



**Corporate
Governance
in Ukraine 2018:
Survey-Based
Report**



CORPORATE
GOVERNANCE
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Vasil Kisil & Partners jointly with the Corporate Governance Professional Association (CGPA), Amrop and the European Business Association (EBA) conducted an online survey "Corporate Governance in Ukraine 2018". The survey results along with expert comments are presented in a report that provides an insight into the current state of corporate governance in Ukrainian companies.



Oleksandr Okuniev,
Chairman of the Management Board, CGPA

Proper corporate governance in Ukrainian companies will contribute to economic growth of individual companies and the public economy in general by attracting domestic and foreign investors and raising investments. Having researched the current state of corporate governance in Ukraine, we will be able to evaluate all positive and negative aspects of corporate governance systems operated in companies and to develop universal recommendations on how to improve them, as well as to understand the development trends.



Alex Dayrabekov,
Associate Partner at Amrop Ukraine

Within recent years we have been witnessing an increasing interest and broadening awareness in corporate governance in general, and supervisory boards in particular. This unique survey is an important step in understanding how it is actually progressing, and which way it has yet to take. We are confident that the outcomes will eventually help to promote the idea of corporate governance which is a crucial mental reform Ukraine has to implement.



Volodymyr Igonin, Head of Corporate / M&A,
Partner at Vasil Kisil & Partners

We are confident that effective corporate governance adds value and sustainability to a company. Our opinion is based on foreign experience as well as on our clients' experience in Ukraine. Besides, the level of attention paid to corporate governance is increasing year by year. We decided to approach representatives of companies as the primary beneficiaries of effective corporate governance. Their feedback to the questions of the survey will give the most valuable practical insight into the actual state and perspectives of corporate governance in Ukraine.

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The online survey on Corporate Governance in Ukraine 2018 was conducted among

104

respondents, including owners, members of supervisory boards and management boards of Ukrainian companies as well as heads of legal departments, corporate secretaries, and compliance officers.

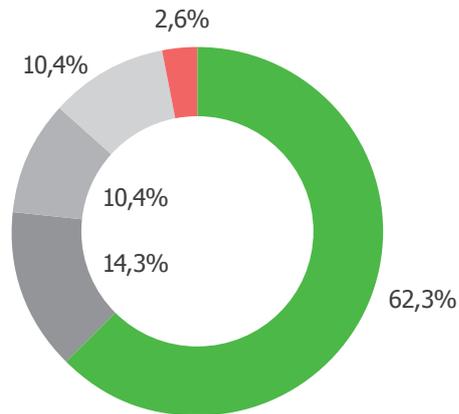
The companies included:

Dniprovskiy Machine Building Plant JSC,
 Ukrhydroenergo PrJSC,
 First Investment Bank JSC,
 Ukrainian Mining and Metallurgical Company PrJSC,
 Bank Sich JSC,
 Oschadbank JSC,
 TAS Insurance Group JSC,
 Agrohim Polonne Enterprise PrJSC,
 Kyivoblenergo PrJSC,
 Consortium Industrial Group,
 Mykolaivoblenergo JSC,
 Farmak PJSC,
 Bank Alliance JSC,
 National Depository of Ukraine PJSC,
 Darnitsa Pharmaceutical Firm PrJSC,
 Retail Group JSC,
 DTEK LLC, and others.

Top five industries:

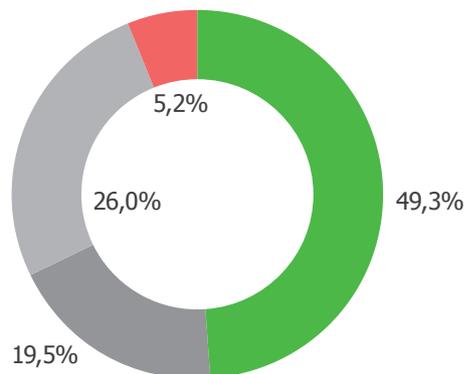
- banking and capital markets,
- manufacturing,
- energy,
- business services,
- engineering/construction.

Participating companies based on ownership



- Private companies
- State-owned or municipality-owned companies
- Subsidiaries of international/foreign companies
- Public companies
- Companies with private equity or venture capital investors

Participating companies based on their legal form



- Private joint stock companies
- Public joint stock companies
- Limited (or additional) liability companies
- Other forms

General moods

What is immediately striking in the survey results is that 97% of the respondents noted a positive impact of proper corporate governance on company's performance. In assessing the corporate governance in different types of companies, respondents gave the highest ratings to the subsidiaries of foreign companies: 95% of respondents believe that the best corporate governance practices are put in place there, fully or partially. Companies with private equity or venture capital investors and public companies were rated second (91%) and third (90%), respectively. Private companies were rated at 66%. The worst ratings were given to state-owned and municipality-owned companies, with only 26% of respondents noting a partial implementation of best corporate governance practices there.

Own company is closer to the heart

When assessing their own company, 72% of respondents believe that best corporate governance practices have been implemented partially or substantially. At the same time, over 70% of companies are planning to implement new measures and changes aimed at improving corporate governance or to continue those already put in place, in the coming year.

Corporate governance components

Respondents identified six most significant corporate governance principles and instruments: effective performance of the supervisory board (69.2%), prevention of conflict of interests (66.4%), protection of shareholders' rights (65.4%), professional approach to decision-making (63.5%), timely and accurate disclosure of information and transparency (56.7%), and equitable treatment of different groups of shareholders (51.9%).

Board as a key element

77.4% of respondents believe that corporate governance is not possible without a proper (independent) supervisory board. Among respondents, a supervisory board was established in 80.6% of companies. Slightly more than 60% of respondents note a positive impact of the supervisory board on the company's performance.

Supervisory board: pros and cons

Respondents identify the following key factors that are instrumental in the establishment of supervisory boards: legislative requirements, an IPO (intention to launch an IPO), and withdrawal of the founder from the company's operational management. The establishment of supervisory boards is hindered by a lack of understanding of the added value created by the supervisory board, the shareholders' disbelief in the board's effectiveness, and a small scale of business.

Focus of the supervisory board

Respondents believe that the supervisory board should focus primarily on strategic planning (80.6%), on risk management (68.8%), and on setting financial goals and monitoring their achievement (62.4%). Although the respondents acknowledge the importance of strategic planning, the supervisory board is directly involved in company's strategy development in 14.8% of cases only.

Corporate governance services

Nearly 74% of companies have a position (department) of a corporate secretary, with the same percentage having the position of an internal auditor (internal audit department). About 50% of companies have put in place a compliance department (a compliance officer position). 28% of companies use a whistleblowing policy. The other 23% of companies have approved, but do not use, such policy.

Which of the following principles and instruments of corporate governance are the most important for Ukrainian companies?

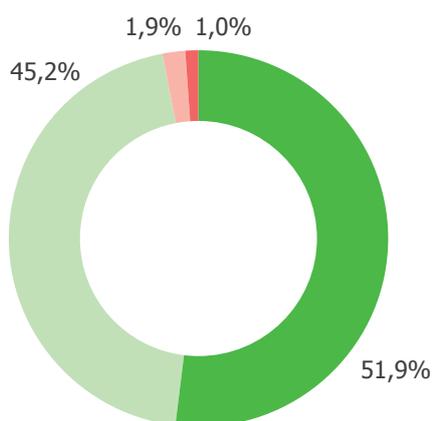
Effective supervisory board	69,2%
Prevention of conflict of interests	66,4%
Protection of shareholders' rights	65,4%
Professional approach to decision-making	63,5%
Timely and accurate disclosure of information and transparency	56,7%
Equitable treatment of different groups of shareholders	51,9%
Accountability	43,3%
System of checks and balances	34,6%
Recognition of the interests of stakeholders and co-operation with them	19,2%
Whistleblowing policy	14,4%
Aligned incentive system	10,6%



Oleksandr Okunieiev,
Chairman of the Management Board, CGPA

It is noteworthy that over 30% of respondents DID NOT mention the effective performance of the supervisory board among 6 (SIX!) most significant corporate governance instruments. This is about 30 people out of 100 – people who have a direct bearing on corporate governance in our country! Rephrasing a famous expression, I would like to note that the glass of understanding of the role of supervisory boards in Ukraine is still almost one-third empty! Of course, the issue is not only in the knowledge and awareness of experts. Supervisory boards in Ukraine have yet to prove their value to companies.

Does good corporate governance influence performance of a company?



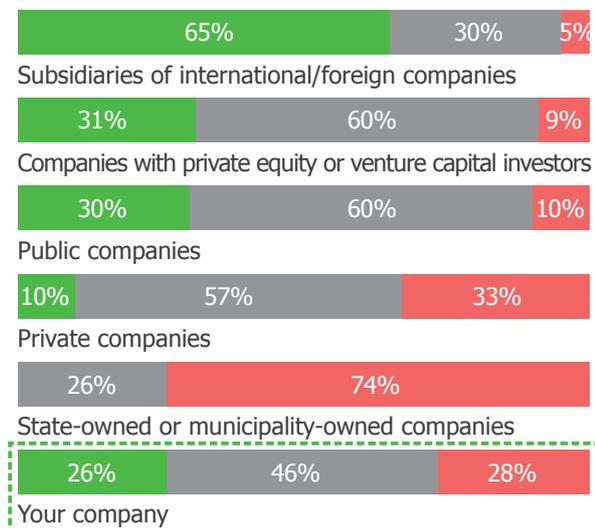
- Yes, it considerably enhances the company's performance
- Yes, it slightly enhances the company's performance
- No, it has no effect on the company's performance
- It negatively impacts the company's performance



Yuriy Nikitin,
Deputy Head of the State Property Fund of Ukraine

The survey showed that 97% of respondents already believe that proper corporate governance affects company's performance. This clearly proves that the component of corporate governance will be important for investors in assessing the company's attractiveness.

Specify to what extent corporate governance best practices are implemented in Ukrainian companies of the following types and in your company



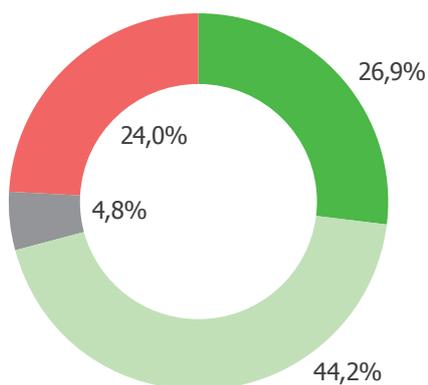
- Considerably (most practices are implemented)
- Partly (about a half of practices are implemented)
- Not enough (most practices are not implemented)



Volodymyr Igonin,
Head of Corporate / M&A,
Partner at Vasil Kisel & Partners

In general, respondents distributed their "preferences" among companies of different types predictably. Indeed, the carriers of the best corporate governance practices and the drivers of their implementation in Ukrainian companies are often large international corporations. In choosing between the quality of a decision and the speed of its adoption, a foreign company would normally choose the quality. Ukrainian owners who built their businesses in a dynamic post-Soviet market have become accustomed to the rapid pace of decision-making and of implementation of decisions. Most corporate governance instruments improve the quality of decisions and promote sustainability, which objectively takes time.

Are you planning to implement measures and changes aimed at improving corporate governance in your company within the next year?



- Some processes have already started and they will continue
- Yes, we are planning to implement certain measures and changes
- I am not aware
- No, we are not planning to implement such measures and changes in the near future



Maksym Libanov,
Member of the National Securities
and Stock Market Commission

Based on the survey results, over half of the companies have ALREADY appointed independent directors to their supervisory boards. Such result is positive and even somewhat unexpected. The very concept of an "independent director" appeared in the Ukrainian corporate law only two years ago and will become binding on companies (other than state-owned ones) as soon as 2019. This proves that a progressive part of the market perceives positively the efforts made by the Commission to implement the corporate governance best practices in Ukraine.

Can corporate governance be effective without a proper (independent) supervisory board?

22,6%

Yes

77,4%

No



Yuriy Nikitin,
Deputy Head of the State Property Fund of Ukraine

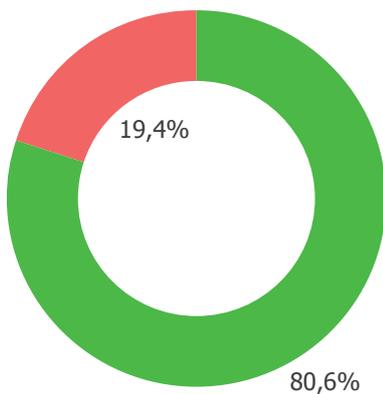
No one may challenge the role the supervisory board plays as an efficient tool of corporate governance in view that 77% supported this essential instrument. This proves once again that there is no doubt that this instrument should exist both in private and state-owned companies.



Volodymyr Igonin,
Head of Corporate / M&A,
Partner at Vasil Kasil & Partners

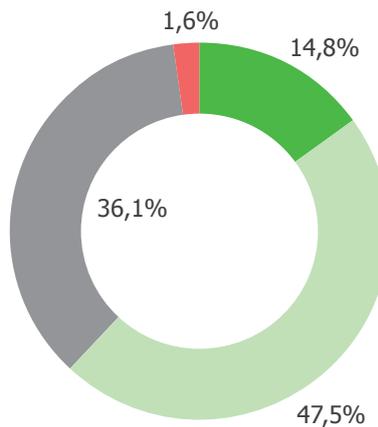
Notably, the Reforms Delivery Office of the Cabinet of Ministers of Ukraine conducted in November 2018 its own survey, in which 79% of 170 respondents said that state-owned companies needed supervisory boards.

Does your company have a supervisory board?



- Yes
- No

What are the results of the supervisory board's activity in your company?



- It significantly enhances the company's performance
- It slightly enhances the company's performance
- It has had no effect on the company's performance so far
- It has had negative effect on the company's performance so far

What drives Ukrainian companies to establish supervisory boards (factors FOR)?



What prevents Ukrainian companies from establishing supervisory boards (factors AGAINST)?



Oleksii Povolotskyi,
Acting Director for Corporate Governance,
Risk Management and Compliance, DTEK

Supervisory boards as a management body and independent directors as a separate category of experts still have a long way to go to prove their actual value for companies and business owners.

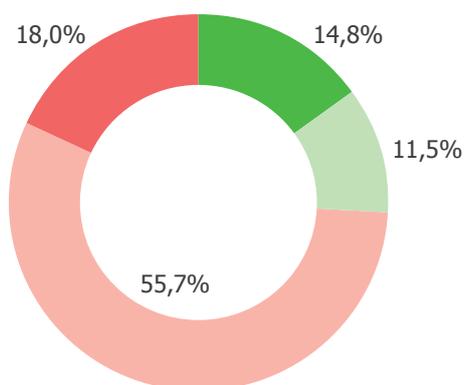
Introducing a legal requirement to have supervisory boards, independent directors, etc., encourages establishing and (potentially) developing the same, but it does so at the initial stage only.

Subsequently, the need for pro forma compliance with laws without clear understanding of the advantages of establishing the supervisory board will never induce a business owner to make serious steps to develop an efficient supervisory board.

What are the most important functions of the supervisory board?

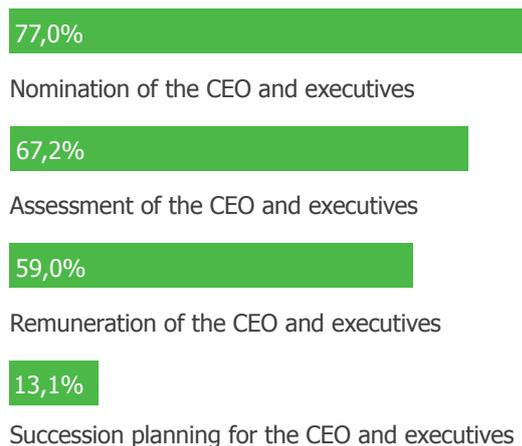
Strategic planning	80,6%
Risk management	68,8%
Financial targets setting and control over achievement of them	62,4%
Compliance with legislation	55,9%
Executives remuneration	41,9%
Procedural powers provided by law	39,8%
Succession planning	25,8%
Crisis management	24,7%
Business analytics (big data)	24,7%
IT strategy, IT risks (including cyber security)	12,9%
Marketing, sales, customer service	2,2%

How is the supervisory board involved in the development of your company's strategy?



- Development and proposal of the company's strategy
- Review of the company's strategy
- Approval of the company's strategy developed by executives
- Not involved in the development of the company's strategy

To what extent is the supervisory board of your company involved in control of the CEO and management?



Oleksandr Okuniev,
Chairman of the Management Board, CGPA

Sadly, as follows from the answers given by respondents, supervisory boards mostly appoint to positions those executives whom they have not selected! The survey results confirm that supervisory boards perform very poorly when it goes to succession planning (13.1% only). This issue is critical to banks and public and state-owned companies in view that this is about who selects and how he or she selects chief executives, if the supervisory board does not do it? Perhaps, a legislative requirement that the supervisory board must establish nomination committee will contribute to the activation of such work.

What types of expertise are essential for the supervisory board (its individual members)?

Legal expertise/corporate governance procedures	82,8%
Risk management	78,5%
Expertise in a business sector in which a company operates	76,3%
Finance	68,8%
International expertise	41,9%
Operational management	33,3%
Human resource management	31,2%
Technology/digital media	22,6%
Marketing	18,3%
Other	7,5%



Oleksii Povolotskyi,
Acting Director for Corporate Governance,
Risk Management and Compliance, DTEK

Naturally, it is very important for supervisory board members, notwithstanding what previous experience they may have, to understand the company's business, its financial aspects, key risks, etc. However, what disturbs more is that only one in five respondents believes that supervisory board members should have experience of / understand IT and digital media. Likewise, most respondents (see page 10) put such issue as IT risks and cyber security as last but one priority of the supervisory board. And this is when the entire world is developing intensely IT and digitalizing many spheres of human activities... We hope that such majority position will change in future since it is very important, from a strategic perspective, for a competitive business to react timely to all changes in technology and work approaches.

What are the most effective types of outside (independent) directors for supervisory boards?

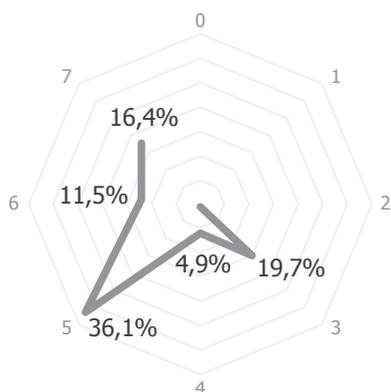
Legal experts, including corporate governance experts	63,4%
Industry experts	61,3%
Experts from banking and financial sector	45,2%
Directors with lobbying capabilities	33,3%
Directors with work experience in regulatory agencies and state authorities	17,2%
Venture capitalists	15,1%
Other	7,5%



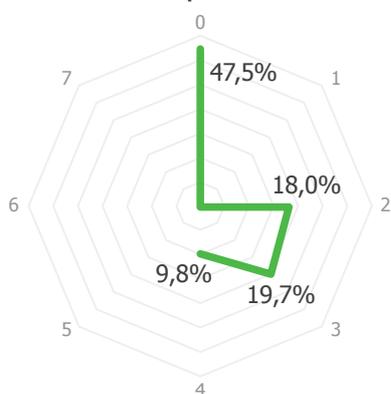
Alex Dayrabekov,
Associate Partner at Amrop Ukraine

According to the survey participants, lawyers (63,4%) and relevant industry specialists (61,3%) are the most efficient independent directors. We are sure that such evaluation is not relevant to the modern view of corporate governance. Moreover, according to Harvard Business Review (based on an example of banks), <https://hbr.org/2016/08/when-having-too-many-experts-on-the-board-backfires> there is a direct correlation between the number of board specialists and potential bankruptcy of a company. To make the company efficient, it is essential that different views and different experiences are represented in the board.

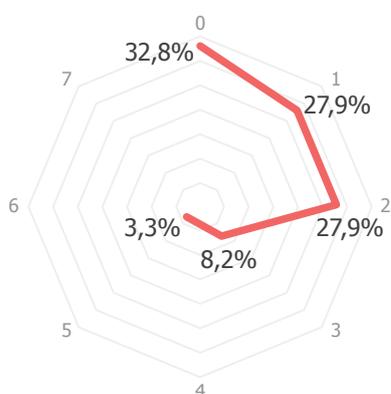
Total number of members



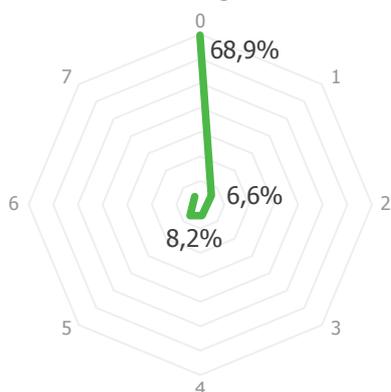
Number of independent directors



Number of female members



Number of foreign members



General facts

5
members in most of the boards

47,5%
of boards without independent directors

2/3
of boards have female members

1/3
of boards have foreign members

40-60
average age



Alex Dayrabekov,
Associate Partner at Amrop Ukraine

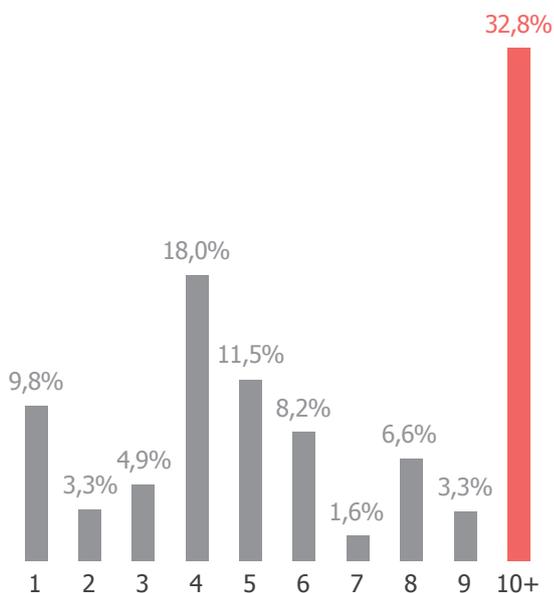
According to survey results, an average number of supervisory board members is five, being the minimum necessary for medium and large companies. For example, most of large state-owned companies will have to have at least 7 members, while state-owned banks will have to have 9 members.

Generally, almost a half of supervisory boards have no independent directors, which fact we believe confirms that supervisory boards are very often established in Ukraine for the sake of appearance only and they do not create space for independent and conflicting views. The supervisory board should be composed mostly of members who are fully independent from the owner. Here, the public sector may be the driving force since the laws provide for the majority of independent directors in the supervisory board and, accordingly, transparent competitions with the engagement of international recruiting companies.

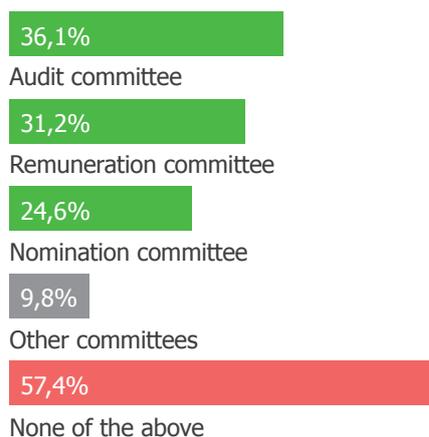
In terms of diversity by gender and age, everything looks just fine: figures are good with 1 to 2 women out of 5 supervisory board members, being consistent with the global trend (at least 30%), and with the age varying from 40 to 60, though we should wish to have more diversity by age (from 30 to 70).

Very unfortunately, one-third of the respondents confirmed that they had no women at all on the supervisory board, which trend we believe will change.

On average, how many times per year does the supervisory board of your company meet in person?



Which of the following committees does the supervisory board of your company have?



Volodymyr Igonin,
Head of Corporate / M&A,
Partner at Vasil Kisil & Partners

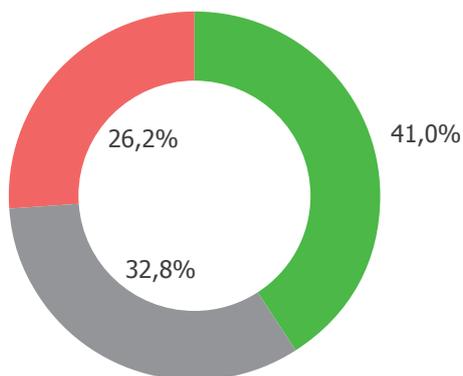
A robust company usually has its supervisory board meeting physically from four (each quarter) to eight times a year. Almost 46% of the answers hit this "robust" range. If the board has to meet more often, this may be caused by serious transformations within the company or may indicate that the management is not effective enough or lacks trust in it from the owner. Naturally, the board maintain communication between meetings.



Oksana Paraskeva,
Senior Project Manager of the EBRD-Supported
External Project Office for the Support
of the Financial Sector Reforms

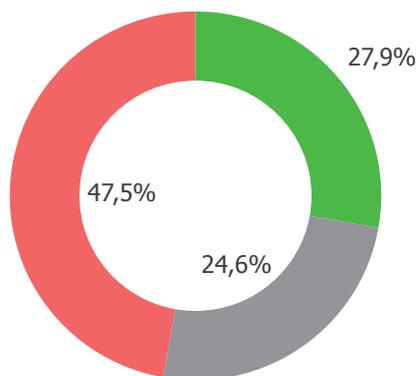
The laws of Ukraine require certain categories of companies to set up an audit committee, so that it was ranked the second with 36.1%. However, in view of lack of understanding of the role and potentials of the committees as such, and a pro forma attitude to the formation of supervisory boards with the minimum number of members combined with ignoring the direct effects the quality of those who work in the committees has on the performance of the supervisory board, it happened that 57.4% of respondents in Ukraine have no committees at all. A transition to committees not composed of the supervisory board members only may be one of the efficient steps to tackle the situation, provided that independent directors make up the majority of the committee.

Does your company have a corporate secretary department (position)?



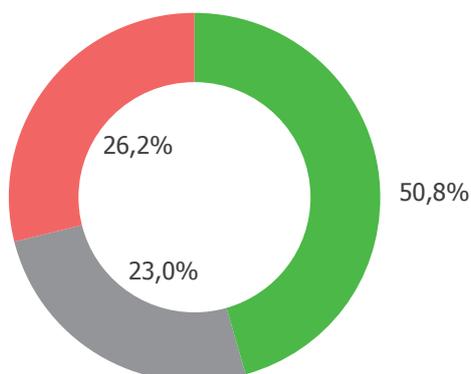
- Yes
- Yes, but this department/position has a different name in our company
- No

Does your company have a compliance department (a compliance officer/manager position)?



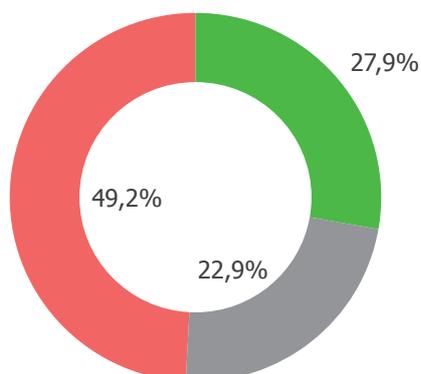
- Yes
- Yes, but this department/position has a different name in our company
- No

Does your company have an internal audit department (an internal auditor position) subordinated to the supervisory board?



- Yes
- Yes, but this department/position has a different name in our company
- No

Do you have an approved whistleblowing policy in your company? Does it work in practice?



- There is whistleblowing policy in our company, and it is put into practice
- There is whistleblowing policy in our company, but it is NOT put into practice
- There is no whistleblowing policy in our company

ABOUT ORGANIZERS



Corporate Governance Professional Association (CGPA) was established in 2009 as a non-government organization and currently ranks as a leading expert community and center for generating corporate governance reforms in Ukraine. CGPA's Mission is to help Ukrainian businesses become more profitable and sustainable through the development of effective corporate governance.

Our values:

- professionalism;
- openness;
- trust;
- apoliticism.

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Amrop is one of the world's largest retained executive search firms with offices worldwide. Our network has 77 offices in 50 countries. The global brand Amrop has been known for over 40 years in the world. We have been operating in Ukraine since 2006.

Amrop offers the following services to its clients:

- Executive Search;
- Board Recruitment;
- Leadership Assessment.

Our strategic goal is to create added value through a deep understanding of clients' businesses and solving their managerial problems. One of the major benefits of cooperation with Amrop is a transparent and well-structured process that enables clients to be involved at any stage of the project.

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Founded in 1992, Vasil Kisil & Partners Law Firm is one of the leading law firms in Ukraine. We have been advising and acting for our clients in the most complicated transactions and disputes for 26 years, helping them to develop their business.

We strictly adhere to the following principles:

- zero tolerance to any illegal practices;
- the highest ethical and professional standards;
- comprehensive and innovative solutions for clients.

Now, Vasil Kisil & Partners is a team of more than 45 professional and experienced lawyers specializing in various areas of legal practice. Such well-known international law directories as Chambers, Legal 500, IFLR1000 have been for more than 10 years recognizing our partners and counsels as the best experts in their industries in Ukraine.

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European Business Association. Established in 1999, the EBA provides a forum in which members can discuss and find solutions to common problems affecting business in Ukraine. This initiative was initially supported by the European Commission and has grown to become one of the largest and most influential business communities in the country.

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