing on the agenda as GCC boardrooms are not particularly diverse from the gender, age or other perspectives. Respondents commented that diversity is promoted by attracting experts with different functional expertise (69%), by attracting qualified international experts (43%) and by attracting board members from diverse age groups (27%). Interestingly, and despite the close cultural proximity, only 12% commented that their board is looking to tap into board members from GCC countries.

Figure 13. Board Diversity

How is board diversity promoted in your company? (please select top 3)

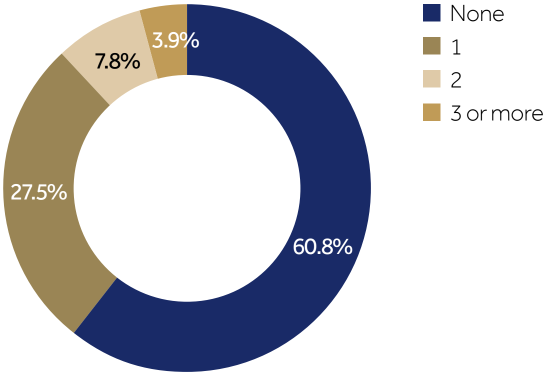


Even fewer respondents (10%) commented that they intend to improve board diversity by attracting female talent. This is despite the fact that only 17% of respondents believe that female participation on boards has been enhanced. Although data on female representation on GCC boards is not systematically collected, it appears that it has not improved significantly from a decade ago when it was estimated at 2% GCC wide (ACCA, 2017). The presence of women on boards of UAE listed companies (DFM and ADX) has most recently been estimated at 1.9% (Hawkamah, 2017).

While over 60% of the respondents noted that their board has no female representation and 28% said they have 1 female director, only 4% said they have 3 or more female board members. At the same time, 19% of directors believe that hurdles for men and women are equivalent. Nonetheless, respondents felt that the most significant obstacles to appointing female directors were primarily cultural obstacles (48%) and the lack of qualified candidates (44%).

Figure 14. Female Representation on Boards

How many female board members sit on the board you sit on?

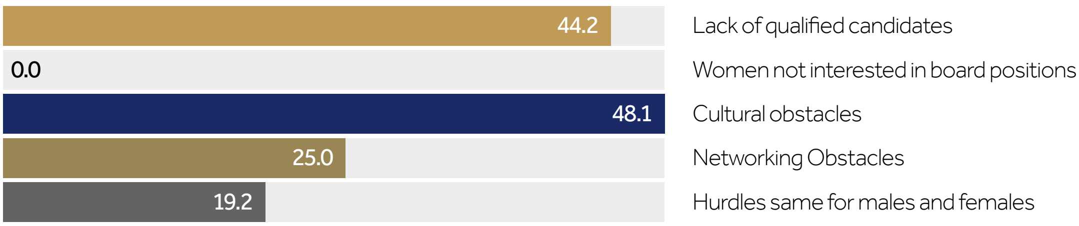


This is of concern considering that the GCC lags significantly behind most developed and emerging markets apart from Japan and South Korea which also have very low female representation on boards and low board diversity more generally. According to a recent report, Saudi Arabia and the UAE are among 11 countries globally where at least half of the boards do not have a woman represented and also do not have female CEOs in any listed company (Egon Zehnder, 2016). This is changing, as can be witnessed recently from the appointment of a first female Chair of Tadawul and other senior board and executive appointments in Saudi Arabia.

This does not compare favourably to global averages where it is estimated that 19% of board seats of the largest companies were held by women (Egon Zehnder, 2016). At the same time, regulators in the region have been reluctant to introduce quotas or specific recommendations concerning female representation on boards (with the exception of SCA in the UAE)[(9)] and interviews with board members also reflected a resistance towards similar measures in the GCC context. While board members and executives did not feel quotas are suitable in the GCC context, few other suggestions were made to redress the current imbalance.

Figure 15. Glass Ceiling in GCC Boards

Which of the following obstacles do you see in appointing women to boards?



While the benefits of independent directors are now well understood in the GCC, the benefits of having diverse boards need to be further demonstrated to be fully integrated in the board culture in the GCC." Dr Abdullah Alabdulqader, Chairman, Saudi Telecom Company, Saudi Arabia

Board independence has received more attention from GCC policymakers than board diversity. As mentioned, the dominant requirement across the GCC is for the majority of the board to be non-executive and for at least a third of the board to be independent. Although there are requirements for Chairs of specific committees (notably the Audit Committee) to be independent, Gulf regulators have stopped short of requiring independent board Chairs or majority independent boards.

9 In 2015, SCA required every UAE publicly listed company to nominate at least one woman to their board and for every company to disclose the actual number of women serving on their board.

Board Composition and Director Capabilities continued

The argument against increasing independence requirements on GCC boards is that there is a deficit of qualified independent directors in the region. While some countries such as the UAE require that a majority of board members (on onshore companies) be nationals, others such as Saudi Arabia leave this open for companies to decide (except for banks). At the same time, it remains relatively rare for nationals of one GCC country to sit on boards of companies domiciled in another country. In principle, the supply of independent directors can be bolstered by facilitating GCC directors' mobility.

> *"The lack of independent directors in the region is questionable as in addition to the growing pool of local directors there is a pool of international directors with relevant regional experience" Steffen Schubert, Chief Executive Officer, Anapix Capital, UAE*

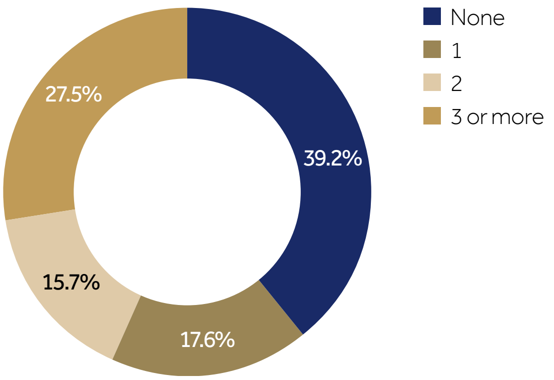
In leading family-owned companies, boards also tend to be majority non-executive. The method for constituting boards of family-companies remains anchored in the concept of augmenting family member presence with non-executive directors with the relevant sectoral expertise.

At the same time, inviting independent directors on boards of family-controlled companies remains relatively rare. Survey responses highlight that independent directors are more common in listed companies, as 39% of respondents admit to having no independent directors on boards.

> *"Family firm boards are growing as some businesses are growing globally and require international expertise: we are seeing the addition of new board members to family boards." Sharon Ditchburn, Managing Director, Capital Advantage, UAE*

Figure 16. Presence of Independent Directors

How many independent directors sit on the board?

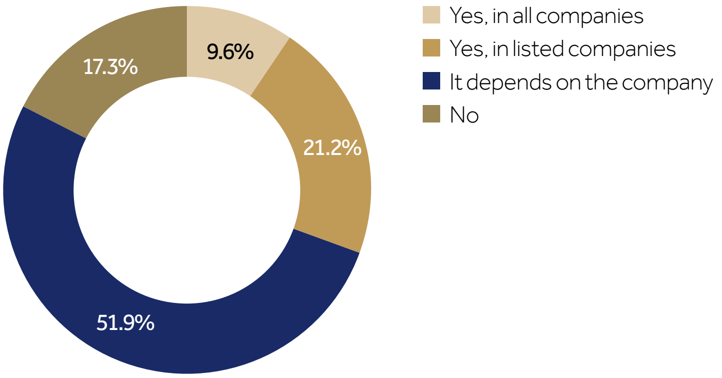


In most GCC jurisdictions, regulators have recently revised the definition of independent directors for listed companies and banks. For instance, the revision of the corporate governance code in Saudi Arabia in 2017 puts limits on ownership (5%), relationships to board members and executives, past employment and current contracts, and also limits the tenure of independent directors to 9 years. The Saudi Capital Market Authority (CMA) requires an annual assessment of independence, whereas its Omani counterpart asks independent directors to notify the regulator within a month of any change of circumstances affecting their independence, in addition to the fact that directors have to certify their independence on an annual basis.

Despite the increasingly rigorous provisions for listed companies, when asked whether the regulatory definition of independent directors results in true independence, the majority of respondents (69%) expressed concerns. This is consistent with the fact that while banking and securities regulators have tightened the definition of independence, the appointment of independent directors in unlisted companies has not been to the same rigorous standards. Indeed, considering that most directors represent major shareholders – whether family or government – it has been extremely challenging to ensure director independence.

Figure 17. Definition of Independence

Do you believe the regulatory definition of independent directors results in true independence of those appointed as independent directors?



"Family companies still have significant challenges with the concept of non-executive Chairs or independence of Committee Chairs and this is one of the key factors which stymies listings in the region." Sharon Ditchburn, Managing Director, Capital Advantage, UAE

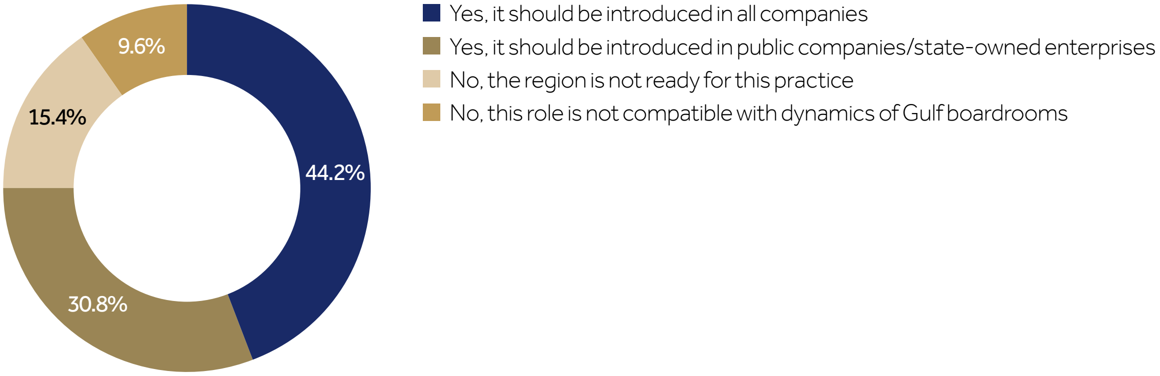
Few policy solutions are available to policymakers to render boards truly independent considering most GCC companies remain controlled and that the culture of independent thinking is often contingent on whether the board Chair is willing to allow open board deliberations. One policy solution recommended by organisations such as the International Corporate Governance Network (ICGN) is to introduce the role of a lead independent director. This recommendation has been adopted in diverse jurisdictions such as Spain where listed companies that choose not to separate CEO and Chair roles must appoint a lead independent director.

While the concept of a lead independent director has not been explored or introduced by any regulators in the region, 44% of respondents believe that lead independent directors should be introduced in all companies and a further 31% believe it should be introduced in listed and state-owned companies only. Less than 10% indicate that the role is not compatible with board dynamics in the Gulf.

Board Composition and Director Capabilities continued

Figure 18. Lead Independent Director Role

Do you believe the role of a lead independent director would enhance board effectiveness in the Gulf?



"The board charters should specify how independent directors are appointed and what specific powers they have. In my opinion, independent directors should have more power than other directors." Gabriel Abdullah Al-Roomi, Senior Manager, Saudi Kayan, Saudi Arabia

Besides introducing independent directors, respondents indicated that improving board knowledge and capabilities (42%) and replacing ineffective board members (36%) are two measures expected to significantly improve board effectiveness. Areas where respondents thought board knowledge should be enhanced as a priority were corporate governance and compliance. Conversely and surprisingly, information technology skills were rated the lowest. Consistent with other responses, appointing international board members and female board members on the board appears to be of least important (8% respectively).

Figure 19. Levers for Improving Board Effectiveness

Which of the following levers would have the most impact on improving the composition of your board?

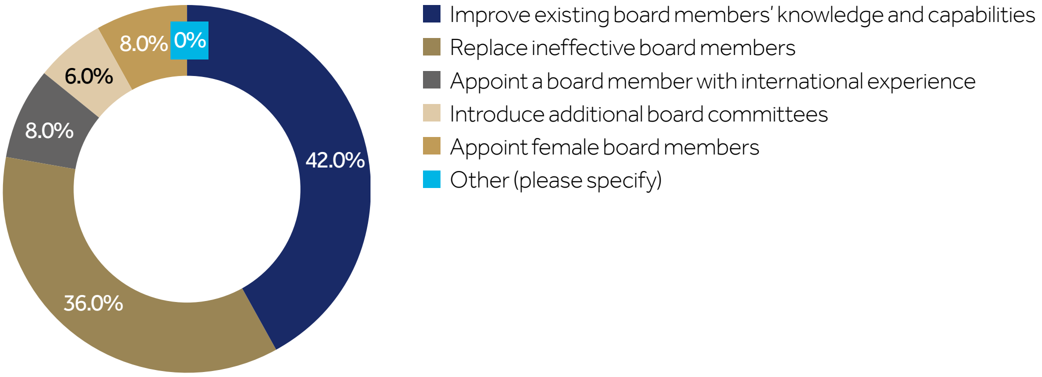
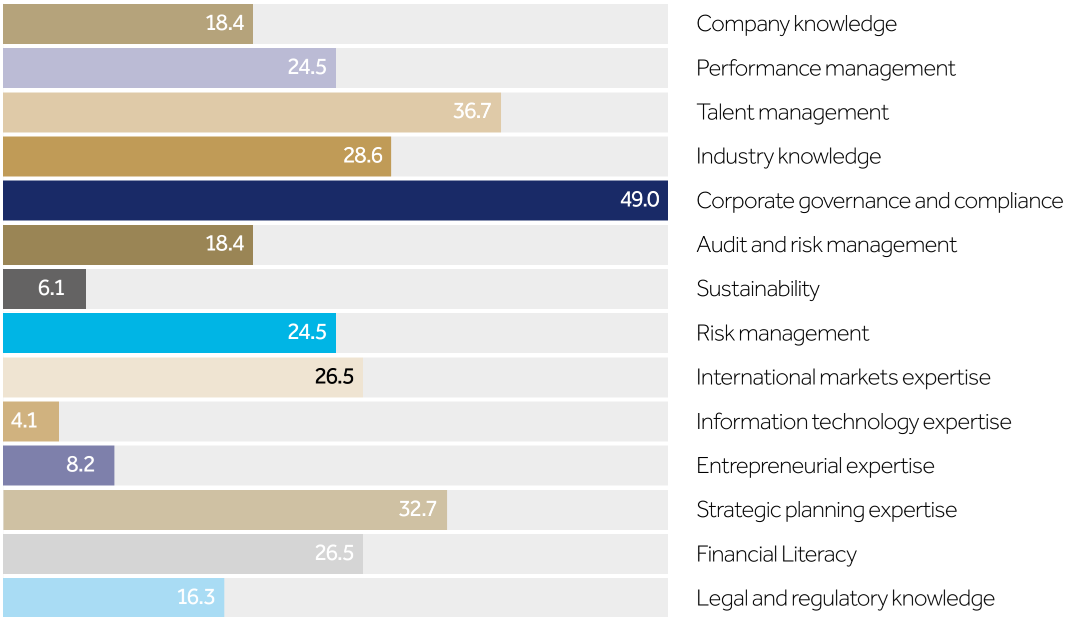


Figure 20. Required Skills on GCC Boards

Looking at the main board on which you sit, where would you like to see more expertise? (Please select top 3)

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Director Duties and Responsibilities

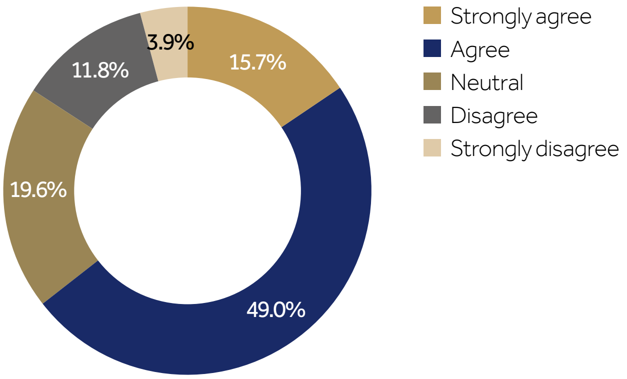
The definition of director duties and responsibilities has evolved significantly over the past decade both for listed and unlisted companies. Fiduciary duties of loyalty and care are now explicitly mentioned in governance regulations and recommendations and large listed companies are increasingly providing directors with insurance. Indeed, 32% of directors surveyed noted that they have director insurance for all posts they hold, 22% for some posts and a further 26% are considering getting director insurance. There are, however, variations by country in terms of the prevalence of director insurance.

"Board member insurance is still relatively rare in Bahrain and in the GCC more generally." Dr Redah Faraj, Managing Director, Faraj Consulting, Bahrain

A few profile enforcement cases in the region have served to further raise director awareness of their responsibilities. From being an honorary role a decade ago, director responsibilities – and the liability that comes with them, especially in publicly listed companies, banks and companies in regulated sectors – are taken more seriously in the region today. However, while board members are increasingly aware of their duties and responsibilities, shareholders in the region rarely hold boards to account.

Figure 21. Board Duties and Responsibilities

The duties of care and loyalty are well understood by the board as a whole and its individual members



Managing board members' and executives' conflicts of interest, notably related party transactions (RPTs)[10] has been a key focus of regulators, considering the controlled nature of most companies in the region, either by family or government shareholders. In Saudi Arabia, if the director fails to disclose his interest in a particular transaction, it may be invalidated and the director obliged to refund any benefits extracted. In Oman, any RPT conducted by a listed company in contravention of the CMA rules is likewise considered void.

"In Oman, all ordinary RPTs in listed companies must be reviewed by the audit committee and approved by the Board prior to execution and extraordinary transactions require approval by the general assembly of the shareholders. This introduced a rigid threshold for RPTs in the country." Ezzeddine Bizri, Company Secretary, National Bank of Oman, Oman

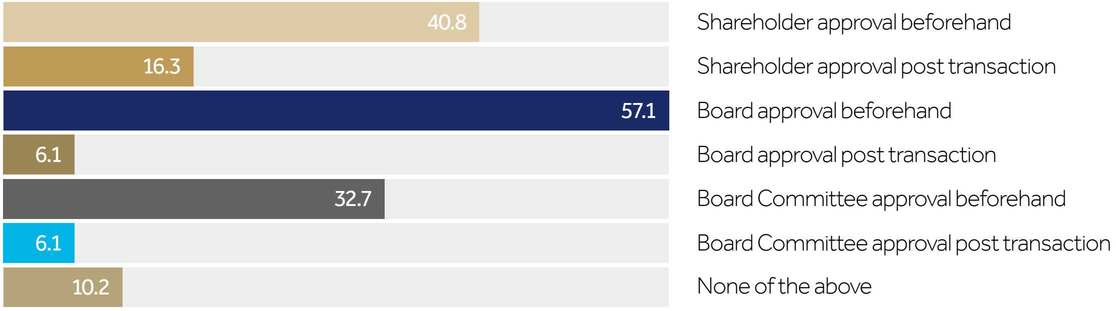
The approach in most jurisdictions has been to allow RPTs, but to impose review and approval mechanisms designed to minimise the risk of shareholder abuse through tunnelling of corporate assets. Respondents commented that RPTs are subject to prior shareholder and/or board approval, depending on the jurisdiction and the type of transaction. Regulators can intervene in case of RPTs concluded in breach of the regulatory requirements.

10 For an overview of rules and regulations concerning the oversight of related party transactions, please refer to the UASA and OECD Guide on Related Party Transactions in the Middle East and North Africa region.

Director Duties and Responsibilities continued

Figure 22. Related Party Transactions Approval

What is the process of approving significant related party transactions? (multiple answers possible)

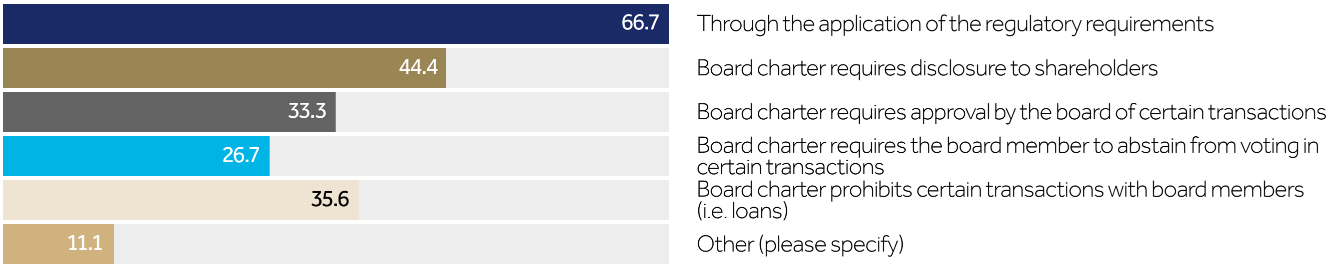


"In private equity investment deals, related party transactions are treated as a reserved matter whereby the approval of the private equity investor is required prior to their execution." Tristan de Boysson, Managing Director, Investcorp, Bahrain

Broadly speaking, GCC boards have adopted a range of mechanisms to manage conflicts of interest, notably through the application of the prevailing regulatory requirements. While a number of respondents confirm that their boards have adopted provisions for conflicted board members to abstain from discussing and voting on transactions in which they have an interest, just over a third of respondents noted that their board charters prohibit transactions with board members.

Figure 23. Management of Conflicts of Interest

How are conflicts of interests in the board managed? (multiple responses possible)




Board Directors Institute

Board Structure, Processes and Protocols

One of the key manifestations of the ongoing professionalisation of GCC boards has been the formation of board committees to oversee specific activities. The most prevalent committee found is unsurprisingly the Audit Committee with the majority of surveyed companies (86%), whether listed or not, confirming its existence. This is broadly consistent with international regulatory approaches: more than 65% of OECD countries require listed companies to establish an independent audit committee, whereas the establishment of nomination and remuneration committees is optional in most jurisdictions (OECD, 2017).

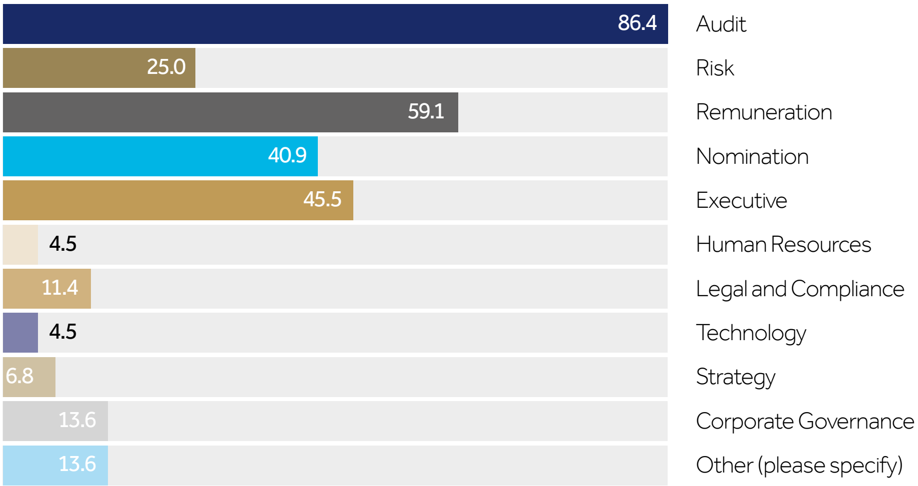
Large GCC companies are increasingly forming other specialised committees of the board, notably a risk committee which is increasingly required by the regulators.[11] The prevalence of nomination, remuneration and executive committees is also very high: 40% of the respondents claim to have 3 board committees, while a further 31% between 1 and 2 committees.

> *"The role of the Board Remuneration Committee is somewhat limited in jurisdictions which have introduced stringent limitations on board remuneration. If remuneration is not proportional to the responsibilities and accountability of non-executive directors, then it becomes unattractive and makes it more difficult to find professional independent directors." Ezzeddine Bizri, Company Secretary, National Bank of Oman, Oman*

Very few companies report that they have more than 4 board committees. The number of committees tends to be higher in listed companies and banks. In unlisted companies, the number of board committees tends to be less and their formation less regulated, motivated more by formal segregation of family and business relationships than a delegation of board powers to specialised organs.

Figure 24. Board Committees

Which of the following committees does your board have?



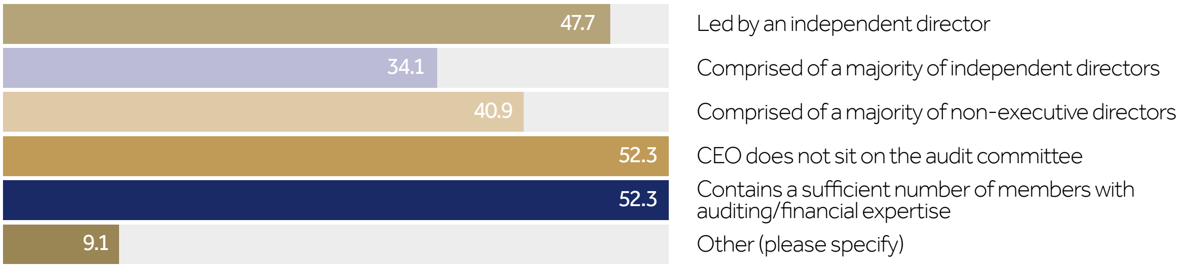
Regulated companies are also addressing committee composition, most commonly through the requirement that committee chairs be independent or at least non-executive and that they include a number of independent directors. Over 40% of companies confirm that their audit committees are led by an independent director and are comprised of majority non-executive directors. In some jurisdictions such as Oman, the Chair of the Audit Committee in listed companies is forbidden to be a member of any other committee; he cannot be the Board Chair either in Oman or in Saudi Arabia.

> *"Boards need to be large enough to enable the establishment of committees with majority non-executive or independent directors as required." Waddah Shihab Al-Hashmi, Executive Director, Compliance & Corporate Affairs, ENOC, UAE*

11 This echoes feedback from directors who feel that risk management at the level of strategy is not being adequately considered, as directors are generally focusing on operational as opposed to strategic risks.

Figure 25. Composition of the Audit Committee

Please indicate the composition of the audit committee (multiple answers possible)



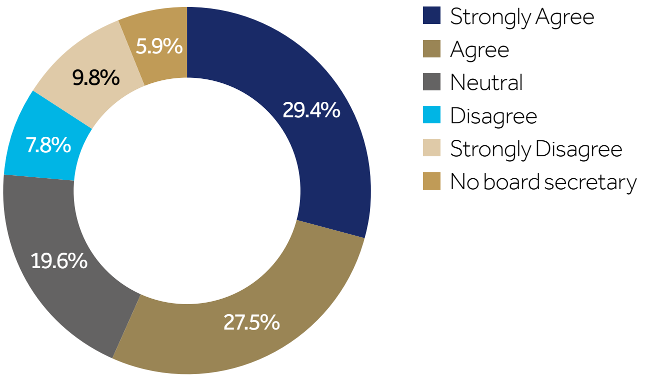
Regulatory approaches towards composition of committees reflect the duties placed on them and other national differences. For instance, the approach taken by regulators towards the composition of Remuneration and Nomination Committee(s) appears to reflect national differences: whereas Omani listed companies have a choice as to the composition of their Remuneration Committees, in Kuwait the committee must be comprised of 3 members, of which 1 is independent and the chair is non-executive. Remuneration committees in Qatari listed companies must be composed of at least 3 non-executive board members, the majority of whom are independent.

In addition to the formation of board committees, regulators are increasingly recommending that boards introduce the role of a professional board secretary. The introduction of this role is thought to significantly improve the organisation of board discussions and the quality of information presented to boards, critical to boards' ability to exercise objective judgement. However, views on the effectiveness of board secretaries were highly varied, possibly due to the fact that the board secretary role is performed by corporate executives in parallel with other functions as opposed to a dedicated and professional non-executive.

"For family-held companies, the introduction of the Board Secretary role has an enormous impact on the organisation of board meetings and hence on the quality of discussions around the table." Hani Kafafi, Chief, Al Houda Hotels & Tourism Company, Kuwait

Figure 26. Board Secretary Role

The Board secretary is highly knowledgeable on topics related to governance and board matters and is a non-executive staff member



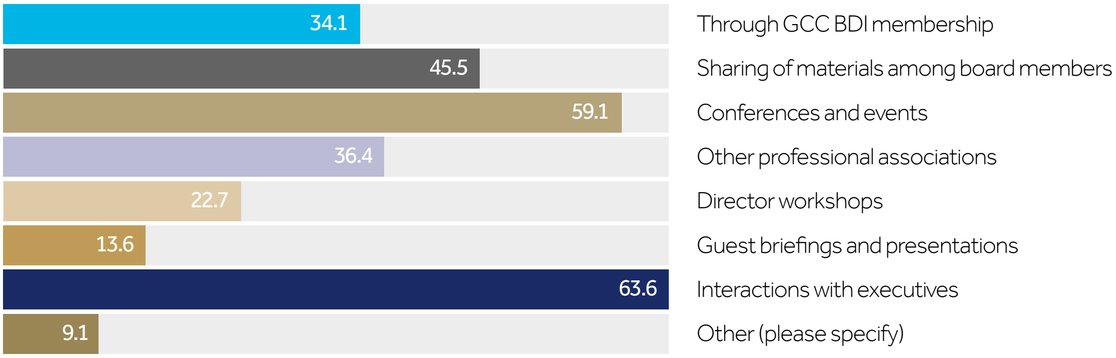
"The term "corporate secretary" does not correspond to the level of the responsibilities carried out by them: a title such as a Senior Governance Official would enable them to get proper attention from boards and management." Steffen Schubert, Chief Executive Officer, Anapix Capital, UAE

Board Structure, Processes and Protocols continued

While board secretaries are a key source of corporate information, GCC directors have multiple channels for keeping themselves informed of industry developments including director workshops, conferences and specific briefings. At the same time, while 33% of boards surveyed report that they have an induction programme for boards, only 2% report having a director development programme. Although regulators in the region are reluctant to provide training directly, [12] they are increasingly emphasising the need for such training in the governance codes (e.g. Kuwait, Saudi Arabia, etc.).

Figure 27. Director Education

What mechanisms do you use to keep abreast of company and industry developments?



12 Some regulators in the region such as the Saudi CMA provide training on governance regulations to board members. Oman's CMA has recently delegated similar functions to the Omani Center for Corporate Governance and Sustainability which now operates independently from the CMA.


أكاديمية سابك
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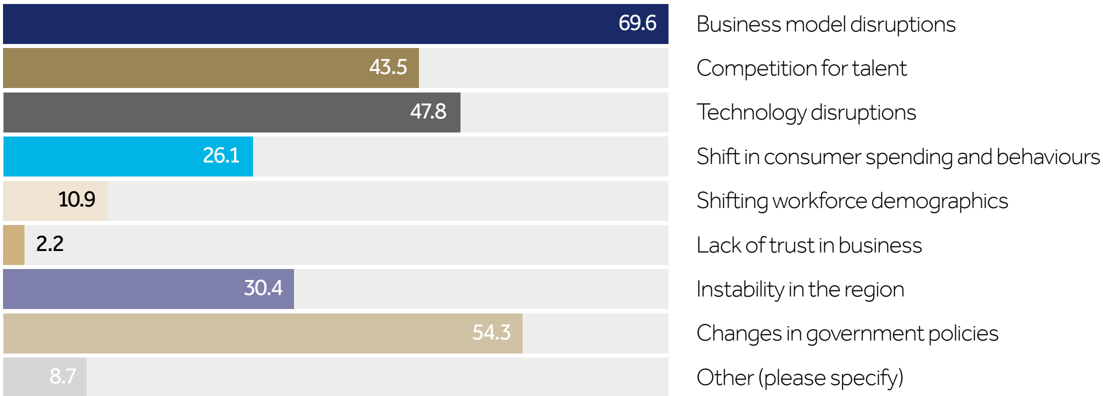
Delivery on the Roles of the Board

The nature of strategic and operational risks facing GCC boards has grown in complexity. A number of new risks have emerged on the horizon, including risks linked to the broader political and economic environment, technological and – for listed companies and banks – greater compliance risks.[13] With the type and the extent of risks facing GCC boards shifting, their ability to spend adequate time on strategy issues is constrained by compliance priorities. Indeed, a number of board members commented that insufficient time is spent on discussing strategy issues. Business model disruptions, changes in government policies, and technology disruptions topped the agenda of boards.

Figure 28. Strategy Oversight Priorities

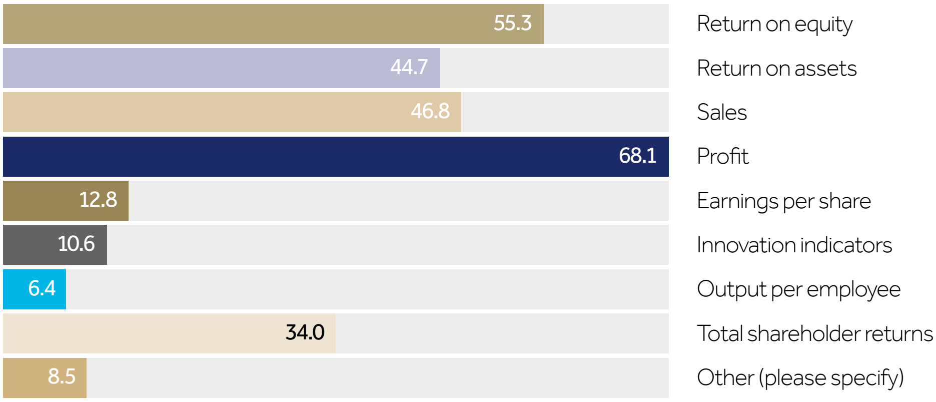
Which of the following factors require most board attention when overseeing strategy? (please select top 3)



Boards in the GCC tend to benchmark their performance to their peers by looking primarily at purely financial metrics such as profit or sales as opposed to more comprehensive environmental, social and governance (ESG) metrics or innovation indicators that might take into account intangible assets or the environmental impact made by companies. This is not necessarily in line with metrics employed by international investors who are increasingly investing in the region's capital markets.

Figure 29. KPIs Monitored by Boards

What are the key indicators the board monitors in terms of overseeing the company's performance? (please select top 3)



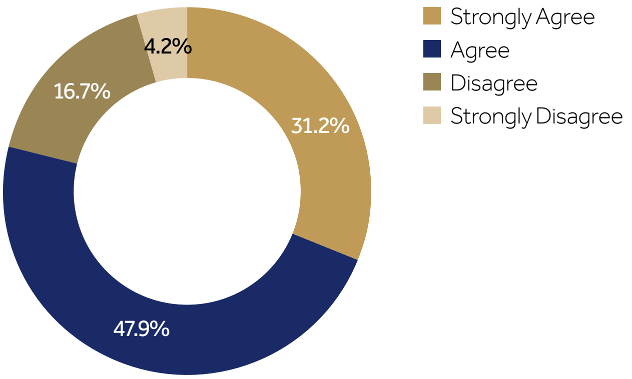
"Boards should be aware of industry KPIs and the performance of top companies operating in the same sector." Waddah Shihab Al-Hashmi, Executive Director, Compliance & Corporate Affairs, ENOC, UAE

13 Indeed, a recent survey of senior MENA executives revealed that failure to meet regulatory requirements topped the sources of their concerns (40%), even before meeting business objectives (23%) and failure to identify new risks (20%) (Deloitte, 2016).

79% of respondents felt that boards are effectively involved in setting the risk appetite. However, fewer felt that the necessary processes to deal with the risks arising from regional volatility are in place, despite the range of mechanisms that boards have introduced to monitor risks. Boards in the region receive risk reporting from a range of business lines and departments, including not only enterprise risk management (ERM) but also finance and compliance departments in order to have the full picture of strategic and operational risks.

Figure 30. Role of the Board in Risk Management

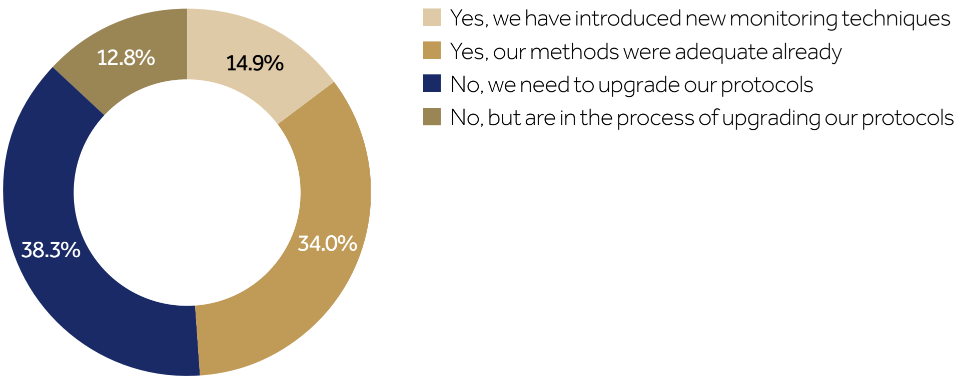
The board is effectively involved in setting the risk appetite of the company



Delivery on the Roles of the Board continued

Figure 31. Regional Volatility Risks

Do you believe your board has the necessary processes in place to deal with the risks arising from the international and regional volatility?



"We have merged the Risk and Audit Committees and intend to use it to focus more strategically on risk management." Gabriel Abdullah Al-Roomi, Senior Manager, Saudi Kayan, Saudi Arabia

At the same time, board members in the GCC feel that strategy and risk management are clearly two interconnected areas that require further attention. 38% of respondents noted that they need to upgrade their risk oversight protocols and a further 13% noted that they are in the process of doing so. At the same time, Risk Committees at the level of the board are common only in listed companies and in banks where the regulators require them and the role of the Chief Risk Officer (CRO) reporting to the board is common to the banking sector only. Indeed, the role of the CRO with unfettered access to the board was one of the key OECD recommendations following the financial crisis. The CRO should report on a diversity of risks, including on new risks such as cybersecurity.

"GCC boards are still insufficiently focused on cybersecurity and this will be changing in the coming years." Tristan de Boysson, Managing Director, Investcorp, Bahrain

Figure 32. Risk Oversight Practices

Which of the following risk oversight practices has your board performed in the past year? (multiple answers possible)

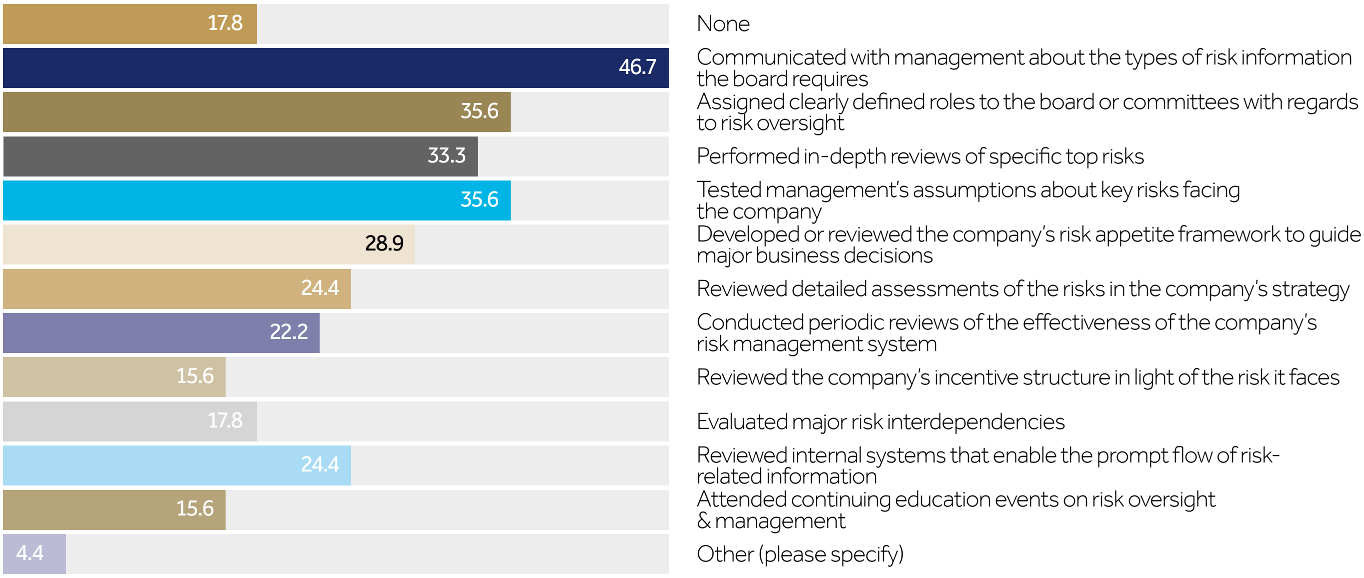
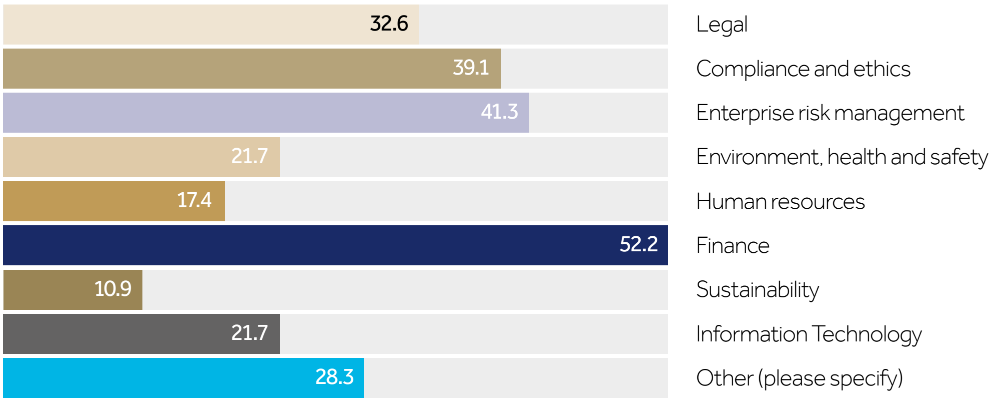


Figure 33. Risk Communication to the Board

Which of the following departments/internal functions present risk information to the board? (multiple answers possible)

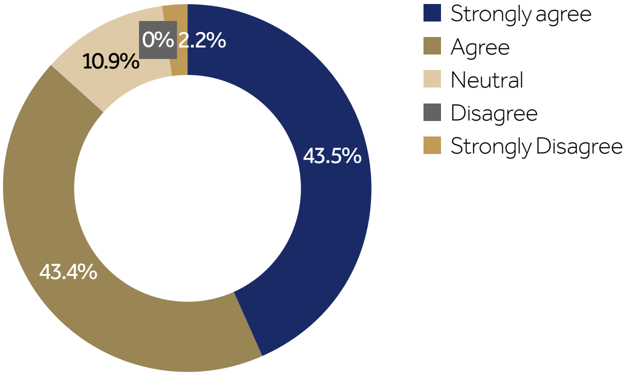


For listed companies, the opening of GCC markets to foreign investment requires new approaches to dealing with investors. While most regulators in the region have left this decision to individual listed companies, some regulators (e.g. SCA in the UAE) have moved to require all listed companies to appoint a dedicated investor relations officer. The role of investor relations officers is critical as less than half of respondents (46%) believe that boards provide best-in-class disclosure to shareholders.

Delivery on the Roles of the Board continued

Figure 34. Boards dealing with investors

The ongoing opening of the GCC markets and companies to foreign investment necessitates a new approach to dealing with investors



Effective Board Dynamics

Globally, and notably due to growing compliance challenges, board members have been dedicating a growing amount of time to discharging their duties and responsibilities. A survey of European boards revealed that the average number of hours dedicated annually to board service was 215 in 2013, up from 155 a decade earlier (Heidrick and Struggles, 2014). In the United States, individual directors devote an average 245 hours annually on the exercise of their duties on any given board (NACD, 2016).

A recent McKinsey survey found that directors of high impact boards dedicated approximately 40 days per year to the exercise of their board duties, while those who said that their impact was moderate to low averaged 19 days. (McKinsey, 2014) In the GCC, while directors allocate an increasing amount of time to the exercise of their duties, there appears to be a great variability in metrics. For approximately half of directors surveyed, the amount of time they dedicate to the exercise of their duties is in line with their European and especially North American peers. Most of this time is spent outside formal board deliberations as 65% of directors report to have 4-5 board meetings per year.

Figure 35. Time Spent on Board Duties

How much time do you estimate to spend annually on exercising your board duties?

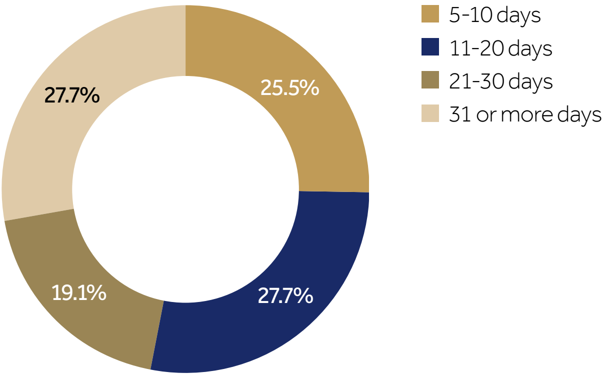
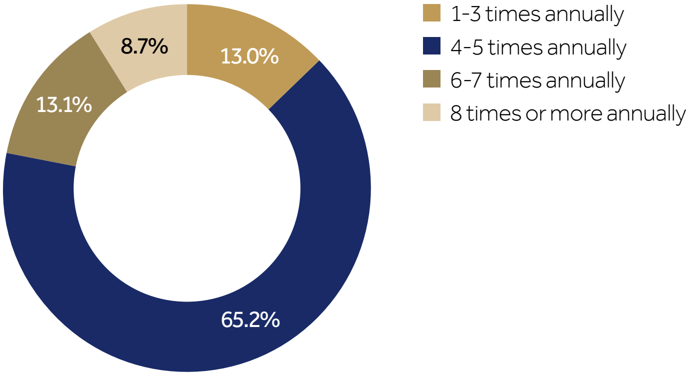


Figure 36. Frequency of Board Meetings

What is the frequency of board meetings (excluding committee meetings)?

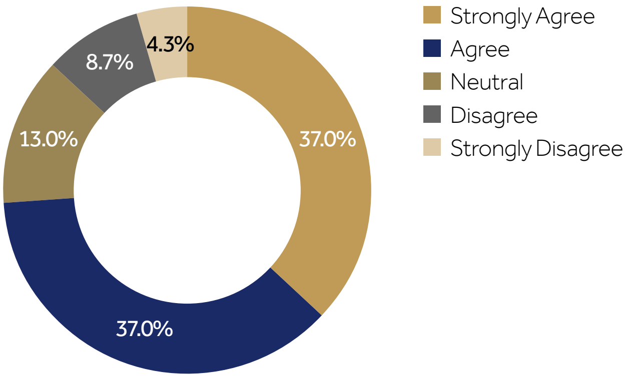


While the majority of board members surveyed feel that board discussions follow a structured agenda, in-depth interviews highlight that board discussions and indeed their planning can be rather unstructured, especially in privately-held companies. As a result, board members commented that decisions in board meetings are not always taken through due deliberations and thorough consideration of options.

On the other hand, discussions between boards and management are organised as open deliberations and 74% board members commented that board meetings follow a clear agenda. The majority of boards (61%) noted that the decision making process is consensual whereas only 7% indicated that the Chair makes a decision on behalf of the board. 63% of respondents were satisfied with the quality and timeliness of information provided to the board by the management and only 11% were dissatisfied.

Figure 37. Structure of Board Discussions

Board meetings follow a clear agenda and structure which helps the board in ensuring sufficient time is allotted to key topics to be covered in the meeting

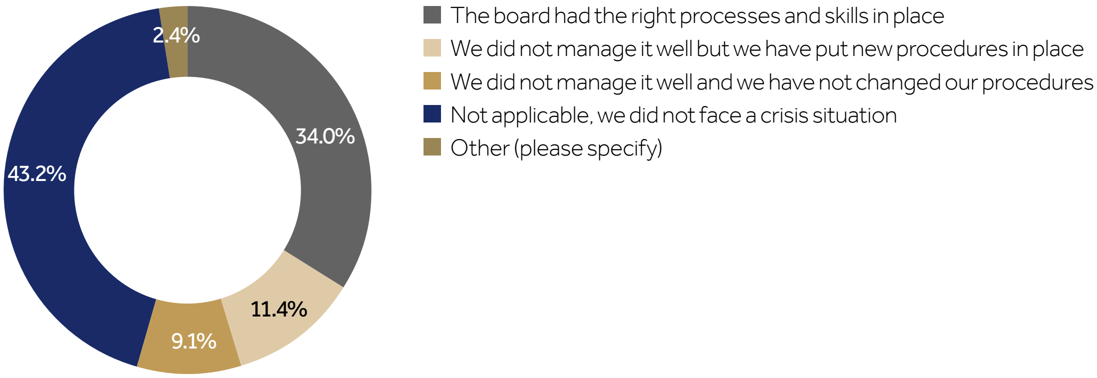


Reflecting global and regional instability of recent years that has preoccupied GCC directors, approximately half of respondents confirmed that they have not had to deal with a crisis situation in the past 3 years. Of those who have had to deal with a difficult situation, 34% thought that the board had the right processes and skills in place and 11% noted that they introduced new procedures going forward. As the types of risks that GCC boardrooms face are growing in complexity, the processes that boards have to address these risks and their manifestations would merit further attention.

Effective Board Dynamics continued

Figure 38. Boards Addressing Crises

If your board has had to handle a crisis situation in the past 3 years, how did it handle it?




Board
Directors
Institute

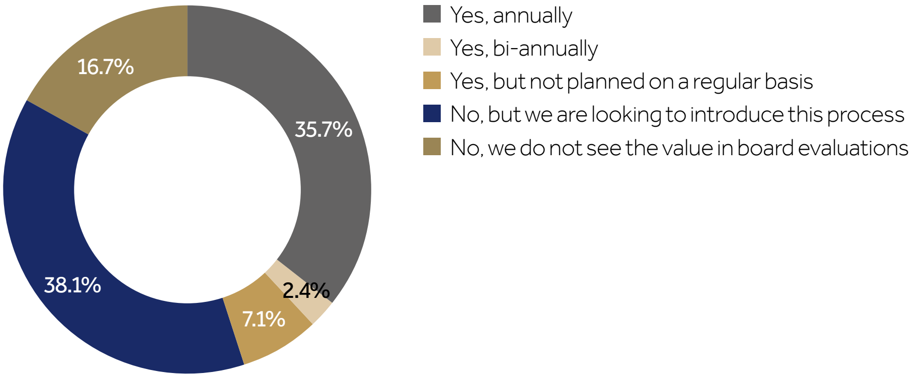
Board Evaluation and Renewal

Board composition has been subject to potentially the greatest regulatory attention and recently this has included board evaluations as a mechanism for assuring the representation of adequate skills on GCC boards. From being virtually non-existent a decade ago, the use of board evaluations in the region has grown significantly over the past 3 years. While annual or periodic board evaluations are now mandatory or recommended in the region for banks and listed companies[14], they remain rare in private companies, where board renewal tends to be less formal.

36% of GCC BDI survey respondents commented that board evaluations are conducted on an annual basis and 17% noted that they are conducted periodically, while an additional 38% said that they are looking to introduce board evaluations. Over a third of respondents thought that the introduction of board evaluation was driven by global best practice and 17% commented that it was a regulatory requirement.

Figure 39. Implementation of Board Evaluations

Do you evaluate the board's performance and effectiveness?



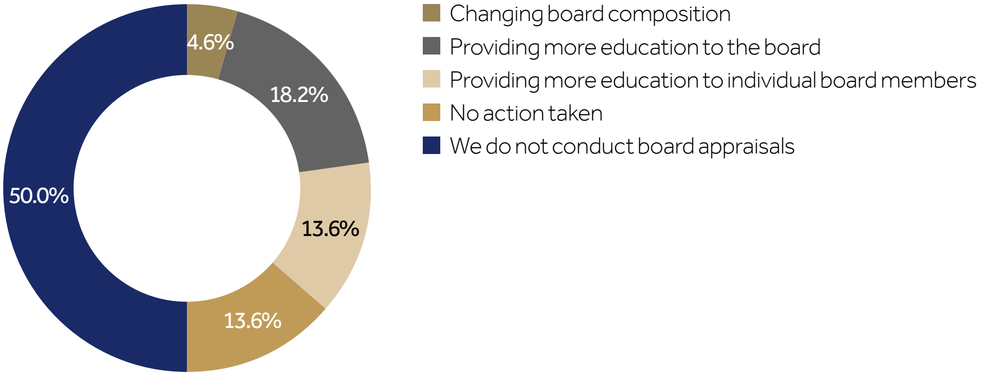
"Board evaluations should be conducted by a Company Secretary or an independent outside party. They should start with evaluating the board as a whole; individual evaluations should be introduced in subsequent years." H.E. Abdullatif Al Othman, Chairman, Dussur and Chairman of SAIIC, Saudi Arabia

Given the sensitivity of board evaluations, boards are moving towards conducting them internally first, and then externally for the entire board and subsequently for individual board members. The most common outcome of board evaluations in the GCC is not a change in board composition as, according to the survey responses, this happened in less than 5% of the cases. Instead, board assessments help boards identify skill gaps. As a result, the most prevalent outcome of board evaluations is the provision of training either to individual board members (14%) or at the level of the board as a whole (18%).

14 For example, Bahrain requires all listed companies and banks to conduct annual evaluation of the board and its committees, including the performance of individual directors.

Figure 40. Results of Board Evaluations

What follow up actions were taken, if any, as a result of the board evaluations conducted?

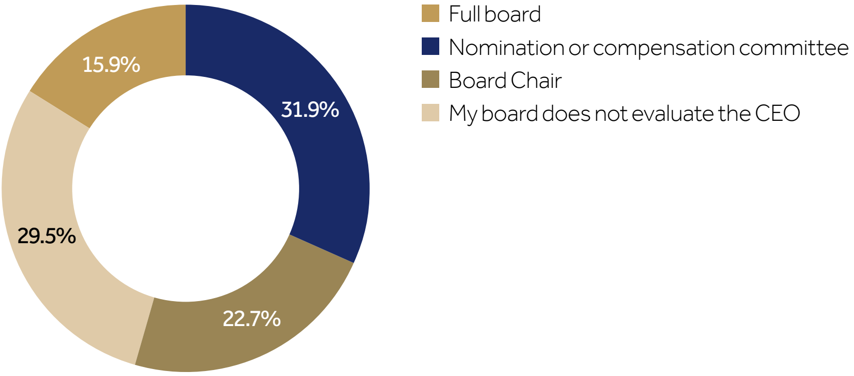


> *"Board evaluations serve to identify gaps and issues in the dynamics of the board and can be a useful tool to understand the profile of members the board should be seeking when board seats become vacant." Dr Abdullah Alabdulqader, Chair, Saudi Telecommunications Company, Saudi Arabia*

On the other hand, evaluations of senior management in the region are typically conducted by either the board as a whole (32%) or by the board Chair (30%), as opposed to a specialised governance organ such as the Nomination or Remuneration Committees. Boards in the region have realised that assessing CEO effectiveness and preparing plans for their succession are key to business sustainability as well as to assuring sufficient corporate memory.

Figure 41. Conduct of CEO Evaluations

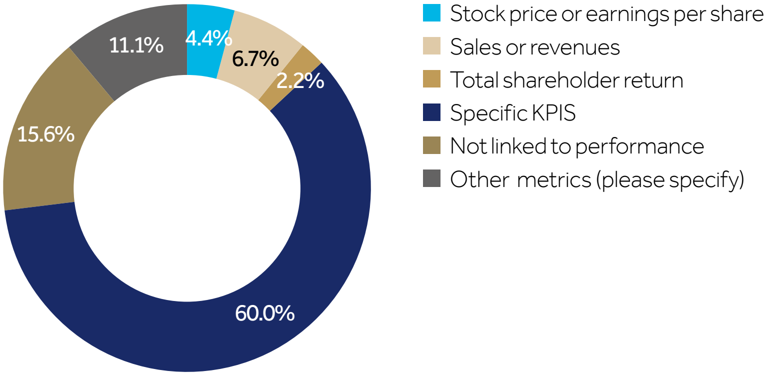
Which group or individual has the primary responsibility for the CEO evaluation?



Board Evaluation and Renewal continued

Figure 42. Pay-to-Performance Metrics

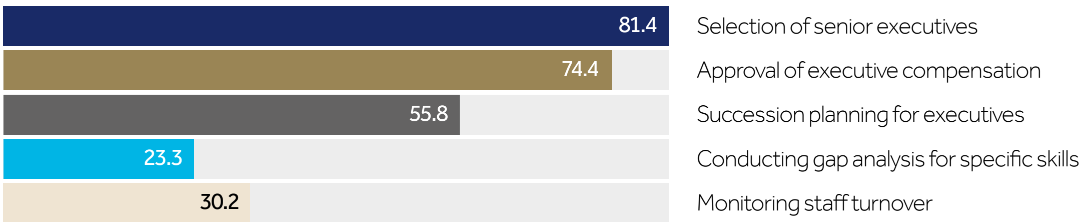
Is senior executive pay linked to performance and if so, how is performance defined?



Indeed, in terms of managing the complexities of succession planning, GCC board members note that few systematic attempts are made to manage succession planning for executives. At the same time, the majority of companies (60%) say that they have already defined custom KPIs for evaluating executives. Boards in the region remain more narrowly focused on selection, assessment and succession planning of senior executives, whereas broader talent management practices have not yet attracted attention.

Figure 43. Board's Role in Talent Management

The Board is actively involved in the following areas of talent management in the organization (multiple answers possible)



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