Corporate Governance Forum: Independence, Diversity and Right Mix of Skills
Take-Aways

“A change is needed in the understanding on roles and responsibilities of board member. Dedicated education and more objective outside board evaluations will be very helpful in this matter.”
- Johan Brand, Managing Director at Johan Brand Leadership Advisory

“Diversity is one of the main points boards should think about.”
- Tarek Fadlallah, Chief Executive Officer of Nomura Asset Management (Middle East)

“Hawkamah’s Director Development Program is very helpful. More people should attend this program, especially first time board members.”
- Omar Al Shunnar, Co-founder and Chairman of Aquagas Group of Companies
Hawkamah held a Corporate Governance Forum on Boards Independence, Diversity and Right Mix of Skills on 14th June 2017 in the DIFC’s Conference Center.

The forum focused on independent boards in the region as well as its importance, the value added by independent Board members and the challenges that the region is facing to ensure that companies have robust Boards. Effective boards today should not only have independent directors, but should ensure also a diversity in experiences, skills and perspectives that will allow for the board as a collective to add and create value of organizations.

The forum was opened by Dr. Ashraf Gamal El Din, the CEO of Hawkamah, who highlighted the four key principles Boards should take into consideration, which are accountability, foresight, strategy and supervision. “The Board is responsible to the shareholders for the proper management of the company and meets regularly to set the overall direction and strategy of the organization, to review operational and financial performance, and to advise on management appointments. All key operational and investment decisions are subject to Board approval. As such, it is important that the board is independent”.

Moderated by Alec Aaltonen, Vice President of Hawkamah, the forum brought together panelists and practitioners who stressed the importance of increasing diversity in regional boards and the significance of a balanced board with the right mix of skills.
Independence

The board of directors and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively (B.1. UK Corporate Governance Code).

Board directors have a number of functions in common, still each of them has a specific assigned role to play to enable the board to achieve its purpose. Thus boards are no longer the old man club but should be rather a carefully composed team, where each member can cover a different area of the pitch.

According the UK Governance Code the board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking (B.1. UK Corporate Governance Code).

The definition of independence for independent directors varies considerably across jurisdictions, particularly with regard to the maximum term of office and independence from significant shareholders.¹

Figure 1- Definition of independent directors: independence from substantial shareholders

Figure 1 - OECD, Corporate Governance Factbook 2017, p. 99

¹ OECD Corporate Governance Factbook 2017, p. 110.
According to the SCA Definition, an Independent Member of the Board of Directors is a member who has no relationship with the Company, any of its Senior Executive Management persons, auditor, Mother company, subsidiaries, sister company, or affiliate company that could lead to financial or moral benefit which may affect his decisions. ²

The Company’s Articles of Association shall determine the method of formation of the Board of Directors, the number of its members, and the term of its membership. However at least one-third of Board members shall be Independent Board Members. ³

Whereas the UK Code goes one step further by mandating that at least half the board, excluding the chairman, should be composed of independent non-executive directors. A smaller company ⁴ should have at least two independent non-executive directors (B.1.2. UK Corporate Governance Code).

Many jurisdictions have introduced a requirement or recommendation with regard to a minimum number of ratio of independent directors. Some jurisdictions ⁵ established binding requirements for 50 % or more independent board members for at least some companies. However, it is far more common for calls for the majority of board members to be independent to be limited to recommendations on a “comply or explain” basis. ⁶

Johan Brand, an experienced leadership professional and the owner of a leadership advisory firm, highlighted that a main issue for boards can be “being comfortable”. “Boards in the MENA region often comprise of members who already know each other. Many of these Boards are ‘comfortable’ with each other, which ‘feels’ good and enhances trust. But the negative of being ‘comfortable’ is that they are less likely to ask questions about what they do not know; which is effectively limiting the quality of the discussion around the Boardroom table. Adding independent, outsider, Board Members will enrich the debate in the Boardroom. Remaining ‘comfortable’ with insiders only might represent a risk to the sustainability of the company.”

The lack of industry knowledge can prevent directors to contribute in the boardroom, said Johan. Thus, “the induction training of board members is very important especially for independent directors.”

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² Article (1) The Chairman of Authority’s Board of Directors’ Resolution No. (7 R.M) of 2016 Concerning the Standards of Institutional Discipline and Governance of Public Shareholding Companies.
³ Article (3) A , Art. (40) 2. of The Chairman of Authority’s Board of Directors’ Resolution No. (7 R.M) of 2016 Concerning the Standards of Institutional Discipline and Governance of Public Shareholding Companies.
⁴ Which is a company that is below the FTSE 250 throughout the year immediately prior to the reporting year.
⁵ For example Sweden, Australia, UK, Iceland.
⁶ OECD Corporate Governance Factbook 2017, p. 95.
Tarek Fadlallah, Chief Executive Officer of Nomura Asset Management (Middle East), raised a concern that appointing independent board member could be a box ticking exercise for some companies. The importance is not only to have independent board members but knowing what they bring to the company.

“In the MENA region most boards lack industry knowledge. They should have access to the right education through induction and training programs which will certainly add value to the team and their organization. The past few years have witnessed a positive shift where independent Boards derive their value as much from operational performance as from enhanced governance practices”, Omar Al Shunnar, Co-founder and Chairman of Aquagas Group of Companies, said.

Diversity

Gender diversity in boardrooms and board effectiveness as well as the correlation between gender diversity and companies’ performance is a hot topic globally which gained renewed traction in recent years. Yet gender diversity is gaining momentum rather slowly despite the efforts made by governments and regulators. Women representation on boards in many countries ranges from less than one percent to slightly over forty percent.

The Financial Reporting Council (FRC) announced that, effective October 1, 2012, the UK Code will require companies to publish their policy on gender diversity in the boardroom, to report against it annually and to consider diversity as a factor when evaluating the effectiveness of the board.

The SCA Resolution mandates that at least 20 % candidates for Board membership shall be represented by female board members, the Company shall disclose the reasons in case no female is nominated; and shall also disclose the rate of female representation in the Board of Directors in its Annual Governance Report. ¹

In the UAE, there are 511 board members in the companies listed on DFM and ADX. The percentage of women directors still amounts 1.9 % only.

¹ Article (40) 1. The Chairman of Authority’s Board of Directors’ Resolution No. (7 R.M) of 2016 Concerning the Standards of Institutional Discipline and Governance of Public Shareholding Companies.
The panelists called for more diverse boards. “Many organizations in the region have independent directors and professionals on board, but what is really missing is gender diversity on boards,” Omar said in his opening statement. He strongly agrees that “definitely there is a value increase if women are represented in boards”, but still he has not seen many boards with women.

“The MENA region has few women serving on Boards. However, strides have been made to provide women with the opportunity to showcase their skills and talent. The government of Dubai has been very progressive and has introduced a number of processes and regulations in an effort to increase the number of women in senior positions”, he continued.

Europe is ahead in the women on board’s agenda. However, there are still cases were women are voted on boards just as “trophies” without realizing that women can enrich discussions on board. So the risk of “trophy” hunting remains, said Johan. “Therefore we need to make sure that women need to be fully qualified as much as their peers to be come board members,” he continued.

Quota system can trigger a higher female representation on boards, said Tarek. “Generally, I am against gender quota, but as the number in the region is so low there should be a minimum threshold to have more women on boards”, said Tarek.

Dr. Ashraf highlighted the newly issued Hawkamah report on the relationship between Culture, Organizational Policies, Self-Imposed Barriers, and Gender Diversity in the UAE. The report acknowledged that women face more pressure than men to prove their capability to sit in boards: Women have to put in extra effort within their work and networking is very important for women to become board members. The board leadership pipeline also calls for more women to take on senior leadership positions, that will enable them to access decision-makers.

Hawkamah believes that quota can be one of many solutions to reach gender diversity in the boardroom. However implementing quotas cannot be the final solution as they can only be seen as one of the ingredients needed to crack the glass ceiling by raising awareness and ensuring board effectiveness.

Johan continued, “Women need the right qualification to become board members, but also men need to be sure that they are equipped for board memberships to fulfil their roles. “Board education is very important”.

Whether men or women, identifying the optimal qualifications of board skills and experience will continue to be a challenge in the region. There is a need to bridge this gap through comprehensive induction and education programs for boards, said Tarek.
Board Evaluation

In many companies globally, Board evaluations are an annual exercise, by choice or by regulation.

“Board performance evaluation is very important and should therefore definitely happen”, said Johan. He mentioned that there are several methods of board evaluations. Some boards use the method of self-evaluation via a questionnaire with the board discussing the results. This might be a subjective “box-ticking” exercise for some. Other boards make use of external, objective, evaluators and in some cases they even use a combination of quantitative and qualitative board evaluations.

No matter which evaluation method is chosen, it is a very good investment for the companies, he concluded.

Conclusion

Overall, the panelists were in agreement in calling for more independent directors in the boardrooms across the region. Boards today should be carefully composed teams, and the presence of independent directors can significantly improve the effectiveness of decision making at the boardroom. The panelists felt that this was the case for all types of companies, whether listed or non-listed.

Gender diversity is on top of the agenda for most governments across the world, with some countries opting to set strict quotas while others simply follow the “comply or explain” principle. The panel noted that participation of women in the boardroom in this region is still an area for improvement. Hawkamah’s Gender Report states that only 1.9 % of board seats in DFM and ADX are held by women. Quota systems can definitely trigger a higher female representation, yet Hawkamah believes that implementing a quota system can only be seen as one of several ingredients needed to crack the glass ceiling by raising awareness and ensuring board effectiveness.