UNITED
NATIONS

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# Economic and Social Council

Distr.
GENERAL

TRADE/WP.8/2005/13
15 November 2004

Original: ENGLISH

**ECONOMIC COMMISSION FOR EUROPE**

COMMITTEE FOR TRADE, INDUSTRY AND
ENTERPRISE DEVELOPMENT

**Working Party on Industry and Enterprise Development**
Sixth session, 10 and 11 February 2005
Sub-item 4.1.3 of the provisional agenda

## A REVIEW OF SELECTED CORPORATE GOVERNANCE ISSUES

Note by the secretariat on the Round Table on Corporate Governance*
held at the Palais des Nations on 12 February 2004

### Introduction

1. The term "Corporate Governance" has been used extensively in the UNECE region over the last ten to twelve years in at least two different but related contexts. The first use was linked to the market transition of the former centrally planned economies where economic agents had to learn the meaning and application of corporate governance principles. The second, more recent and more profound focus on corporate governance concerns the UNECE region as a whole. It stems from the wave of corporate scandals and the stock market crash in market economies and the consequent widespread perception that there might be serious problems with corporate governance possibly threatening the efficient functioning of financial markets and endangering economic growth, employment and perhaps even economic and social stability.

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* The views and facts expressed by panellists at the Round Table are reported by the UNECE secretariat in this note. The UNECE secretariat does not assume responsibility for the accuracy of those views and facts and for possible actions by third parties based on the information provided in this note. Furthermore, given dynamic developments in corporate governance area, the views of the panellists might have already evolved.

Corporate governance: What is at stake?

2. There is no universally accepted definition of corporate governance. In addition, corporate governance is related to a large number of economic terms, issues and institutions, which are viewed by different economic and social agents from dissimilar positions and interests. It therefore comes as no surprise that there are not only different definitions of corporate governance with their boundaries being vague and fuzzy but also that a measurable corporate governance definition has yet to emerge. In short, good corporate governance, however defined, should support the corporate institution as the engine of economic growth and for economic and social development.[1]

3. It is the view of the UNECE secretariat that in essence, at its roots, corporate governance is an issue between capital providers and corporate management whose complexity is further compounded by the presence of financial market intermediaries within a given legal and regulatory framework.

4. Currently there seem to be three key different, and unfortunately incomplete and deficient approaches to identifying and dealing with corporate governance issues. The first approach depends mostly on the legal structure and institutions with the underlying belief that if the laws are right and completely enforced, the corporate governance concerns should disappear. At the same time, the intermediaries at the stock market, above all, seem to promote the view that selected individual corporate governance excesses and problems, including investors' unrealistic expectations, should be taken as unavoidable and as a part of the business. Essentially, greed, theft and wrongdoing are such minor items in the financial market structure that additional regulatory cost would outweigh additional benefits. More laws and regulation could not deal with it in any case. Finally, there is a moralistic view that only the right kind of corporate executives (with unquestionable integrity) could solve the current corporate governance puzzle. Given the short CEO duration in office, this view often implicitly assumes, on a particular point of CEOs' compensation, that the market always sets it right and that certain "excesses" in this respect would not represent a major concern.

5. While the positions indicated above certainly stem from the different interests involved, it is striking that the structure and operation of the financial and in particular of the stock market is taken as essentially sound from this point of view. There are indications that perhaps this view could be challenged pointing to considerable risk shifting and risk-hiding with huge loss potential for investors and the insurance industry, in particular. The principles and objectives of the three key approaches to corporate governance as well as the author's view are given in Table 1.

6. Thus, corporate governance is objectively a complex issue differently perceived by key actors in the financial market such as: investors, corporate management, governments, regulators, financial intermediaries and insurance companies. Any attempt to the understand various facets of corporate governance would need to focus on finding out what are the corporate

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[1] Recognizing the importance of corporate governance, a number of international development and financial institutions currently deal with it albeit in different ways and goals. A review of related activities of those organizations is given in the last part of this note.

governance issues and concerns as well as possible remedies as perceived by the main financial market players. In that framework, consideration should also be given to the identification of the structural factors stemming from the financial market operations and not only to the regulatory or legal aspects of corporate governance.

Table 1. Identification and handling of corporate governance (CG) issues/concerns, status January 2004, current approaches

| Party / Element | Stock market / Financial market intermediaries | Government / Regulators | Corporate executives | UNECE approach |
|---|---|---|---|---|
| Key source of CG concerns | Transitory market excesses including Improper individual behaviour and unreasonable investors | Lack of suitable laws and regulation | Moral element key | A combination of improper regulation and financial market operations and structure |
| Legal CG requirements | Only very necessary, discretion required | Backbone of CG | Often unnecessary, burden | Selected required |
| Moral element of CG | Regulated by market | Works within suitable laws and regulation | Key, self-regulatory | Not to be relied upon |
| Operation of financial market | Excellent | Needs to be improved | Given, CEO can not influence it | Deficient |
| Structure of financial market | Excellent | Appropriate | Given and difficult | Deficient |
| CG problem detection | Operational area-related | A bit wider than operational area-related | Only operational area-related | Along financial market chain |
| Solution to CG issues | To be left to the market as much as possible | Introduction & enforcement of suitable laws and regulation | Appointment of the right kind of executive & perhaps financial market framework | Identification, catalogisation and commercialisation of CG risks along the chain |

*Source:* Compilation of the author

7. Ultimately, a better understanding of corporate governance and the whole related process could facilitate the introduction of a measurable definition of “good” corporate governance along the financial market chain, which would benefit the UNECE member States, their corporate sectors, investors and insurance business.[2] Perhaps, based on existing data from the insurance and financial industry, it would be possible to quantify currently identified risks in several corporate governance areas, which could be a necessary first step in the mentioned process. In particular in this framework, there seems to be solid evidence to indicate that the quality of corporate governance judged along the financial market chain and not on, for example, purely corporate level or even board level, might be a preferable approach. This approach in a way could be considered as a novelty in this area with consequent benefits for all financial market participants.

8. This aforementioned concept implies that, in particular, the corporate governance segment of information flow among capital providers, financial intermediaries and corporate management, related to decision-making and linked to the corporate governance regulatory sphere, might be the area of work offering if not the most then certainly a considerable potential for further work. Also, a thorough assessment of all identified individual and cumulative corporate governance risks along the financial market chain could build a basis for designing suitable risk-mitigating products. If designed properly, those products could contribute to the commercialisation of the risks and the removal of voluntaristic interventions by governments and/or regulators from the financial markets ultimately benefiting all investors and shareholders.

## Selected trends in corporate governance[3]

9. Currently, corporate governance is mainly analysed at the corporate level and even at the board level. Several agencies, financial institutions and consultancy companies are in the business of estimating the value of good corporate governance for shareholders, ranking companies in terms of quality of corporate governance and even looking at good business ethics in the same framework. Deminor, Mc Kinsey, the Harvard Business School and the University of Basel are only some of such institutions.

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[2] There are attempts to measure quality of corporate governance. While, for example, Fitch Ratings in its Report “Evaluating Corporate Governance: The Bondholders’ Perspective”, April 2004, uses detailed corporate data, at the same time Stephen Kaplan from the University of Chicago in a series of papers on corporate governance, including “The Evolution of U.S. Corporate Governance: We Are All Henry Kravis Now”, draft November 1977, uses a combination of various aggregates such as stock market performance and specific data on corporate restructuring. There are also papers dealing with evaluation of corporate governance from the equityholders perspective such as Lawrence D. Brown and Marcus L. Caylor (2004). Corporate Governance Study, The Correlation between Corporate Governance and Company Performance, ISS paper.

[3] Mostly based on the presentations made by Mr. Hebert G. Buff, Group Compliance Officer, Swiss Re, Zurich at the UNECE Round Table on Corporate Governance, 12 February 2004.

10. Concerning the year 2003, for example, Deminor[4] estimated that the evolution in corporate governance was impressive in most areas. Governance scandals like Enron, WorldCom and Ahold surely served as a blessing in disguise in initiating reforms on the domestic level although the cases of Ahold, Parmalat or Skandia affected investor confidence negatively and thus increased the cost of capital for those companies.[5]

11. Such and similar analyses often point to the main reasons for having good governance structures and rules at the corporate level. Firstly, such structures and rules could improve relatively low public confidence in big corporations and their leaders. Secondly, for various reasons the need for transparency on business issues has increased enormously. Stakeholders want to be better informed while corporate and related financial information is transmitted almost instantaneously around the world. In addition, corporations are under increased scrutiny not only from their employees and clients, but also from players such as NGOs who have become new influential spokesmen on global issues such as human rights and sustainable development. Finally, regulators are "turning the screw" and tightening their controls, and the same applies to the legislators (for example, Sarbanes Oxley-Act in the United States).

12. Some countries seem to have taken the lead in advancing corporate governance practices. The Hewitt Report 2003, for example, notes that the United Kingdom has been leading actions in these difficult times, for a number of reasons, but that continental Europe is catching up quickly with some prominent examples.[6]

13. With increasing emphasis on corporate governance, reputation management has become a key factor in avoiding corporate breakdowns with solid indications that good governance at the corporate level pays off. Good corporate governance is the requirement for a licence to operate and many companies with inadequate corporate governance have disappeared from the corporate world. In addition, a couple of relatively recent studies have confirmed the relevance of good corporate governance for financial results. For example, a study by the Harvard Business School on "Corporate Governance and Equity Practices" published in February 2002 concludes that between September 1990 and December 1999, the group of surveyed companies with the "worst practices" earned 9.3% less profit for its shareholders than the group with the "best practices".[7] In addition, a study by Deminor Rating in 2003 confirms this result for European companies: a broad-based survey leads to the conclusion that a portfolio of equity holdings in companies with "good governance" brought 2.97% more returns per year than one with holdings in firms with "bad governance". "Good Corporate Governance pays off! Well-governed companies perform better on the stock market" – that is the conclusion of the study dating from April 2003.[8] The McKinsey 2002 international survey confirmed the esteem which good governance enjoys among investors covering more than 200 institutional investors in over 30 countries. It states that more than three-quarters of the investors are ready to pay a higher price for good corporate

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[4] Deminor Rating Report, Trends & Ratings 2003, Corporate Governance Research and Ratings, 9 February 2004.

[5] Deminor Rating Report, Trends & Ratings 2003, Corporate Governance Research and Ratings, 9 February 2004.

[6] Hewitt Report on Corporate Governance and Executive Remuneration, 2003, p. 1.

[7] +14% as opposed to +23.3%.

[8] Robert Bauer/Nadja Guenster: Deminor Rating's Corporate Governance ratings and research 2003 (Amsterdam etc. April 2003).

governance, citing premiums of 12% to more than 30%.[9] According to another study, good governance in connection with company loans or bonds should lead to significantly lower capital costs.[10]

14. Unfortunately, for some countries, such as Switzerland, no comprehensive surveys are available of the influence of corporate governance practices on company value. In this particular case, a project in progress at the University of Basel is rectifying this omission, and it shows that good governance is rewarded by the market.[11]

15. As regards ethics, an internationally-based survey of large companies between 1997 and 2001 carried out by the Institute of Business Ethics finds several clear correlations. The Institute claims that there is for the first time good prima facie evidence that large companies with codes of ethics perform better financially than those that do not have codes, are rated higher than those without codes on their ability to reduce non-financial risks and are consistently more admired by their peers.[12] The study continues that in summary, there is clear evidence of a very strong connection between superior corporate performance and a public statement by corporate management of a strategic reliance on ethics as an element of internal control and corporate governance.[13]

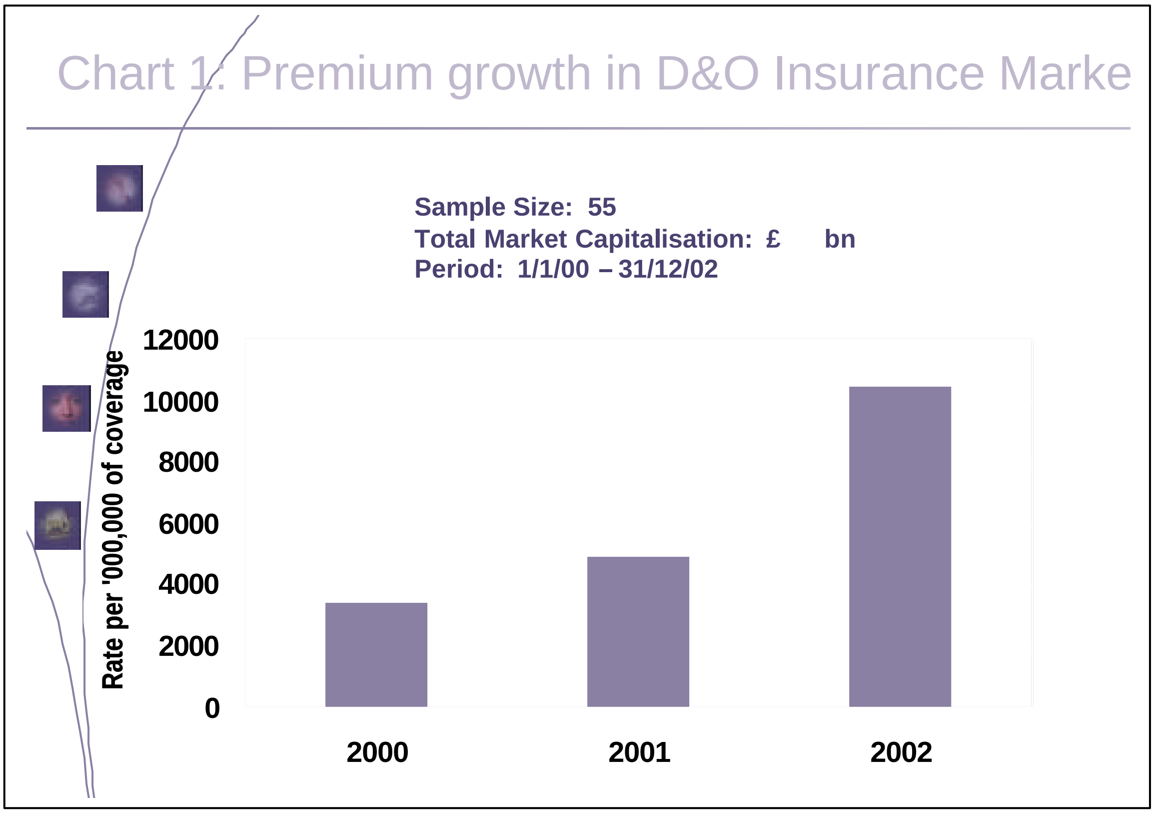
Corporate governance and the insurance market

16. Little attention has been paid so far to the role of insurance markets in evaluating quality of corporate governance in market economies. However, there are solid indications that those markets could provide essential corporate governance insights through, for example, the market

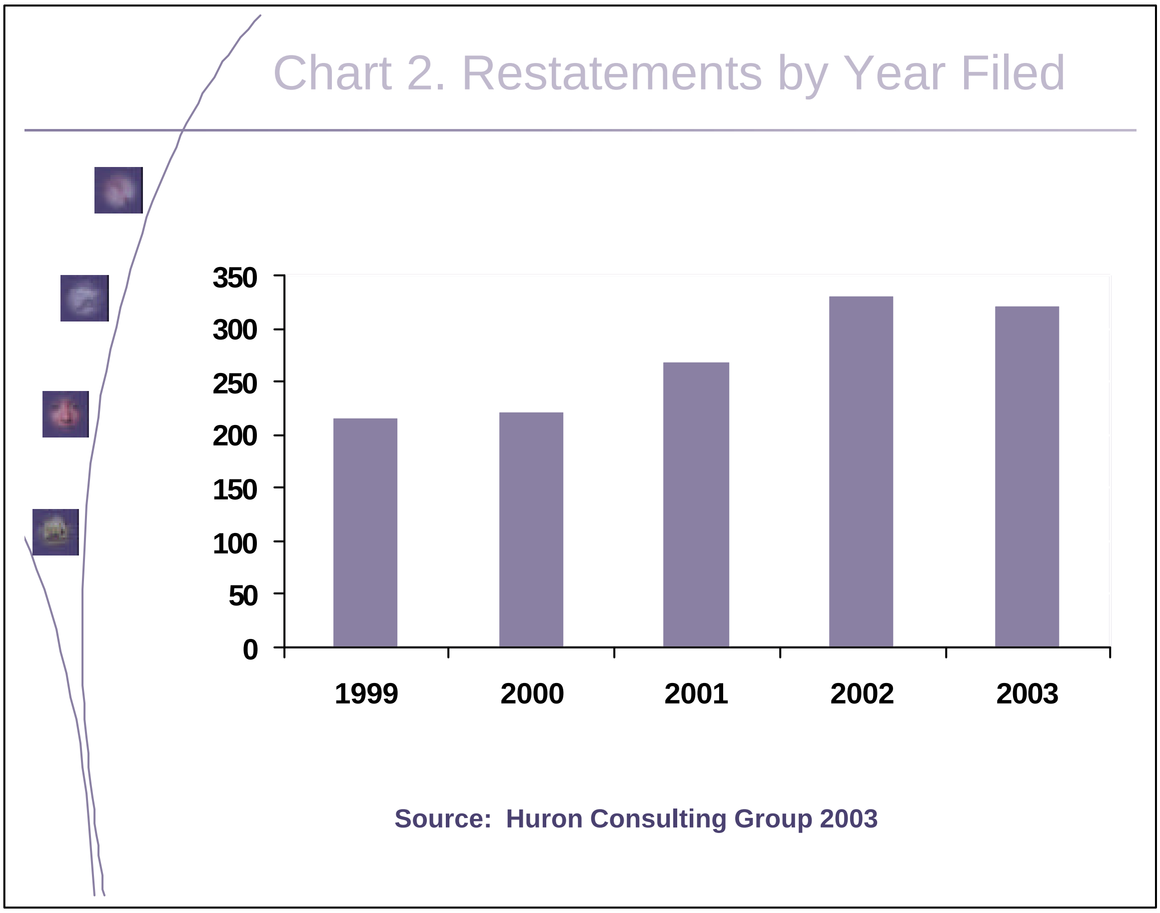
[9] Only 3% of the investors surveyed stated that governance was irrelevant to their decisions. The importance of good governance for investors is illustrated by the fact that rating agencies increasingly include Corporate Governance when compiling their qualifications. The assessment of governance has also been discovered as a new business area; cf. for example, Standard & Poors Governance Services, a Standard & Poors organisation which operates on an entirely separate basis from the credit rating activities and publishes Corporate Governance scores for companies (corresponding to the credit ratings). Governance reports for entire sectors or economic areas are springing up like mushrooms. cf. also the DWS Corporate Governance Survey published by the Deutsche Bank Group since 2001, which analyses the governance of the Dow Jones EURO STOXX 50 companies.
[10] FAZ dated 8 July 2002, page 18.
[11] NZZ dated 29 September 2003, page 10.
[12] Institute of Business Ethics: Does Business Ethics Pay? Ethics and financial performance (London April 2003), page 32.
[13] Institute of Business Ethics page 4, cf. also the note in the annexe stating that a survey of about 30 companies showed that those with a code of ethics achieved 18.6% higher profits – measured by sales – than those without a code, op. cit., page 46.

for Directors & Officers cover.[14] The directors & officers insurance aims to achieve three main goals: (a) help attract and retain talented directors; (b) provide jurisdictional comfort; and (c) protect personal and corporate assets. Its crucial role has been confirmed by many directors who would not serve without it. Furthermore, use of the directors & officers insurance has proved critical for US securities exposure.

17. The estimated directors & officers insurance market in 2004 is around €750 million with great demand for the product and plenty of capacity for most buyers. With a proliferation of claims activity since 1995 and the US plaintiffs' bar driving the market, insurance rates almost tripled in the 2000-2002 period (Chart 1). The number of restatements of corporate financial reports has been considered a key indicator for risks related to directors & officers activity and this way to directors & officers insurance (Chart 2).




[14] Mostly based on the presentations made by Mr. Adam Codrington, Executive Director, Aon Financial Risks, London at the UNECE Round Table on Corporate Governance, 12 February 2004.




Corporate Governance Considerations from a Global Player's View: Examples of Swiss Re and United Bank of Switzerland (UBS)[15]

Swiss Re

18. The Swiss Reinsurance Company (Swiss Re), established in Zurich in 1863, provides risk transfer, risk financing and asset management to the global client base. The Swiss Re Group is one of the leading and financially strongest reinsurers.[16]

19. Swiss Re is committed to the Corporate Philosophy and Code of Conduct. Integrity, Excellence, Efficiency and Sustainability are its core values. There are several "objective"

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[15] Based on the presentations made by Mr. Hebert G. Buff, Group Compliance Officer, Swiss Re, Zurich and by Felix Horber, Group Legal Sevices, UBS AG, Zurich, at the UNECE Round Table on Corporate Governance, 12 February 2004.

[16] In the financial year 2002, premiums earned amounted to CHF 29.1 billion, and total revenues to CHF 34.5 billion. Swiss Re is rated "AA" by Standard & Poor's, "Aa1" by Moody's and "A+" (superior) by A.M. Best.

reasons why this is important to Swiss Re. It sells risk transfer, risk finance and asset management – all of which are difficult to evaluate, and consequently the client's decision is built upon trust. Also the company is in a long-term business and cannot afford any attitude, which helps to promote short-term profit whilst destroying sustainable client relationships. Finally Swiss Re is a one-brand company, operating globally with its somewhat intangible products, relying heavily on its brand, always under the threat that its failure to preserve its reputation in any part of the world would have negative effects for the company worldwide.

20. As a Swiss company, Swiss Re's governance is mainly to be measured against the Swiss Code of Best Practice governance recommendations. The Swiss Code defines Corporate Governance as encompassing "the full range of principles directed towards shareholders' interests, seeking a good balance between direction and control and transparency at the company level while maintaining decision-making capacity and efficiency." Also, as a publicly listed company, Swiss Re must provide detailed information on its governance in its annual report as described in the annex to the Directive on Information relating to Corporate Governance, issued by SWX Swiss Exchange (also referred to as the "SWX Directive"). Having to reply to those stringent requirements in recent years, Swiss Re today is different structurally and organizationally from what it was five years ago.[17]

21. A glance at the headlines in recent years shows that long-term economic success is closely tied to credibility and social acceptance. Trust and respect are new and indispensable success factors. A company's stakeholders not only judge "their" company on the basis of its capital, but also according to its skill in dealing with the "soft" factors.[18] It has therefore become commonplace for many companies to have some explicit statement of ethical principles to which it commits itself.[19] The statement: "integrity, fairness and professionalism" describes the corporate values to which Swiss Re is committed. It comes from the opening letter of its Group Code of Conduct.

22. In Swiss Re's view Ethics, Corporate Governance and compliance are inseparable: ethical principles have to be implemented in the form of specific made-to-measure rules. But in turn, it has to be possible to put these rules into practice with conviction, on the basis of fundamental values and within a sound corporate structure. This altogether then forms the corporate culture.[20]

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[17] cf. Peter Forstmoser, Chairman's address at the Swiss Re Annual General Meeting, 31 May 2001.

[18] Martin Ebner is reported to have said: "I am not interested in ethics, I can't buy anything with ethics". Because "adhering to the law is necessary, but by no means sufficient, to protect against reputational risk"; cf. PriceWaterhouseCoopers, Compliance: A gap at the heart of risk management – A joint project with the Economist Intelligence Unit, July 2003, page 2.

[19] The statement "communication, respect, integrity, excellence" – at first sight as strong, concise and meaningful as the Swiss Re's one – is stated by Enron in its 2000 annual report. This example illustrates the limited impact of such general and generic value statements: they sound good in the introduction of a corporate document, they provide comfort and create harmony because nobody would be against such values. But, as such, they are meaningless. In order to have an impact on the daily life of an organisation and its employees, these statements must be converted into daily action.

[20] Various features and concepts are associated with the term *"corporate culture"* in the literature.

Governance and compliance are the practical or tangible expression of ethics, which means that they are principles of applied business ethics.

23. In line with the Swiss Code of Best Practices, the Swiss Re Board of Directors assesses on an annual basis its own performance, and the performance of each Board member as well as its committees' performance against implementation of the Swiss Code's recommendations.

24. Swiss Re has implemented independence of directors' requirement in terms of Board composition in two ways. Firstly, a majority of the Board of Directors is composed of independent directors. To be considered independent, a director may not be, and may not have been in the previous three years, employed as an executive officer of Swiss Re or any of its Group companies. The Board also must make an annual determination that such director has no material relationship with Swiss Re or any of its Group companies (either directly or as a partner, director or shareholder of an organisation that has a material relationship with Swiss Re or any of its Group companies). Swiss Re ranks fifth in an international survey on independence of Boards. Secondly, board members should not serve as directors on more than three other listed company boards and should advise the Chairman of the Board and the Chairman of the Compensation and Appointments Committee in advance of accepting any further invitation to serve on the board of a listed company.

25. Swiss Re also decided to separate the functions of the Chairman and the CEO. However, other companies may well prefer other structures, and a two-board model is quite simply what seems right for Swiss Re at the present time. Swiss Re's Board has further delegated the preparation and execution of certain resolutions to committees. The following 5 committees have been established: Audit Committee, Compensation and Appointments Committee, Finance and Risk Committee, Governance and Shareholder Relations Committee and Investments Committee.

26. The company places a lot of value on the internal control system, which should comprise a risk management system designed for the size, complexity and risk profile of the company, an internal auditing procedure, and an organisation that ensures adherence to certain standards (compliance). Swiss Re has chosen the following set-up: Group Risk Management, Group Internal Audit, Compliance, External Auditor and Actuarial auditor.

27. On compensation, the Compensation and Appointments Committee – composed of independent non-executive Directors – determines the Chairman's, the Executive Vice Chairman's and the Executive Board's payment. It further submits the proposal for the Board's compensation to the Board. Swiss Re has a "pay for performance" philosophy. The Executive Board is paid a base salary and variable bonus (either in cash or shares that are deferred for four years). In addition, all Executive Board members are obliged to own a multiple of their base salary in shares. The company does not have "golden parachutes", either. That means Swiss Re has made no agreements with members of the Executive Board regarding salary or pension fund payments that extend beyond the normal notice periods. It remains within the area delineated by local laws and customs.[21] Finally "clear and open communication" and transparency towards all

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[21] cf. Peter Forstmoser, Chairman's address at the Swiss Re Annual General Meeting, 31 May 2001.

its stakeholders are guiding principles for Swiss Re. It maintain a close relationship with the financial community and the broader public by using all available communication channels. The Swiss Re website, for example, includes details of its corporate disclosure.

United Bank of Switzerland - UBS AG

28. United Bank of Switzerland has decided on its corporate governance policy fully bearing in mind the complexity of changing international regulations, its position in the world financial markets and additional requirements by the world investment community. Furthermore, it considers corporate governance as one of the most important issues in today's business world. UBS pays full attention to the key regulatory and related developments in corporate governance area including new regulations which have been implemented, such as the Sarbanes-Oxley Act in the United States or the Swiss Code of Best Practice for Corporate Governance or the initiatives which are still under review, for example the OECD Principles on Corporate Governance. UBS is also mindful that although some of its stakeholders might appear to be more vital to the company**,** it is crucial that the company takes care of all its stakeholders. Due to the complex interrelationships, neglecting a single one of the stakeholders will certainly have a negative influence on all the other relationships.

29. A major issue for UBS is the international applicability of corporate governance. It is certain that with the globalization of financial markets and the multinational reach of companies and their businesses, Corporate Governance has become a worldwide topic. In that framework, for example, since 2002 Switzerland benefits from two major documents designed to improve corporate governance within companies listed on the Swiss Exchange. The first set of rules is to be found in the "Swiss Code of Best Practice for Corporate Governance", published by Economiesuisse (the federation of Swiss enterprises), which sets out recommendations for public companies. The second document, issued by the Swiss stock exchange, is the "Directive on Information Relating to Corporate Governance" which sets out what information relating to corporate governance must henceforth be provided in a company's annual report. All this activity coincided with the Sarbanes-Oxley Act of 2002 which, in the wake of corporate scandals, has become law in the US. This act establishes a comprehensive framework to modernize and reform the oversight of public company auditing, improve the quality and transparency of corporate financial reporting, and strengthen the role and authority of independent directors and the independence of auditors and audit committees alike. In addition, the New York Stock Exchange has adopted significant changes to its corporate governance listing standards. There are other national initiatives, for example the German Corporate Governance Code which was issued last year by the Government Commission.

30. Global companies such as UBS need to operate under uniform rules worldwide and cannot cope with a patchwork of different national rules. This tends to break down national barriers and leads to the harmonization of regulatory and transparency requirements. By benchmarking the highest standards available, the financial industry is developing best corporate governance practice worldwide.

31. Given that UBS is incorporated in Switzerland and its shares are listed on the Swiss Exchange, it is therefore subject to both Swiss Corporate Law and the Directive on Information Relating to Corporate Governance issued by the Swiss Exchange. In addition, UBS follows the

Swiss Code of Best Practice for Corporate Governance. This Code is intended to be advisory and contains no mandatory provisions.

32. Since May 2000, UBS shares have been listed on the New York Stock Exchange. They are issued in the form of Global Registered Shares which is a security that provides direct and equal ownership for all shareholders. It can be traded and transferred across applicable borders without the need for conversion, with identical shares traded on different stock exchanges in different currencies. The Sarbanes-Oxley Act applies to any issuer, including any non-U.S. issuer, that has securities registered or is required to file under the Securities Exchange Act of 1934. Since its listing on the New York Stock Exchange, UBS is subject to the Sarbanes-Oxley Act.

33. In the above complex framework UBS efficiently implements the mentioned national and international Corporate Governance requirements.

34. Regarding the balance between leadership and control, for which the Swiss Code of Best Practice for Corporate Governance states that it should be maintained at the top of the company, UBS has resolved it in the following way: the ultimate responsibility for the strategy and management of UBS lies with the Board of Directors. In line with Swiss banking law, the Board has delegated the responsibility for day-to-day management to the Group Executive Board. No one can be a member of both bodies. The supervision and control of the executive management remains with the Board of Directors. At the same time, the Group Executive Board is responsible for the implementation and results of the firm's business strategies, for the alignment of the Business Groups to UBS's integrated business model and for the exploitation of synergies across the firm.

35. The Board of Directors of UBS has developed and adopted a set of Corporate Governance Principles to promote the functioning of the Board and its committees and to set forth a common set of expectations as to how the Board should perform its functions. The guidelines are published on the UBS website. As mentioned before UBS operates under a strict dual board structure. This structure ensures that there is an institutional independence of the entire Board of Directors from the daily business. It also implies that the independence rules applicable to UBS under Swiss, US and other law have to be viewed in that light. All members of the Board are considered "non-management directors".

36. The UBS guidelines cover the following topics: Board composition and selection, Director responsibilities, Director access to information, compensation, Director orientation and continuing education, management succession, annual performance evaluation of the Board.

37. The Audit Committee represents one of the committees within the structure and organization of UBS's Board of Directors. The others are the Compensation Committee, the Nominating Committee and the Corporate Responsibility Committee. In terms of the Audit Committee, UBS complies fully with the four major requirements of the US Sarbanes-Oxley Act. Firstly, UBS's Audit Committee is entirely composed of independent directors and chaired by a financial expert. Secondly, the duties and responsibilities of the Audit Committee are described in the UBS charter which states that the Committee's primary responsibility is to monitor and review the organization and efficiency of internal control procedures and the financial reporting process. Thirdly, the Audit Committee reviews annually the written

statements submitted by the external auditor, reviews the fees paid to them and prepares the decision on appointment and/or removal of the external auditors. It is up to the General Meeting of Shareholders to elect the External Auditors. Finally, the Audit Committee oversees the handling of complaints regarding concerns about questionable accounting or auditing matters. Furthermore, under the UBS's directive "Use of Services of UBS' Principal Auditors", the Audit Committee approves audit, audit-related and non-audit services provided by external auditors.

38. Regarding the Sarbanes-Oxley Act requirement that the lead and concurring partners on an audit engagement team must rotate after five years and are then subject to "a time-out" period of at least five years and other possible conflicts of interest, UBS has defined in the directive "Use of Services of UBS' Principle Auditors" different kinds of services that can be provided by the external auditor. In this way, the bank's exposure to employing auditors who have conflicts of interest has been dramatically reduced. This directive rules that principal auditors may be retained - with prior approval of the audit committee - for audit work (which is basically the reviewing and auditing of the financial statements) and for specified audit related services (which are for example tax work, extraordinary internal control reviews or additional attestation services for the financial statements). Principal auditors shall, on the other hand, not be retained by UBS for non-audit work. Finally the directive requires an annual disclosure of aggregate fees paid to the outside auditors, including the fees allocable to audit work, audit related services, tax work and all other fees.

39. UBS also complies with the Sarbanes-Oxley Act's request that each issuer disclose whether it has a code of ethics for senior financial officers or not (and if not, why not) as well as with the New York Stock Exchange Governance Rules requiring a code of ethics that - among other things - encourages employees/officers and directors to report illegal or unethical behavior. The company has already adopted a Code of Business Conduct and Ethics of the UBS Group, with an addendum for the board of directors and principal officers. The UBS Code of Business Conduct and Ethics deals with the required standards of fairness, honesty and integrity in a universal and general manner. Finally, the Code explains the procedure for granting waivers, describes the compliance procedure and sets forth additional requirements and procedures in respect of disclosure in reports and documents. The Code is available on the Internet.

40. In the view of UBS, there is no doubt that the permanent improvement of corporate governance standards will strengthen the corporate governance framework of companies and improve transparency. Furthermore, the new requirements will create best industry practice while corporate governance will influence the rating of companies with the integrity of the people at the top of the company as the key element in the process.

International development and financial organizations and issues in corporate governance

41. A number of international organizations and private institutions have ventured into the corporate governance arena in recent years. OECD, World Bank, MIGA, IFC, International Chamber of Commerce, European Commission, UNIDO and UNCTAD are among the leaders.[22] For the current situation regarding work on Corporate Governance see Tables 2 and 3.

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[22] At the same time, there is a large number of non-governmental organizations, private companies, associations or networks which deal with CG issues.

Table 2. Corporate governance (CG) activities, selected international orga nizations, status January 2003, part one

| CG Element | Organization | | | |
|---|---|---|---|---|
| | OECD | World Bank | ICC | European Commission |
| 1. Main focus | | | | |
| | Company law reform | Right of shareholders | Accounting standards | Operation of financial markets |
| | CG and development | The equitable treatment of shareholders | Auditing practice | Board of directors |
| | CG principles | Treatment of stakeholders | Board of directors | Management remuneration |
| | Corporate responsibility | Disclosure and transparency | Disclosure and transparency | Auditing practices |
| | Disclosure and accounting reform | Duties of board members | Shareholders rights | Management responsibility for financial reporting |
| | Entrepreneurship | | Small or family owned business | Protection of minority shareholders |
| | CG and privatisation of state-owned assets | | | |
| | Guidelines for multinational enterprises | | | |
| | Insolvency and corporate distress | | | |
| 2. Key products | | | | |
| | Guidelines | Research | Website - A basic guide to corporate governance for business managers everywhere | Recommendation |
| | Research | Technical assistance | Debate | Debate |
| | Publications | | Case studies - research | Research |
| | | | Self-assessment tools | |
| 3. Partnership exercised | World Bank | OECD | | |
| OECD/WB Global CG Forum | Mission: Helping countries improve the standards of governance for | Sponsors: The governments of Luxembourg, the Netherlands, | Key products: Assistance to developing transition | Work Program: ·Policy dialogue: by convening governance |

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|---|---|---|---|---|
| | their corporations, by fostering the spirit of enterprise and accountability, promoting fairness, transparency and responsibility. | Norway, Sweden, Switzerland, the United Kingdom, the United States, OECD, and the WB Group. | economies on corporate governance through dialogue, exchange of information and coordination between international organizations active in CG (inventory published) | conferences and roundtables at national and regional levels, the To date regional roundtables have been organized in Russia, and Asia; others are planned for Latin America and Africa, drawing in other partners.<br><br>· Technical assistance<br>· Institution building<br>· Information exchange<br>· Capacity building:<br>· Task forces: |
| 4. Size of secretariat / resources committed | Core: 10 professionals<br>Other: 50-60 in related division | Core: 3 professionals in GCGF plus dozen in Private Sector Development Units<br>Other: project managers on ad hoc basis | Core: 3 professionals<br>Other: 15-20 corporate experts on ad-hoc basis | Core: currently 10 professionals in F-3 unit, Financial Reporting and Company Law , from 16 January, F3 will be split in G-3 Company Law, CG and Financial Crime, and G-4 Financial Reporting, in total 15, Other: 10 professionals in F-2 unit: Securities Legislation. |
| 5. Assessment of strength | The key world institution, ample resources available | More auxiliary than a core activity, depends to a great extent on partnership with OECD | Auxiliary activity to the Commission on Financial Services and Insurance, combination of regular budget & special funds | Core activity, funded by regular budget and political willingness by member-states to have EU in that area making Directives & Recommendations (as of March 2003) |

*Source:* UNECE secretariat research

Table 3. Corporate governance activities, selected international organizations, status January 2003, part two

| CG Element | Organization | | | |
|---|---|---|---|---|
| | OECD/WB Global CG Forum | UNCTAD | UNIDO | IFC / MIGA |
| 1. Main focus | | | | |
| | Improvement of the standards of governance for corporations in developing transition countries | Corporate accounting and auditing issues in developing countries | Industrial Governance & Statistics within the policy segment "Competitive Economy – Making industry more efficient" | Development of entrepreneurship and successful private investment |
| | Fostering the spirit of enterprise | Contribution to accounting & audit standard-setting at national and regional levels | Public-private partnership | Development of conducive business environment |
| | Accountability | Disclosure and reporting by trans-national corporations | Stakeholders role | Integration of best environmental, corporate and social governance |
| | Transparency and responsibility | Review of developments in international accounting and reporting | Scoreboard of Industrial Performance and Capabilities* | Smoothing of possible (CG) impediments to investments |
| | Fairness | Reporting in small and medium-sized firms | | |
| 2. Key products | ·Policy dialogue: by convening governance conferences and roundtables at national and regional levels: Russia, SE Europe, Latin America and Asia; planned for Africa. | The Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) since 1982 | Policy advice | Knowledge inputs through financing and insuring private sector projects with good CG |
| | · Technical assistance | Research on International accounting and reporting issues | Knowledge Centre on Industrial Strategies* | Research |

| | | | | |
|---|---|---|---|---|
| | · Institution building | Guidelines for accounting professionals | Research focused on industry | Policy advice |
| | · Information exchange and coordination between international organizations active in CG (inventory published) | Financial reporting and environmental cost and liabilities | | |
| | · Capacity building: | | | |
| | · Task forces: | | | |
| 3. Size of secretariat / resources committed | Core: 3 professionals Other: project managers on ad hoc basis | Core: 2 1/2 professionals Other: several on part-time and ad hoc basis in CITRFI | Core: estimated 5 professionals Other: 10 on ad hoc basis from other parts of UNIDO | Core: none Other: many project managers on ad hoc and project basis |
| 4. Assessment of strength | Auxiliary activity, depends on partnership with OECD and countries' funding | Auxiliary activity to the UNCTAD Commission on Investment, Technology and Related Financial Issues, weak mandate, poorly equipped secretariat and modest resources available | Core activity, financed from regular budget. Competence in core CG issues questionable | Not a core activity, strong competence in project and insurance CG elements |

* - to be developed

*Source:* UNECE secretariat research

42. Based on this survey, the OECD seems to be the only international organization that treats corporate governance as a true core activity with a suitable number of staff in place, required broad and in-depth expertise and appropriate resources employed. In its partnership with the World Bank, through the WB/OECD Global Corporate Governance Forum, the OECD extends its reach all over the world providing corporate governance assistance in various forms. With already substantial resources committed to corporate governance activities, the European Commission will also most likely become a key player in this area. ICC, UNCTAD, UNIDO, IFC and MIGA are at the other end of the CG arena, operating in different niches related to their core missions and activities, but with unequal success. However, the work on corporate governance in many aspects, measurement in particular, seems still to be in a rudimentary phase with none of the international organizations covering corporate governance in its totality and in the required depth. This situation could provide opportunities for newcomers to offer their own view on general aspects of corporate governance or position themselves in a new, unoccupied corporate governance niche.