Corporate & Regulatory Governance Reforms: Building Markets & Institutions for MENA

IMF-AMF Conference
Abu Dhabi, UAE December 19-20, 2006

Dr. Nasser Saidi
Executive Director
Hawkamah Institute for Corporate Governance

Agenda

- Building Sound Financial Markets: roles of good Corporate and Regulatory Governance
- Driving forces of CG reforms
- CG principles for POEs and SOEs
- CG of Banks and of Regulators
- CG Survey results for MENA & GCC
  - ➢ Hawkamah-IIF GCC CG Survey
  - ➢ Hawkamah-IFC MENA CEO Survey
- Improving market performance: Reforms & Recommendations

Role of Financial Sector Development for MENA and GCC

- Invest, Manage and Control region's financial wealth of $2 trillion and growing as a result of high energy prices:
  – Financial sector can be an engine of growth
  – Strategic issue: security and safety of assets.
- Role in Economic Development & Diversification
- Financing Infrastructure & Regional Economic Integration
- Develop new markets and instruments:
  – Shari'a compliant financial sector & market
  – Bond market
  – Housing Finance & Mortgage markets
- Enable & support economic and financial reforms:
  – Enable separation of oil revenue management from economic policy
  – Privatisation and Private sector Participation in Infrastructure

Building Financial Markets to Sustain Growth & Development

- Developing Financial Markets priority for MENA countries: good CG is a major building block
- New Institutional Economics (T. Beck, R. Levine, R. LaPorta, A. Schleifer and others):
  - Historically determined differences (including colonial heritage and implantation) in legal tradition influence national approaches to private property rights protection, the support of private contractual arrangements, and the enactment and enforcement of investor protection laws
  - Resultant legal institutions shape the willingness of savers to invest in firms, the effectiveness of corporate governance, and the degree of financial market development
- Lack of financial development and financial deepening are increasingly a barrier to MENA growth and development

Impact of Good CG

- At the country level, countries with strong shareholder rights and investor protection tend to have larger capital markets, companies with less debt and perform better during periods of crisis
- Public Governance matters. In particular:
  - **Control of corruption**
  - **Regulatory quality**
  - **Rule of law**
  - **Government effectiveness**
- At a company level, companies with good governance tend to have higher values in the market, better access to finance & higher credit ratings
- Institutional investors consistently express preferences for companies with good governance.
- [Sources: WB, OECD, CIPE]

Corporate Governance : Performance in Emerging Markets

Better CG correlates with

→ better operating performance

→ better market valuation of companies

Firm level CG provisions & practices matters even more wherever:

→ Weak protection of shareholder rights

→ weak legal environments & weak public governance

Cross-country differences in laws & enforcement affect

→ ownership structure

→ Market valuations & dividend payouts

→ availability & cost of external finance

Impact of Good Governance & Transparency

- Recent survey of 4,411 firms in 29 countries looked at relationship between foreign investment and corporate governance
- Survey showed that foreign investors invest less in less governed companies
- Investors look at country level disclosures and governance practices AND firm level improvements in governance or information flows in making investment decisions.

[Source: Leuz, Lins, Warnock, “Do Foreigners Investment Less in Poorly Governed Firms?” 2005]

Drivers for Corporate Governance Reform

- International convergence of prudential and regulatory codes and standards: e.g. AML/CTF, Banking CPs,
- Drivers for modernisation and change are varied:
  - Intellectual: new institutional economics
  - International obligations and agreements: WTO, RTAs and FTAs
  - Competitive pressure and emulation
  - Role of IFIs: WB, IMF, WIPO, WTO
  - High volatility and turbulence in equity markets
  - Pressure from globalisation, liberalisation and inter-connectedness of markets and regional/ international investors
- MENA countries have been slow in adopting or complying with international codes and standards, apart from Basel CPs and AML/CTF

MENA ROSCs, FSAs Completed and Published, December 2006

ROSC	Algeria	Bahrain	Egypt	Jordan	Kuwait	Lebanon	Morocco	Oman	KSA	Tunisia	UAE
Accounting & Auditing			X ‘02	X ‘04		X ‘03	X ‘02				
AML/CTF		X '06			X '04						
Banking Supervision	X '04	X '06			X '04		X '03		X '06	X '01	X '03
Corporate Governance			X ‘04	X ‘04			X ‘03				
Data Dissemination			X '05	X '04			X '03	X '05		X '01	
Fiscal Transparency	X '05			X '06		X '05	X '05			X '01	
Insolvency & Creditors											
Insurance Supervision		X '06					X '03			X '02	
Monetary & Financial Transparency	X '04						X '03		X '06	X '02	X '03
Payments							X '03		X '06		X '03
Securities Regulation		X '06			X '04		X '03			X '01	
FSAP/FSA	X '04	X '06	X '05		X '04		X '03		X '06	X '02	X '03

Lags in Completing ROSCS (Recommendations of the 2005 Review of the Initiative**, IMF, June 2006)**

Table 1. Lag in Completing the ROSCS 1/
(In months)

	Overall					Data					Fiscal					Financial Sector (excluding AML/CFT)				
	Average	Std. Dev.	Max	Min	Med	Average	Std. Dev.	Max	Min	Med	Average	Std. Dev.	Max	Min	Med	Average	Std. Dev.	Max	Min	Med
Overall	8	4.1	32	1	7	11	4.5	23	3	10	8	5.7	32	1	7	7	3.3	22	2	7
Advanced	7	2.2	12	2	8	8	2.2	11	4	8	7	3.2	12	2	8	8	2.0	11	4	8
Emerging	8	4.8	32	1	6	11	5.6	23	3	10	8	7.6	32	1	6	7	3.4	15	2	6
Developing	8	4.2	22	3	7	11	3.6	20	4	12	9	4.5	20	3	9	8	4.0	22	3	7
Africa	10	4.8	22	3	9	11	4.7	20	5	10	9	5.5	20	3	7	10	4.8	22	3	8
Asian and Pacific	9	3.4	23	2	9	12	6.3	23	6	11	9	4.7	16	2	9	8	2.1	11	5	10
Europe	7	3.2	21	1	6	8	3.5	16	3	8	7	5.7	21	1	6	7	2.6	12	2	6
Middle-East and C. Asia	7	3.9	19	2	6	11	2.9	14	4	12	7	3.2	13	4	7	7	3.8	15	2	5
Western Hemisphere	9	5.1	32	3	7	12	5.6	23	4	12	11	7.7	32	3	8	8	3.3	14	3	7

1/ The lag is considered as the time between the (last) ROSC mission and the issuance of the ROSC to the Board.

What Good Corporate Governance should do

- Align interest between shareholders and board of directors/management
- Promote accountability throughout the company
- Win and retain confidence of investors and other stakeholders
- Ensure fair treatment of minority shareholders
- Enhance transparency & disclosure within the company and to the outside world
- Ensure responsiveness to stakeholder concerns, consistent with long-term shareholder value creation

Corporate Governance Codes

- CG Codes and Principles have been developed for major sectors of modern economies
  - Listed Companies (OECD, WB)
  - Banks and financial institutions (BIS)
  - Insurance Companies (IAIS)
  - Investment managers (IOSCO, Hermes)
  - Family enterprises (Cadbury)
  - State Enterprises (OECD)
- Need to adapt to national legal and institutional conditions

OECD Corporate Governance Principles

1. Ensuring the basis for effective Corporate Governance framework
2. The rights of the shareholders and key ownership functions
3. The equitable treatment of shareholders
4. The role of stakeholders in CG
5. Disclosure and transparency
6. The responsibility of the board

OECD CG Principles (2004)

- Stronger role of shareholders: institutional investors
- Conflicts of interest and self dealing
- Abuse of related companies
- The role of stakeholders including creditors
- Executive and director remuneration
- Financial market integrity: audit and accounting
- Transparency; also intermediaries
- Ensuring the basis for an effective corporate governance framework: effective enforcement

OECD CG Guidelines for SOEs

- **Ensure a level-playing field with the private sector.**
- **Reinforce the ownership function within the state administration.**
- **Improve transparency of SOEs' objectives and performance.**
- **Strengthen and empower SOE boards.**
- **Provide equitable treatment of minority shareholders**

Why Bank Corporate Governance Matters in MENA

- Banks' dominant position in financial and payment systems
- Banks dominate both credit & investment process for economy and majority of firms
- Government ownership and concentration of ownership in banking sector
- Strengthen prudential regulation and supervision
- Strengthen Transparency, Disclosure & Reporting
- Face challenge of external competition
- Liberalization & opening up is providing greater latitude to banks

Evidence on Government Ownership of Banks

1. Government ownership of banks is large and pervasive around the world.
2. Ownership is particularly significant in countries with low levels of per capita income, underdeveloped financial systems, interventionist and inefficient governments, and poor protection of property rights.
3. Government ownership of banks is associated with slower subsequent financial development.
4. Government ownership of banks is associated with lower subsequent growth of per capita income, and in particular with lower growth of productivity rather than slower factor accumulation.
5. The evidence is inconsistent with the optimistic “development” theories of government ownership of banks common in the 1960s, but supports the more recent “political” theories of the effects of government ownership of firms.

Survey by R. LaPorta, F. Lopez-de-Silanes & A. Shleifer (2000)

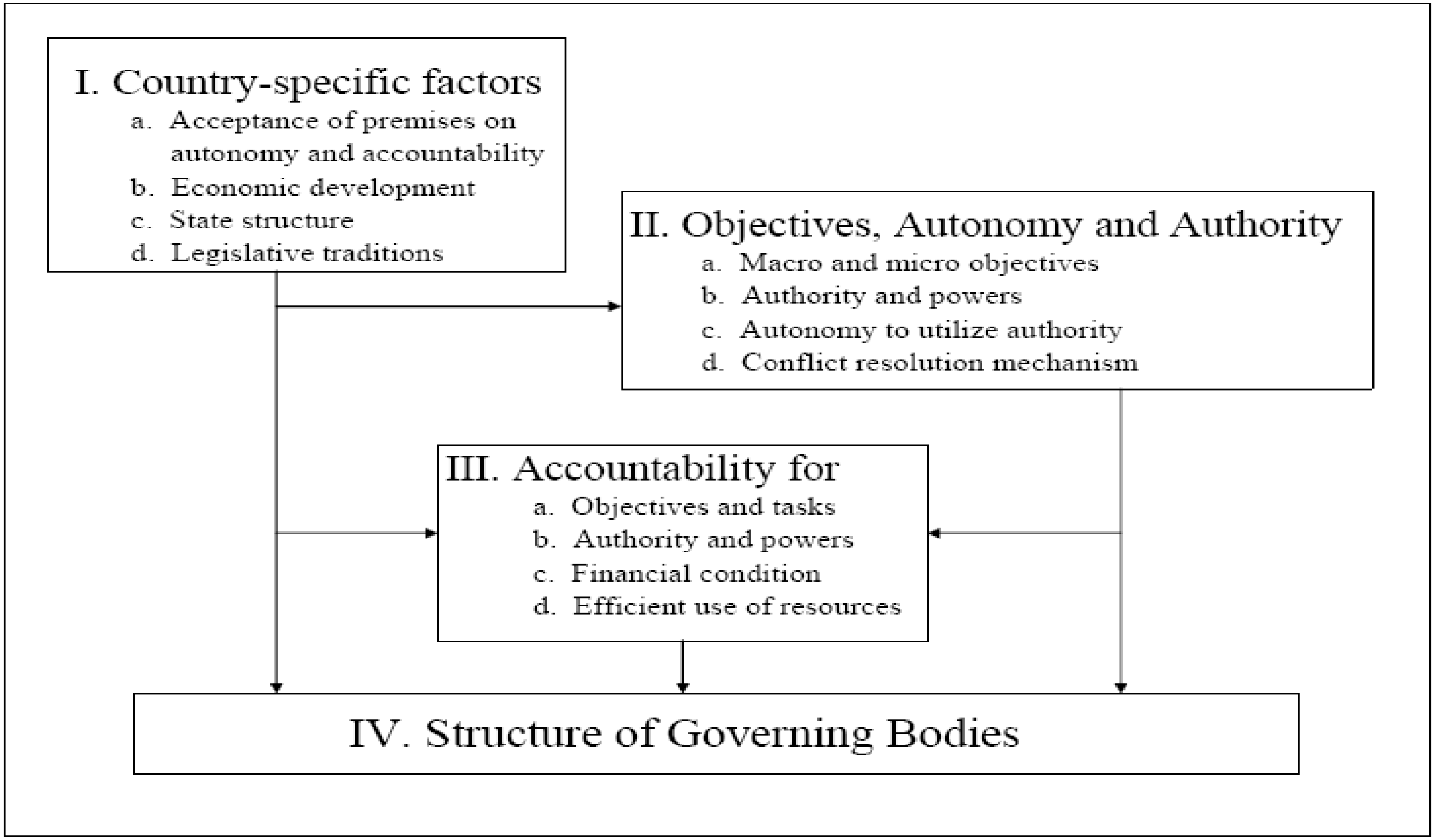
Focus Efforts to Address CG of the Banking System

1. Central Bank and Bank Supervisors
2. Banking sector and financial institutions
3. Non-bank corporate sector: Insurance sector being a priority
4. Shari’a compliant financial institutions

1. CG of Central Banks and Bank Supervisors

- Develop a credible and transparent regulatory environment
- Address Central Bank governance to ensure its independence and accountability
- Regulatory environment must not be perceived to be under control or influence of any particular interest group
- Follow BIS principles for sound banking CG

Designing a Consistent Governance Structure at the Central Bank



Source: Central Bank Governance: A Survey of Boards and Management. Tony Lybek and Joanne Morris, IMF Working Paper WP/04/226,

BIS: Sound CG Principles for Banking Organizations

- **Principle 1** Board members should be qualified for their positions, have a clear understanding of their role in corporate governance and be able to exercise sound judgment about the affairs of the bank.
- **Principle 2** The board of directors should approve and oversee the bank's strategic objectives and corporate values that are communicated throughout the banking organisation.
- **Principle 3** The board of directors should set and enforce clear lines of responsibility and accountability throughout the organisation.
- **Principle 4** The board should ensure that there is appropriate oversight by senior management consistent with board policy.

BIS: Sound CG Principles for Banking Organizations

- **Principle 5** The board and senior management should effectively utilise the work conducted by the internal audit function, external auditors, and internal control functions.
- **Principle 6** The board should ensure that compensation policies and practices are consistent with the bank's corporate culture, long-term objectives and strategy, and control environment.
- **Principle 7** The bank should be governed in a transparent manner.
- **Principle 8** The board and senior management should understand the bank's operational structure, including where the bank operates in jurisdictions, or through structures, that impede transparency (i.e. "know-your-structure").

BIS Principles on the Role of Supervisors in Bank CG

- Supervisors should provide guidance to banks on sound corporate governance and the pro-active practices that should be in place.
- Supervisors should consider corporate governance as one element of depositor protection.
- Supervisors should determine whether the bank has adopted and effectively implemented sound corporate governance policies and practices.
- Supervisors should assess the quality of banks' audit and control functions.
- Supervisors should evaluate the effects of the bank's group structure.
- Supervisors should bring to the board of directors' and management's attention problems that they detect through their supervisory efforts.

BIS on Role of Bank Supervisors

- Promote strong corporate governance
- Determine whether the bank has sound corporate governance policies and practices
- Hold the Board and senior management accountable for governance and internal control weaknesses
- Be attentive to warning signs of deterioration in management

2. CG of Banking Sector and Financial Institutions

- Understand and implement BIS standards
- Address institutional barriers for implementing BIS standards
- Be transparent and disclose:
  - Board and senior management structure
  - Organisational structure
  - Incentive structure of the bank
  - Related party transactions
  - Annual financial statements with supporting notes and schedules
- Develop codes of ethics and CG handbooks for banks, as guidance for directors and staff
  - Jordan, Lebanon, Oman, Pakistan have developed codes

3. Banks have a role in extending CG to non-bank corporate sector

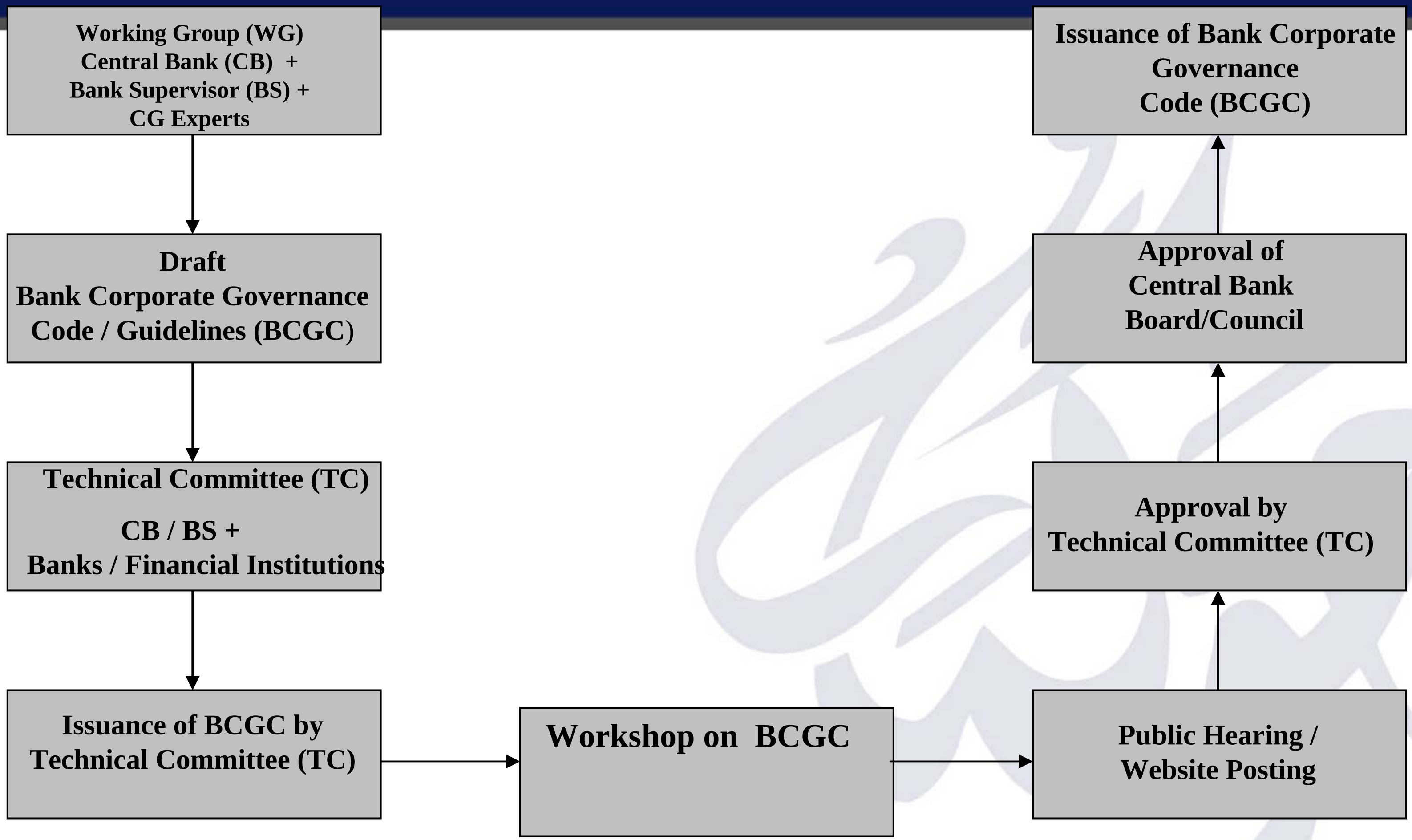
- For CG to take root in countries with relatively undeveloped financial markets, banks can play a crucial role to advance good CG practices.
- Establish ‘cascading effect’ of CG to banks’ corporate clients.
- Over 85% of firms in emerging markets are FOEs and are mostly dependent on banks, not capital markets, for source of capital.

Implementing CG in Non-Bank Corporate Sector

- Two step process consistent with implementation of Basel II:

1. Develop a mandatory bank CG Code
   - Monitored by bank supervisors and reported on by board
   - Reporting on compliance in bank annual report
2. Central Bank issues a circular relating to CG code for non-bank corporate clients of the banking system
   - Develop effective monitoring by banks (i.e. market based monitoring)
   - Support monitoring by development of credit bureaus and credit rating agencies
   - Create incentives (such as lower risk assessment for capital adequacy requirements) for CG-compliant corporate clients thereby also providing incentives for banks

PROCESS OF DEVELOPING BANK CORPORATE GOVERNANCE CODE / GUIDELINES



4. Shari'a Compliant Financial Institutions

- Islamic Financial Services Board developed seven guiding principles, divided into four parts, on CG for institutions offering only Islamic financial services (IIFS).
- Complements current corporate governance principles issued by OECD, BCBS and other international standard setting bodies.
- Recognizes that specific CG practices will vary in scope and content
- Prudential regulations covering aspects of capital adequacy, risk management, investor protection, transparency and market discipline, accounting practices will have CG dimension on structure and business practice. Focus is on holistic compliance of regulations.

Islamic financial Institutions: Draft Guiding Principles for CG

- **General Governance Approach of IIFS**
  - Establish comprehensive governance policy framework
  - Reporting of financial and non-financial information meets international standards
- **Rights of investment account holders (IAHs)**
  - Recognizes IAH’s rights to monitor performance of investments
  - IIFS shall adopt sound investment strategy
- **Compliance with Islamic Shari’ah rules and principles**
  - Put in place an appropriate mechanism for obtaining Shari’ah rulings, application of fatwa and monitoring of Shariah compliance
  - IIFS shall comply with Shari’ah rules and principles
- **Transparency of financial reporting**
  - IIFS shall make adequate and timely disclosure to the IAH and the public on investment accounts that they manage

Complementary Work Needed to Advance CG

- Engage wide participation from NGO's, Chambers of Commerce & Industry, media, business associations, government
- Develop necessary institutions and build human capacity in major areas (accountants, regulators, bankers, company directors)
- Design an effective regulatory system, but also create the conditions that make such a system credible.
- Corporate governance is about establishing a climate of integrity, trust and confidence.
- Corporate governance is critically about enforcement and will require judicial reform

Reinforcing Institutions for a CG regime for bank and non-bank corporate sector

- **Central Credit Reporting Organizations**
  - Provide information on bank and non-bank credit (including supplier credit)
  - Local CCROs can collect, organize, and analyze valuable material information in an efficient manner
- **Companies Houses**
  - Act as a corporate registrar and reliable source for publicly available information about corporations
  - Provide and disseminate financial reports and info on board & management actions
- **Credit Rating Agencies**
  - Risk assessments and credit ratings for companies and governments
  - Important for capital market development, and implementation of Basel II by providing credit benchmarks for local markets

IIF-Hawkamah GCC CG Survey & Assessment is the Start…

- Hawkamah Institute for Corporate Governance partnered with the Institute for International Finance to assess the corporate governance environment of the GCC countries, from an investors perspective.
- GCC Task Force met with close to 100 regulators, Central Bank officials, accountants, auditors, investment firms in all 6 GCC countries.
- Analysis of the corporate governance environment focused on:
- > Minority shareholder rights
- > Structure and responsibilities of Board of Directors
- > Accounting and auditing
- > Transparency of ownership and control
- > Regulatory environment

GCC Corporate Governance Reforms are on the policy agenda

Bahrain	• The Ministry of Commerce in Bahrain has drafted a new Commercial Companies Law and a new code of corporate governance that will be enforced in the near term.
Kuwait	• A new Capital Market Law will incorporate corporate governance-related requirements for companies.
Oman	• The Capital Market Authority plans to reassess current corporate governance requirements in fall 2006. • Authorities are considering privatization of Muscat Securities Market.
Qatar	• Doha Securities Market will introduce a code of corporate governance by end 2006. • Authorities are strengthening regulator's surveillance and enforcement of stock exchange and companies; they also created an independent regulator in 2005.
Saudi Arabia	• The Capital Market Authority issued a draft code of corporate governance for public comment. It hopes to finalize and implement the code by end 2006.
UAE	• The Emirates' Securities and Commodities Authority, the regulator for UAE, is currently drafting a code of corporate governance for listed companies. • Abu Dhabi Securities Market recently issued corporate governance guidelines for listed companies for market feedback. • Dubai Financial Market has drafted corporate governance guidelines for listed companies, which should become enforceable by fall 2006. • The Ministry of Economy has drafted a new company law which includes corporate governance principles.

Table 5: Comparison of Corporate Governance Frameworks in the GCC with IIF Guidelines

(on scale of 1-5 with 5 being fully compliant)

	Bahrain	Kuwait	Oman	Qatar	Saudi Arabia	United Arab Emirates
Minority Shareholder Protection	2.0	4.0	3.0	2.5	3.5	2.5
Voting Rights	1.5	3.5	3.5	2.5	2.0	3.5
Firm/Capital Structure	1.5	4.5	1.0	2.0	5.0	2.0
Shareholder Meetings/Other Rights	3.0	3.5	3.5	3.0	3.0	2.5
Structure and Responsibilities of the Board of Directors	2.0	1.5	3.5	1.5	2.0	1.5
Board Structure	1.0	1.5	3.5	1.5	1.0	1.0
Disclosure	4.0	3.5	5.0	1.5	4.0	3.5
Others	1.0	0.5	2.5	0.5	2.5	0.0

Comparison of CG frameworks in the GCC Countries with IIF Guidelines (on scale of 1-5 with 5 being fully compliant) II

	Bahrain	Kuwait	Oman	Qatar	Saudi Arabia	United Arab Emirates
Accounting and Auditing	2.0	2.5	4.0	2.0	2.5	2.0
Standards	3.0	3.5	3.5	3.0	3.5	2.5
Audit Committee	0.5	0.0	5.0	0.0	0.0	0.0
Transparency of Ownership and Control	2.5	3.5	3.5	1.0	4.5	2.5
Regulatory Environment	2.0	2.0	4.5	2.5	2.5	2.0
OVERALL ASSESSMENT	**2.0**	**3.0**	**3.5**	**2.0**	**3.0**	**2.0**

Improving performance: Recommended GCC CG Reform Measures

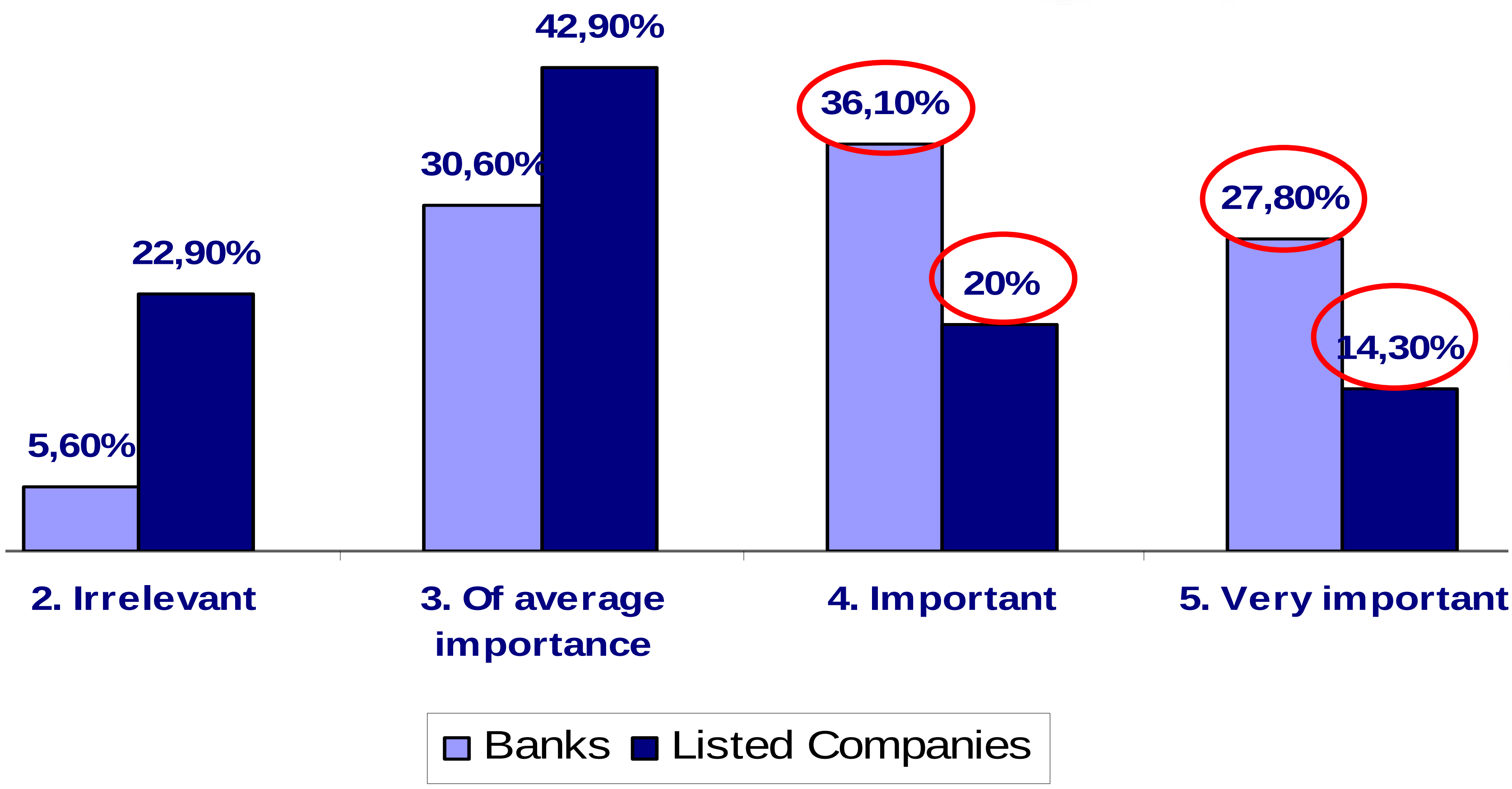
- ✓ Develop a strong regulatory structure by clearly separating and defining the roles of the regulator and the stock exchange
- ✓ Increase effectiveness of regulators by making them fully independent of government
- ✓ Issue meaningful corporate governance codes and require mandatory compliance
- ✓ Build institutional capacity and strengthen surveillance and enforcement mechanisms to ensure compliance
- ✓ Strengthen the underlying corporate governance infrastructure by updating laws and creating specialized courts to deal with financial cases
- ✓ Promote training programs for directors of listed companies
- ✓ Promote investor education and enhance public awareness of good corporate governance principles and practices
- ✓ Introduce corporate governance best practices for state-owned and family-owned companies
- ✓ Grant foreign investors full access to equity markets and promote shareholder activism by foreign and domestic institutional investors and the media
- ✓ Create a regional level corporate governance task force to promote convergence and harmonization of laws and codes among GCC countries

IFC –Hawkamah CEO CG Survey Background

- Scope: **Listed companies and banks**

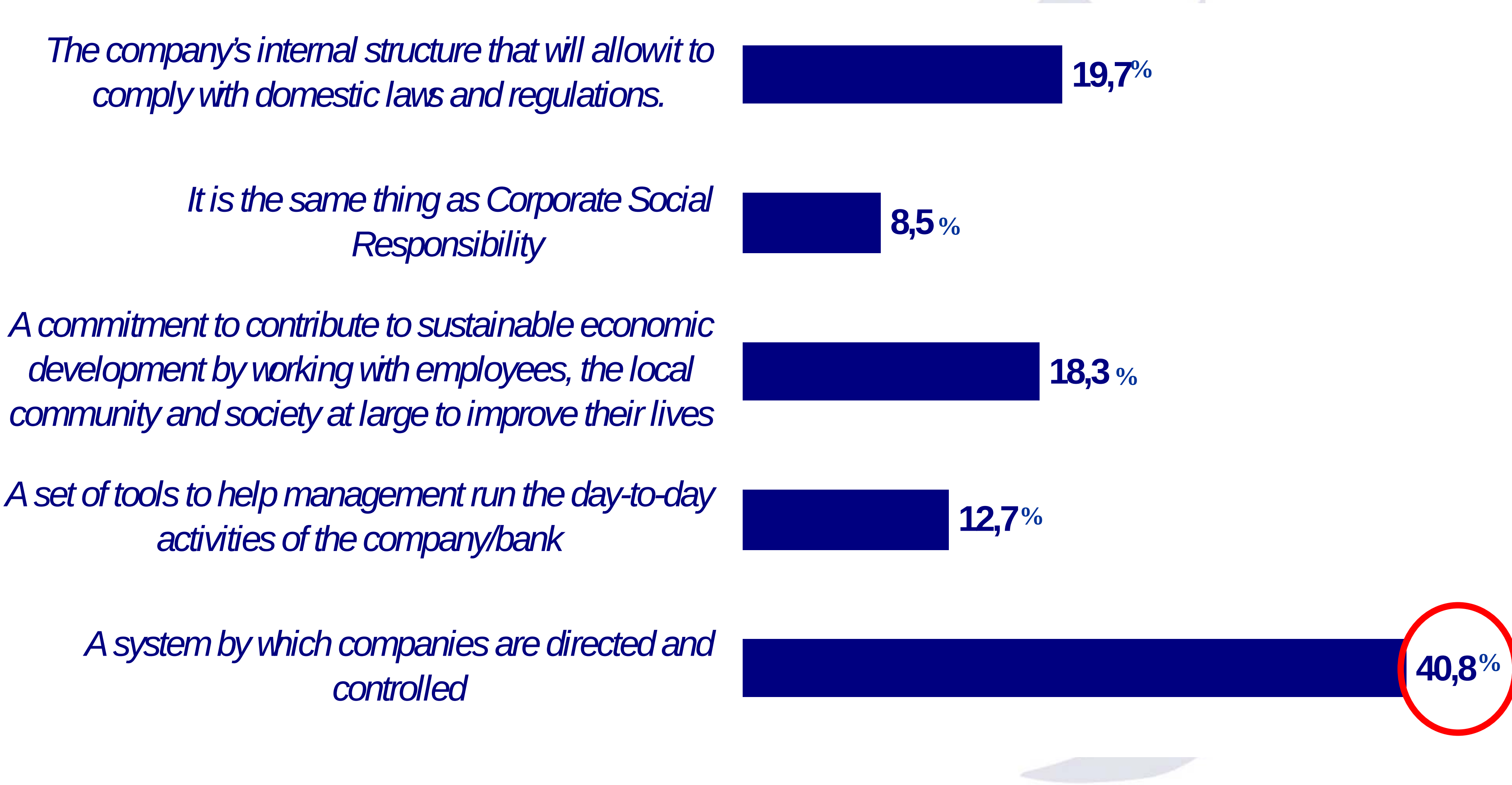
- 11 IFC member countries with stock exchanges:
  - Maghreb: **Morocco and Tunisia**
  - Mashrek: **Egypt, Jordan, Lebanon and West Bank**
  - GCC: **Bahrain, Kuwait, Oman, Saudi Arabia and the UAE**
- **Final Report out march 2007**

49.3% of Respondents Cited Corporate Governance as Important or Very Important



63.9% of banks → **34.3% of listed companies**

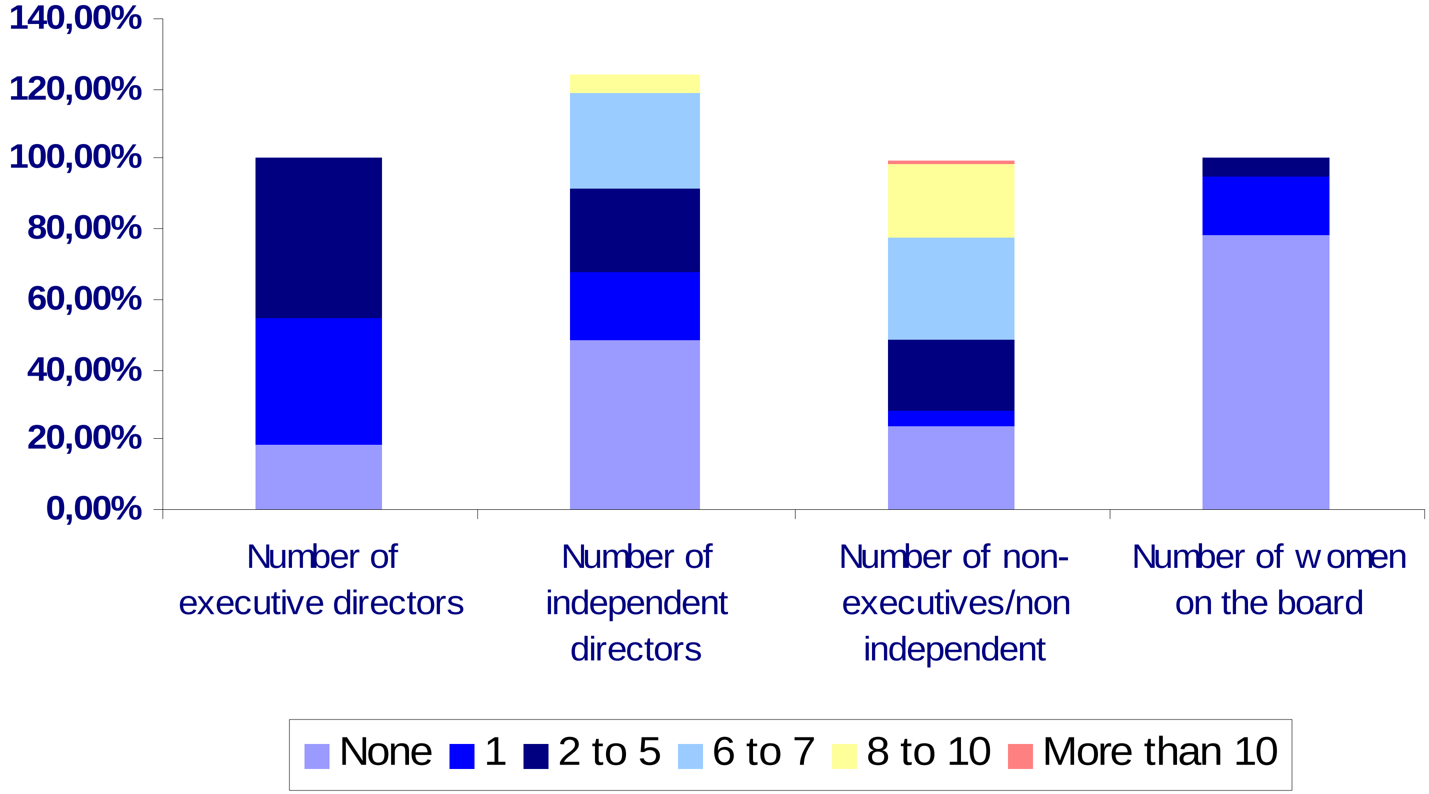
Nota Bene: 59.2% of Respondents Were Unable to Define Corporate Governance



Top Three Barriers to Corporate Governance Cited by Respondents

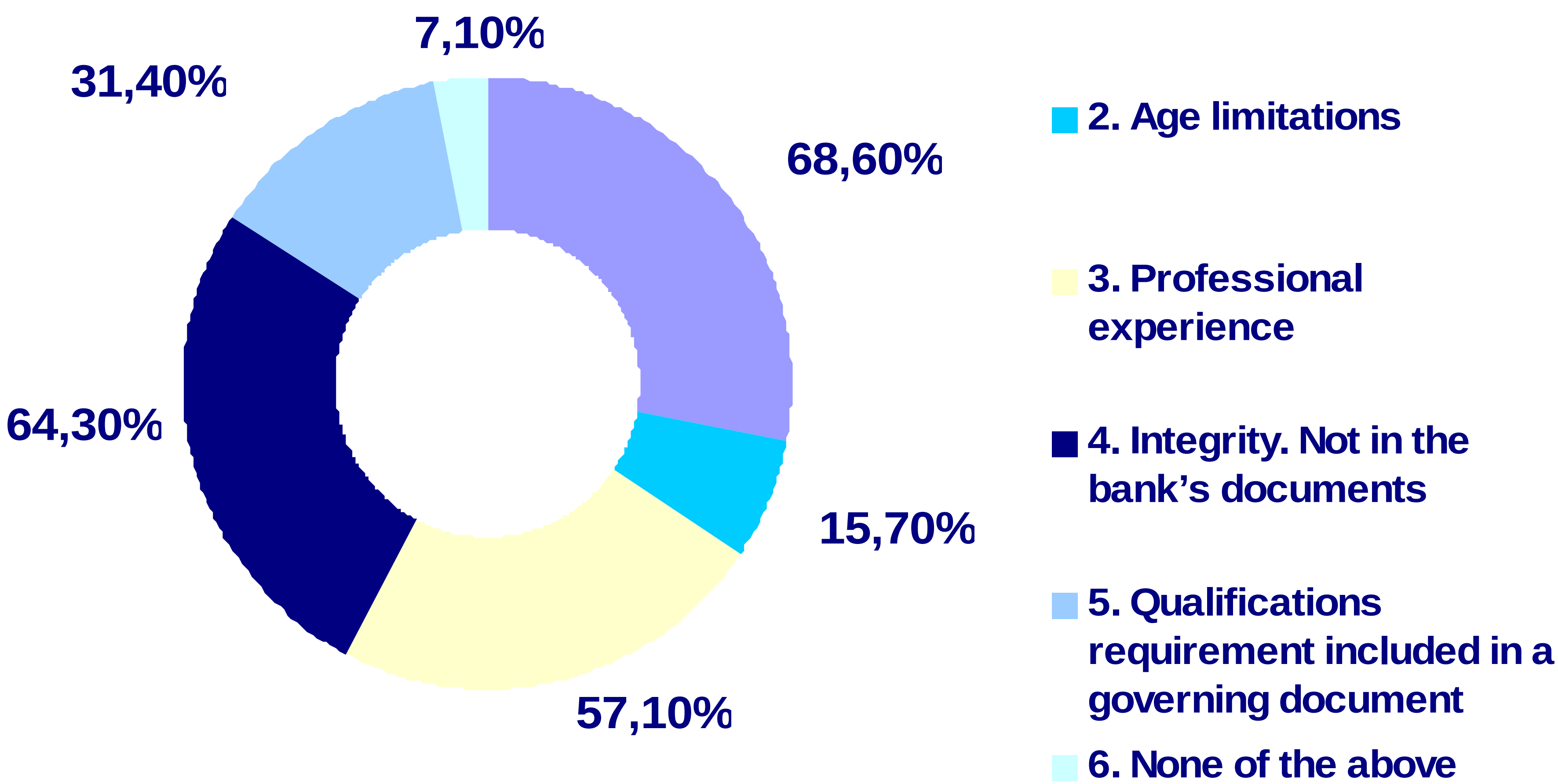
- **53.6% cited a** lack of qualified specialists **to help with implementation**
- **37.7% cited a** lack of information or know-how
- **24.6% cited** lower priority **of corporate governance in relation to other tasks**

Board Composition May Be Inadequate for Independent Control & Strategic Guidance



- Strength: Majority of boards consist of non-executives
- Weakness: Executive and independent elements
  - 68% have one or no independent directors
  - 54.7% have one or no executive directors

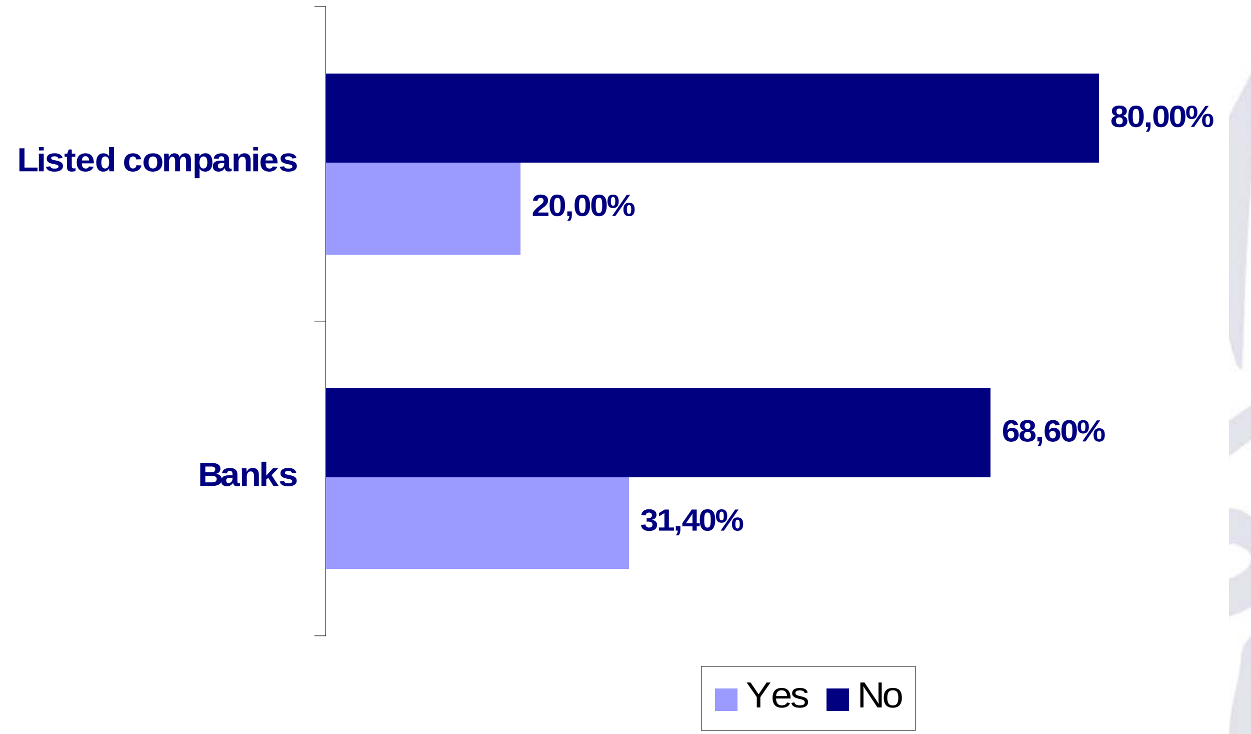
Being a Shareholder Key Criteria for Board Seat, Over Experience and Integrity



While 79.1% of Boards Have an Audit Committee, Only 22.4% are Independent

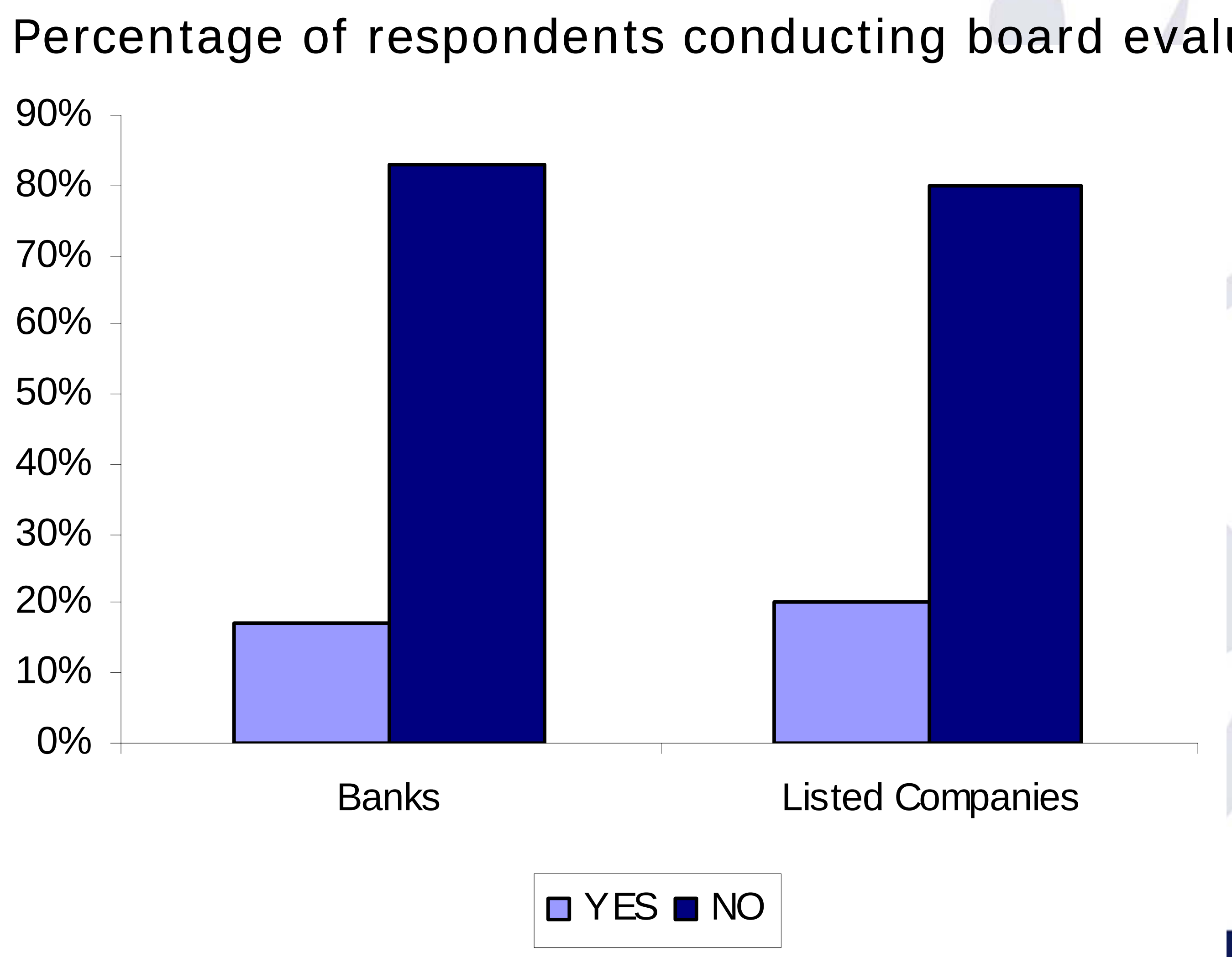
	Audit	Nomination/ CG	Remuneration	ExCom
It will be created	9,0%	14,3%	9,4%	8,5%
Exist	79,1%	14,3%	15,1%	47,5%
With majority of independent directors	22,4%	3,6%	5,7%	6,8%
With majority of non-executive and non-independent directors	35,8%	5,4%	1,9%	20,3%
With majority of executive directors	10,4%	1,8%	3,8%	11,9%
None of the above	7,5%	71,4%	75,5%	42,4%

Position of CEO and Chairman Often Combined … Against Best Practice



- **Board is hindered in providing independent oversight**
- **Lack of outside perspective in terms of strategic guidance**
- **Role are fundamentally different:**
  - CEO runs the business
  - Chairman runs the board.

"When you sweep the stairs, you always start from the top" … German proverb



Disclosure of Financial Information Appears to Be Well Above Par

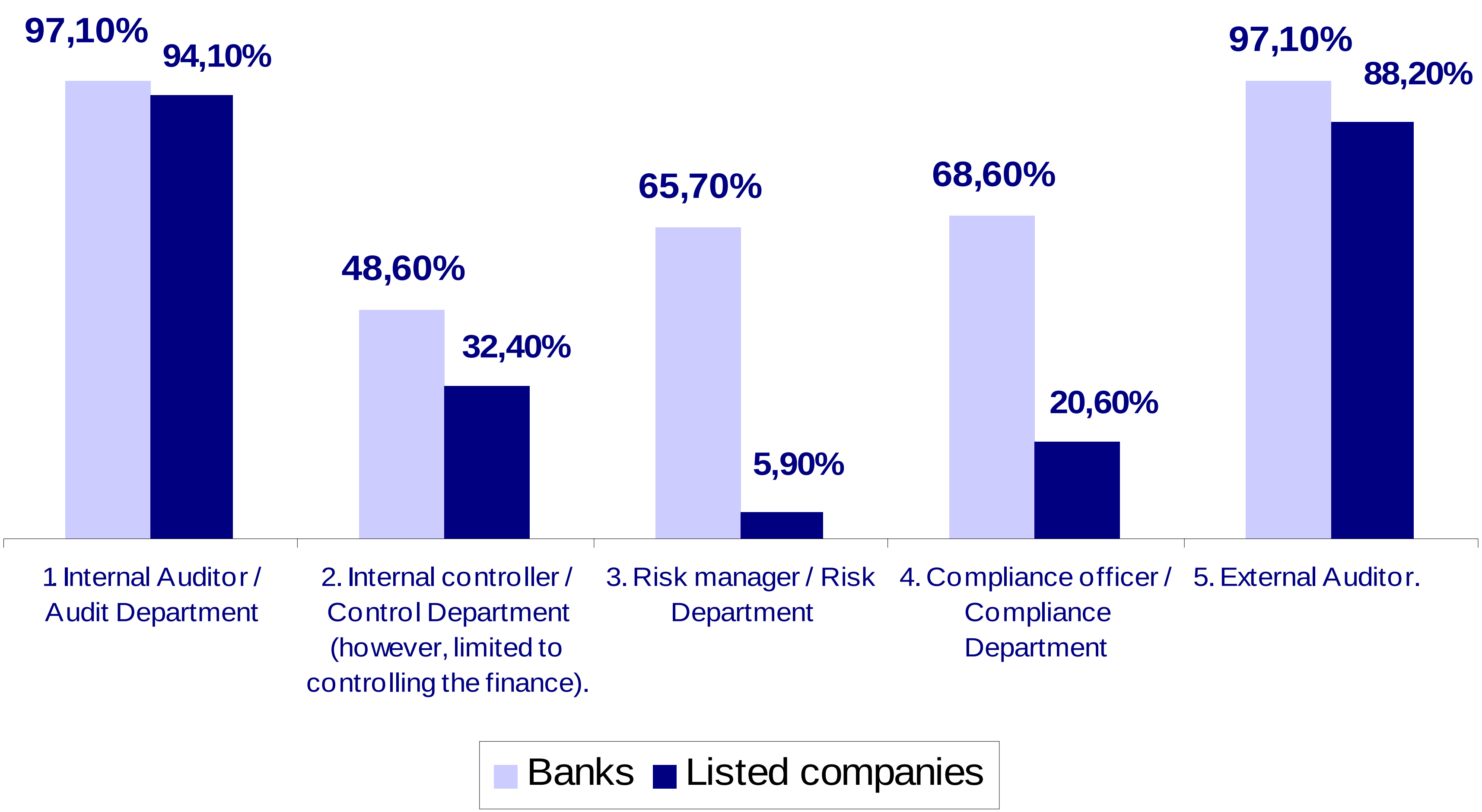
Strengths

- 75.7% of the respondents cited that they prepare their accounts according to IFRS
- 73.9% of respondents disclose financials in the annual report, and post this on their website

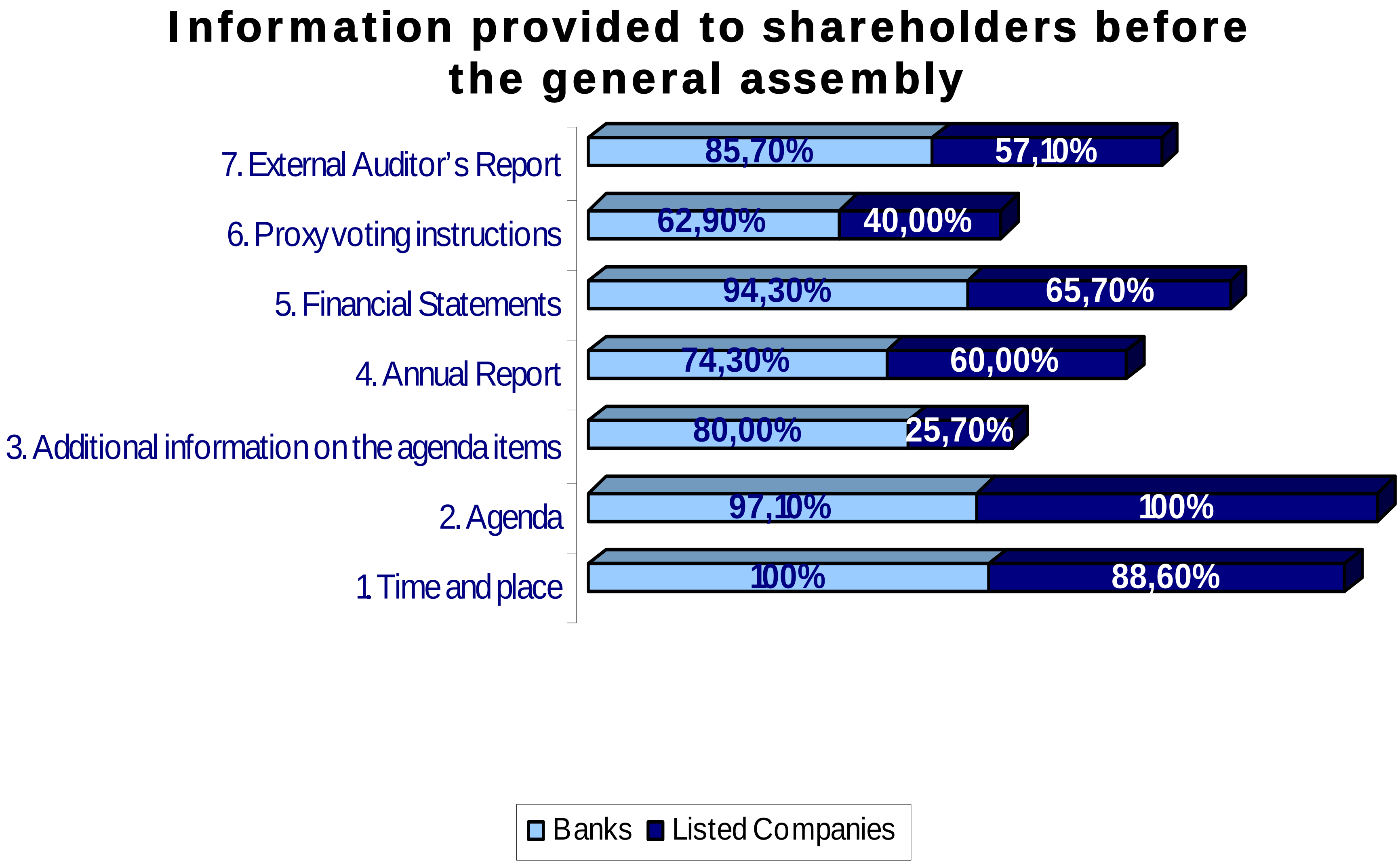
Weaknesses

- Financials often based on 'outdated' IAS, which have not been updated
- However, only 32.9% of annual reports contain a MD&A or corporate governance (27.1%) section

Control Environment: Companies With Passing Grade, Banks …

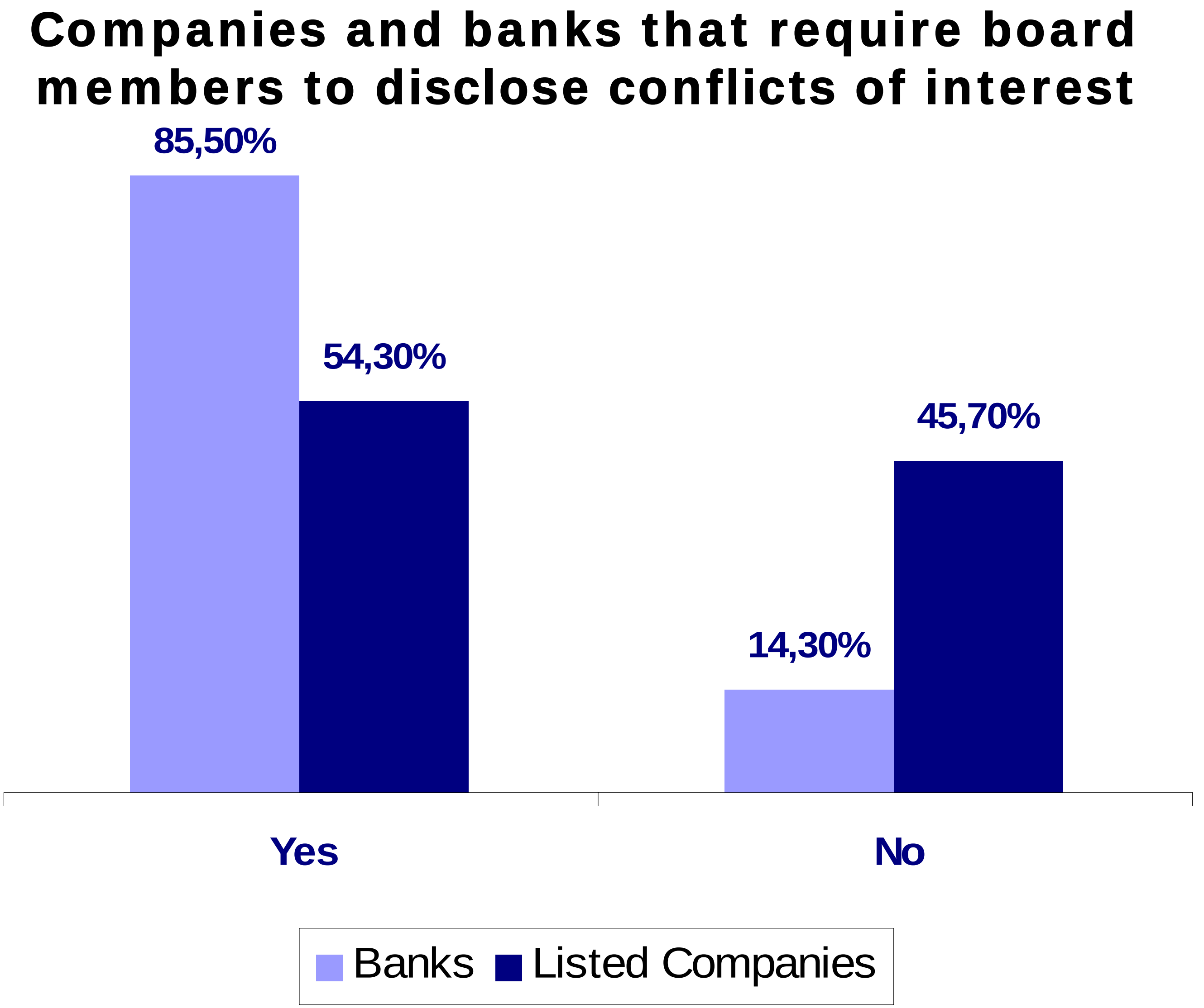


On the Other Hand, Banks Are Much Better at Informing Their Shareholders



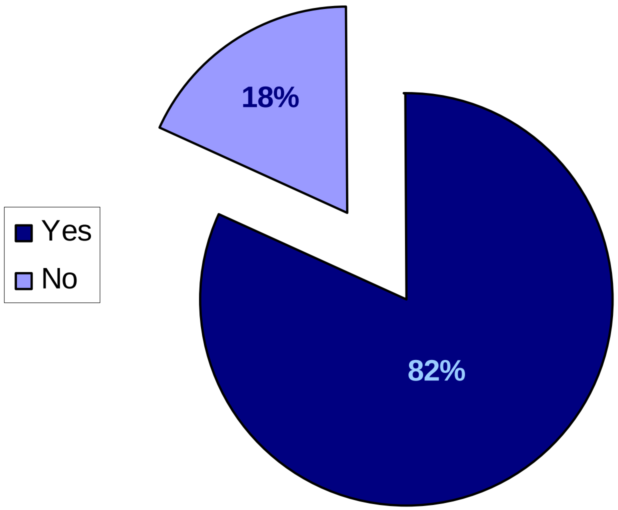
HAWKAMAH
THE INSTITUTE FOR CORPORATE GOVERNANCE

Many Companies do not Have Policies on Related Party Transactions



Special Focus on Bank Governance

82% state that they are familiar with the 2006 Basel Committee Guidelines on Corporate Governance!



However, flawed reporting lines for key control functions:

	Audit Committee	Board	CEO	Board Chair	GMS
Risk Management	22,6%	19,4%	67,7%	6,5%	3,2%
Internal auditor	50%	28,1%	34,4%	12,5%	3,1%
External auditor	34,4%	37,5%	12,5%	15,6%	34,4%
Compliance Officer	23,3%	6,7%	76,7%	3,3%	0,0%

MENA CG and Regulatory Governance Reform 1

- There is no ‘one-size fits all’ in CG or Regulatory Governance reform.
- GCC and MENA countries have CG on the policy agenda
- Countries depending on their institutions and history will need to strike a balance between:
  – Laws vs. Regulations and self enforcement and developing SROs
  – Internal vs. External CG regimes and enforcement

MENA CG and Regulatory Governance Reform 2

- CG reform should encompass:
  - Listed companies and all issuers of securities
  - Banks and non-bank FIs as well SOEs and FOEs
  - Shari'a compliant institutions and finance
- CG and Regulatory Governance reforms and implementation are complementary and reinforce each other

MENA CG and Regulatory Governance Reform 3

- Regulatory Governance reform requires capacity building
- Reinforcing Institutions: Central Credit Reporting Organizations, Credit Rating Agencies, Companies’ Houses
- Enforcement of good CG will require legal and judicial reform

Corporate & Regulatory Governance Reforms: Building Markets & Institutions for MENA

Dr. Nasser Saidi
Executive Director
Hawkamah Institute for Corporate Governance

nasser.saidi@hawkamah.ae