

## SUPERVISORY BOARD IN AN EMERGING ECONOMY: MEETINGS OF THE BOARD\*

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### Board meetings and type of controlling owner

It should note and take into account the dual structure of the boards in Ukraine, i.e. supervisory and management board and the process of the separation of ownership and control in Ukraine that still lasts as the result of privatization of the state property the supervisory board practices in the part of the board meetings are very unique and need a very thorough classifications before its investigating. Moreover, the legislation development in Ukraine is very weak from the point of view of the putting the various board practices in order. From this perspective we apply the following criteria to investigate the supervisory board meeting practices in Ukraine:

- Frequency of the meetings;
- The meeting duration;
- The meeting agenda;
- The meeting place;
- The meeting time;
- The meeting openness;
- Information.

**Frequency of the meetings.** Members of the supervisory boards at Ukrainian joint stock companies meet as a rule quarterly. It is required by charters of companies and the Enterprises Act.

Regrettably, there is still no dependence of number of meetings on number of committees on the boards. Probably, committees on the board do not generate many ideas to discuss it at the meetings of the supervisory board. This is a strong evidence that committees on the board are still working not effectively and do not contribute to improve performance of the supervisory board in whole.

Supervisory boards at the companies, where corporate ownership is strongly concentrated, hold meetings less frequently than at those companies, where corporate ownership is dispersed. This is because controllers have a chance to have both the supervisory and management boards under their control, allow only their representatives to be on the boards. Therefore, it is worth of underlining that under such situation the supervisory board has nothing to supervise. Their supervision is rather nominal that actual.

Generally, there is no dependence of frequency of the board meetings on type of controlling shareholder. Although, it is possible to conclude that slightly more frequent meetings of the boards are held at companies where ownership is concentrated in hands of executives and employees.

Table 6.1. *Ownership structure, size and frequency of meetings of the supervisory boards at Ukrainian joint stock companies*

Board practices	Companies controlled by					
	Executives	Ukrainian FIGs	Ukrainian investment companies	Ukrainian banks	Employees	Foreign investors
Size, persons	12-15	4-6	8-11	8-12	12-15	7-9
Frequency of meetings a year, cases	5-7	4-5	5-6	4-6	6-7	4-6

Besides corporate ownership concentration, frequency of supervisory boards meetings in Ukraine depends on two factors. These are struggle for

corporate control and the degree of knowledge of minority shareholders on corporate governance.

The highest number of meetings of the supervisory board is at the companies where the

struggle for control is still lasting. These are companies where there is a huge stake of the state. The supervisory board holds about 6-7 meetings a year. Moreover, in some cases violation of rights of minority shareholders is the factor which makes the board meet more frequently. This concerns situations when these minority shareholders are not numerous or represented by institutional investors, whose degree of knowledge on corporate governance is quite high. This does not concern companies where minority shareholders are employees or individual outside shareholders. Therefore there is strong evidence that frequency of board meetings is negatively correlated to the degree of concentration of corporate ownership and does not depend on origin of controlling shareholder.

**The meeting duration.** As a rule, meeting lasts not longer than 1 and half hour. The most usual duration of the meeting is 1 hour and 20 minutes. As a rule, an agenda of the meeting is written in the way to let the board members pay certain time to solve all questions of the agenda. There is only one factor strongly influencing the meeting duration. This is a presence of the committees on the supervisory board. As a rule, boards with the committees pay less time for meeting. It takes about 1 hour for such kind of the supervisory board to meet. Probably, the board committees allow the supervisory board in a whole save time for approving items of the agenda which are under responsibility of the supervisory board committees.

At the same time there are many case of extremely short and formal the supervisory board meetings. 98 per cent of the supervisory board members in Ukraine agreed that at least one board meeting a year was taken on the formal basis and took not more than 30 minutes. Formality is demonstrated through the rubber stamping the papers delivered at the board meeting by the secretary of the supervisory board. 54 per cent of the board members informed that at least half of the supervisory board meetings taken a year were formal and short.

Taking into account that the supervisory board committees are not developed in Ukraine such high degree of the supervisory board meeting formality sets a very serious danger to the company. 72 per cent of the supervisory board members are strongly concerned with the high degree of formality of the supervisory board meetings. Probably, the only efficient way out here is through developing the best practices of the supervisory board committees.

The next factor that does not let the supervisory board meetings avoid the formality invasion is the lack of the financial incentives for the supervisory board members. More than two third of the supervisory board members are not rewarded for the participation on the supervisory board. Financial incentives are not developed with an application to the supervisory boards in Ukraine. From this

perspective the supervisory board members are not inclined to pay their time to contribute to the supervisory board work. Their time is not compensated!

Members of the supervisory boards in Ukraine are obliged to follow many procedures to make the supervisory board work. Society is waiting from them for their loyalty to the basic principles of corporate governance, i.e. accountability, social responsibility and transparency. Minority shareholders hope that the supervisory board members would be loyal to the balancing shareholder interests. There are many people who would wait for the outstanding results from the supervisory board members. They do not want a rubber stamping supervisory board. At the same time, no efforts are made by these people to establish the appropriate conditions for the well-ordered and active work of the supervisory board. No incentives of the financial origin are set to hope for the effective, not formal work of the supervisory board.

It is interesting to find out the time spent by the members of the supervisory board in Ukraine to prepare to the meeting of the board. Preparation to the supervisory board meeting takes about 5 hours for a director. Taking into account that the frequency of meetings of the board is five a year the supervisory board member pays about 27 hours a year for preparation to the meetings. Let's remember that the total time of the supervisory meetings at a company is equal to 6,5 hours a year, the relationships between the preparation time and the meeting time is 4/1. The international practices of the supervisory board meetings differ from the point of view of the preparation and the meeting time. Thus, the France practices outline the relationship as 4,5/1, the Germany practices – 4,2/1, the Canada practices – 8,5/1, the USA practices – 9/1. Under the circumstances of the high degree of formality of the supervisory board meetings and low number of the supervisory board committees the Ukraine supervisory board performance is expected to be much worse than international practices evidence.

From the point of view of the time spent by the members of the supervisory board in Ukraine it takes about a working week (36 hours) to fulfill all responsibilities related to the work on the supervisory board. If we relate the time spent by the supervisory board members to work (a week) from one side to the time spent by the members of the executive board (52 weeks) and the executive remuneration (USD14.000 a year) from another side we give a birth to a new remuneration target for the supervisory board members. This is amount of USD270 a year. It is very low amount in comparison to the life expenses in Ukraine. This amount will be enough only to cover the food expenses during two and half month and nothing more.

**Table 2.** The international board practices: the preparation and meeting time of the supervisory boards\*

Country	Number of meet-ings a year	Duration of a meeting, hours	The time spent by director to prepare to a meeting	Total time of the meeting preparation and holding	Relationship – preparation / meeting time	Position
USA	7	3,5	32	248,5	9/1	1
Canada	6,5	2,7	23,0	167	8,5/1	2
France	6,1	2	9	67	4,5/1	3
Italy	6,8	2,2	9,5	79,5	4,3/1	4
Germany	5,5	1,8	8,4	52	4,2/1	5
Ukraine	5,4	1,2	5	33,5	4/1	6

\* data relate only to the single directorship members. Multi-directorships members could have other data.

That is why it is hardly possible to suppose that this could motivate the supervisory board members work effectively. But, this amount evidences about the very low contribution of the supervisory board members in the company directing and supervising from the point of view of such factor as the time spent to execute their responsibilities as the supervisory board members. Certainly the time of work should be increased remarkably. Probably, the time of preparation to the supervisory board meetings could be increased by developing the supervisory board committee practices which are still not developed in Ukraine. At the same time this will require the supervisory boards in Ukraine more knowledge how to organize the work of the board with participation of the committees.

Working on committees of the supervisory board requires much more time from the members of the board. Thus, the total preparation time to the meetings of the supervisory board during a year including the work time in committees is 46 hours in comparison to 27 hours for the members of the supervisory board without committees. Probably the work on the committees of the supervisory board requires its members a higher degree of responsibility, commitment and involvement in the board activity.

**The meeting agenda.** Agenda of the meeting is prepared by the secretary of the supervisory board. Taking into account that the members of supervisory boards are rare independent, secretary of the board experiences a strong pressure by the members of the board and even by large shareholders to include certain questions in the agenda.

Therefore, the Ukrainian practices of preparation of the agenda of the supervisory board meeting are like the wrestling, i.e. there is a strong fight not only for the votes of the supervisory board members, but also for the initiative in preparing the agenda of the meeting. Thus, large shareholders, to be sure that their decisions will be approved, should keep to the following strategy. The first stage – control of the process of preparation of the supervisory board agenda. The second stage – fight

for the votes of supervisory board members. The third stage – fight for votes of the required number of shareholders to see their proposal approved by the general shareholder meeting.

Moreover there are many cases when the agenda of the supervisory board meeting is clarified or added with the new questions even at the supervisory meetings. About 18 per cent of companies have a practice of the final composing the agenda during the supervisory meeting. This is an excellent chance for manipulation with the votes and administrative pressure.

Besides that, questions of the agenda are very often change its order during the supervisory board meeting although the international board practices suggest that the agenda of the supervisory board meeting should be composed in a firm order before the meeting. That worse practice is applied by 59 per cent of joint-stock companies in Ukraine.

The contents of the agenda are generally around the control function. Supervisory board members in Ukraine have a practice of approving the reports at the meeting. These are reports concerning financial statements (annual report), reports of the audit commission, etc. All their efforts are constructed around approving, less discussing, and even less planning. Strategy, as a function of the supervisory board is performed not well, because the lack of motivation.

There is one more reason of such passive behaviour of the supervisory boards in Ukraine concerning the strategy developing and approving. As a rule, large shareholders have their representatives not only on the supervisory board. The same strong influence of large shareholders is at the management board too. Under such circumstances the management board grasps the strategy function in a whole. The real advisors to the management board are large shareholders. They are advisors to the supervisory board too. This situation is widespread in the companies with a concentrated ownership. Therefore, it is not a surprise to conclude that the agenda of the meeting of the supervisory boards of most Ukrainian companies is for “rubber stamping”.

**The meeting place.** Meetings of the supervisory boards in Ukraine, as a rule, are held in the offices of the companies. In the most cases there are no special rooms for meeting of the supervisory board. Every time, before meeting to be held, secretary of the supervisory board should care about finding the most appropriate room for the meeting of the board. The most popular practice is to have the meeting of supervisory boards in the room for meetings of the management board that is prepared for such kind of meetings as the best. Under such circumstances “a homeless status” of the supervisory board does not contribute to the development of the collaborative spirit of team working inside of the supervisory board. Only about 8 per cent of companies in Ukraine provide a special room where only the meetings of supervisory board take place.

The issue of the supervisory board meeting place is not settled in the supervisory board by-laws. It is recommended throughout the world to include a note on the place of meeting of the supervisory board in the by-law. Regrettably, only 6 per cent of joint stock companies in Ukraine have a very clear and justified approach to the place of the meeting choice. This means that as a rule the corporate office is written in the supervisory board by-law as the most preferable place to have a meeting of the board.

The place of meeting is fixed by the head of the supervisory board. The secretary of the board is responsible for informing the supervisory board members about the place of meeting. As a rule, the head of the supervisory board does not consult with other members of the supervisory board what place of meeting to choose if the meeting is expected to be held in the office of the company. To fix another place of meeting of the board the head of the supervisory board is keen on discussing with the rest members of the board.

**The meeting time.** As a rule, meetings of the supervisory boards in Ukraine are held at the first half of the working day, i.e. between 9 a.m. and 1 p.m. Almost 75 per cent of Ukrainian companies have the above mentioned practice. There are 8 per cent of companies where meetings of the supervisory board are held after the working day is over, i.e. as a rule after 5 p.m. There is no a factor, besides the wishing of the members of supervisory board, which could influence a decision of supervisory board members when to have a meeting. Some supervisory board members are sure that having a meeting at the first half of the working day gives them an excellent opportunity to invite required persons to discuss some issues, i.e. members of the management board, members of the audit commission and workers of the company.

The meeting time is recommended by the head of the supervisory board. This recommendation is distributed by the supervisory board secretary among the rest members of the supervisory board. As a rule, there are not conflicts among the members of the supervisory board regarding the time of the meeting.

There are quite active discussions around the issue of the day of the meeting. Some members of the supervisory board who do not work as the full-time employees of the company require much more thorough approach to such an issue as the day of the meeting. They could be employed by other companies therefore they need to be very careful in constructing the optimal timetable of the meeting of the supervisory board.

There are no any firm requirements in the supervisory board by-law concerning the time and day of the meeting of the supervisory board. The companies “recommend” in by-law on the supervisory board when to have a meeting. There are 8 per cent of the companies. Most companies do not prefer indicating in the supervisory board by-law any recommendations on the time and day of the meeting. They write in the by-law that the chairman of the supervisory board is responsible for the choice of the most appropriate for the rest board members the time and day of the meeting.

**The meeting openness.** Supervisory boards in Ukraine, as usual are close for other visitors. Members of the supervisory boards are not inclined to invite at the board meeting representatives of employees, stakeholders from outside of the company, large shareholders, minority shareholders. The only visitors who are quite welcome are executives, i.e. members of the management board. Probably this is an evidence of the situation when members of the supervisory boards are not inclined to keep on a balance of interests of all stakeholders, or even shareholders. They care only about a management monitoring. More than 90 per cent of companies in Ukraine experience a practice when management board members are invited at the meeting of the supervisory board. About 45 per cent of companies do it twice per year. Only 6 per cent of supervisory boards in Ukraine invited at their meetings representatives of employees, 3 per cent – minority shareholders.

From the documentary side of this issue only 6 per cent of joint-stock companies in Ukraine have the well-ordered mechanisms and approaches how to relate to the openness of the supervisory board meetings. These companies wrote these mechanisms and approaches in the supervisory board by-law.

The rest companies in Ukraine rely only on the wisdom of the chairman of the supervisory board who is responsible for making a decision on the category of visitors of the board meeting. At the same time if this issue is not regulated by the by-laws on the supervisory board this gives an excellent chance for the chairman of supervisory board to speculate with his power in the favour of those groups of shareholder, these are mainly large institutional shareholders, which he represent as the board member.

**Information.** Information that should be released at the supervisory board meeting is analyzed by respective functional departments of the company,

delivered to the secretary and the head of supervisory board. Secretary of the board is responsible for sorting all information supplied. The secretary of the board prepares a kit of reports. These kits are delivered to the members of supervisory boards before the meeting, including the agenda.

Regrettably, only 24 per cent of members of supervisory boards of Ukrainian companies are satisfied with the quality, content and volume of the information supplied to them before the meetings of supervisory board. 18 per cent of members of supervisory boards receive only an agenda before the meeting of the board. The rest information on the company activity is supplied during the meeting. This makes the work of the supervisory board when meeting less efficient.

The policy of the information disclosure to the members of the supervisory boards in Ukraine is far from the internationally accepted standards.

First of all, reports are developed not systematically. This does not give the supervisory

members keep a hand on the pulse of the company market position. For the second, there is a very sufficient lag in the report developing. Quarter reports on financial performance on the company are prepared by the end of the next quarter. This does not let the supervisory board members have enough time to analyze the financial quarterly reports in the shortest time and in the most efficient way. For the third, reports delivered to the supervisory board members do not meet the financial disclosure standards accepted internationally. As a rule, reports are overfilled with the numerous numbers on the production and sales performance of the company. At the same time the financial information is almost absent in the reports. For example, it is almost impossible for the supervisory board members to find out the ways and efficiency of the cash flows management, i.e. ways of its application and period of its return.