The role of the board of directors

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2023 Latin America Roundtable on Corporate Governance

Agenda

1. G20/OECD Principles of Corporate Governance
2. Board composition and independence
3. Board-level committees

G20/OECD Principles of Corporate Governance

The revised ***G20/OECD Principles of Corporate Governance*** recommend that **board members should take account** of, among other things, the **interests of stakeholders**, when making business decisions in the interest of the company's long-term success and performance and in the interest of its shareholders :

> Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders, taking into account the interests of stakeholders.
>
> *Principle V.A.*

They reflect that **protecting board members and management against litigation**, if they made a business decision diligently, with procedural due care, on a duly informed basis and without any conflicts of interest, will better enable them to assume the risk of a decision that is expected to benefit the company but which could eventually be unsuccessful:

> Board members should be protected against litigation if a decision was made in good faith with due diligence.
>
> *Subprinciple V.A.1.*

The revisions to the G20/OECD Principles also include annotations on the disclosure of the **composition of the board**, **remuneration** and **liability insurance policies**, as well as greater visibility to the role of the board in reviewing and assessing **risk management policies.**

Board composition and independence (i)

COMPOSITION OF THE BOARD

- Structure: **One-tier board structures** are **favored** in more jurisdictions compared to the ones with two-tier boards, but a growing number of jurisdictions allow both structures.
- Number of members: Most jurisdictions impose **a floor on board size**, usually ranging from three to five members.
- Tenure: The majority of jurisdictions have established **maximum terms of office for board members** before re-election, with three-year terms being the most common practice, and annual re-election for all board members being required or recommended in six jurisdictions.

Source: OECD (2023), OECD Corporate Governance Factbook 2023, OECD Publishing, Paris, https://doi.org/10.1787/6d912314-en .

Board composition and independence (ii)

INDEPENDENCE

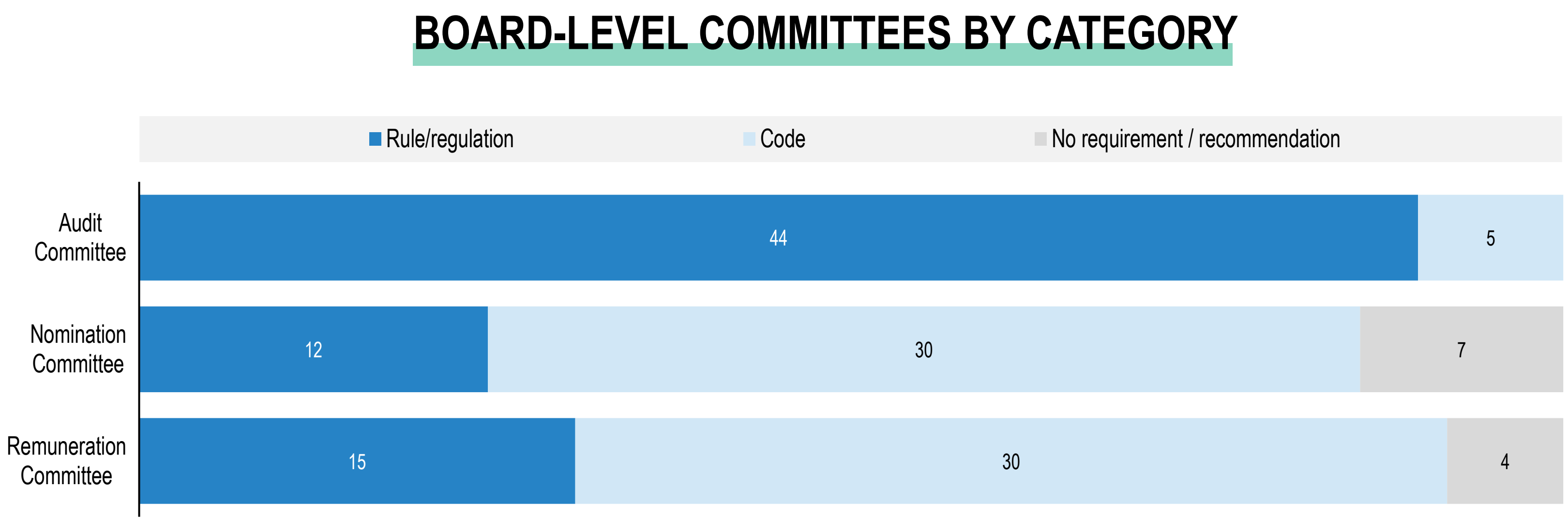
- Independent directors**:** The most common requirement is for **2 to 3 board members** (or at least 30% of the board) to be **independent**, while the most common recommendation is for boards to be composed of at least 50% of independent directors.

- Separation of functions**:** Among the jurisdictions with one-tier board systems, **34%** of them require the **separation** of the **functions** of board chair and CEO.

- Requirements**:** **National approaches** to defining the 'independence' of directors **vary** considerably, particularly with regard to **maximum tenure** and **independence** from a significant shareholder.

Source: OECD (2023), OECD Corporate Governance Factbook 2023, OECD Publishing, Paris, https://doi.org/10.1787/6d912314-en .

Board-level committees (i)

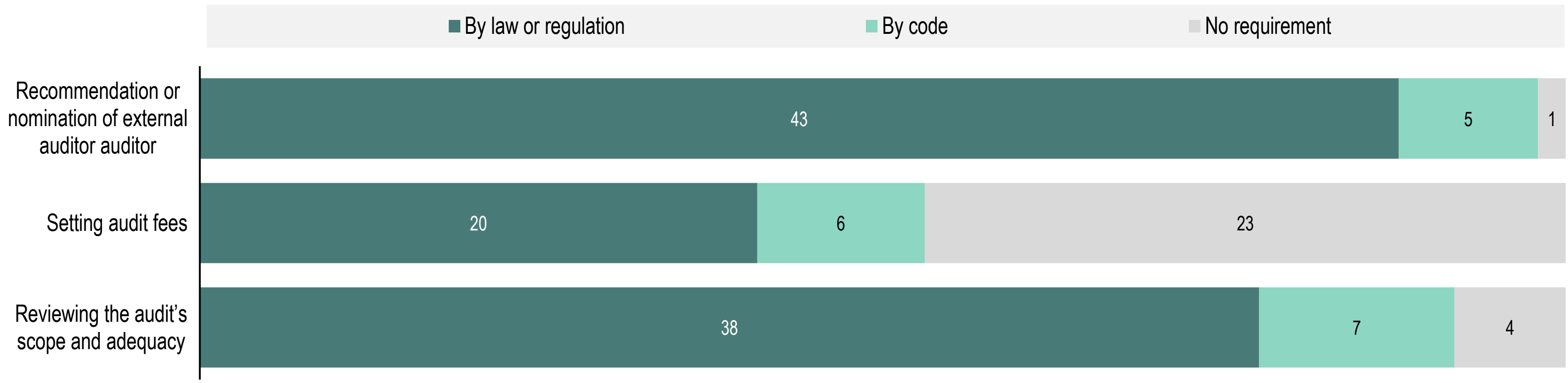


Source: OECD (2023), OECD Corporate Governance Factbook 2023, OECD Publishing, Paris, https://doi.org/10.1787/6d912314-en .

- All but five jurisdictions require the establishment of an **audit committee** with provisions to promote their independence.
- **Nomination and remuneration committees** are **not mandatory** in most jurisdictions, but most jurisdictions at least recommend that they be established.
- More than 90% of jurisdictions require or recommend assigning a **risk management role to the board**. Provisions for internal control and risk management systems are also required or recommended in most jurisdictions.

Board-level committees (ii)

ROLE OF THE AUDIT COMMITTEE IN RELATION TO THE EXTERNAL AUDIT



Source: OECD (2023), OECD Corporate Governance Factbook 2023, OECD Publishing, Paris, https://doi.org/10.1787/6d912314-en .

- While **shareholders** have the **primary responsibility** for **appointing** and/or **approving** the external auditor in the majority of Factbook jurisdictions, the board is often required to recommend suitable candidates for shareholder's final approval.
- The **audit committee** is **required** or **recommended** to play a role in the **selection** and **removal** process of the auditor as well as in **reviewing** the audit's scope and adequacy in nearly all jurisdictions.

Thank you for your attention!