

Boards for the future

Andrew Likierman argues that the role of boards in making change happen in the financial services is important and likely to grow

Is it possible for the boards of banks to meet the expectations of all their key stakeholders? If they can't, that matters. Bank boards are rightly being expected to carry through fundamental changes in the way banks operate. It's in everyone's interest that they should succeed. And if they can't, there are important implications.

Having different corporate governance arrangements for bank boards to those for other organisations is one suggested approach. Three sets of reasons are advanced for this. The first is about size. The argument is that banks are just too big to manage as a single unit. There are others who argue that banks are different from other organisations because of the complexity of what they do. Finally, there is the extension of the argument that banks are different because of the implications for society of their failure.

In each of these cases it's more appropriate to consider a spectrum rather than a tipping point. So on the first one – size – are banks too big? It's certainly true that many banks are big. But then so are a lot of other organisations – BP, BAe Systems, Tesco. Where along the spectrum does an organisation become too big to have a single board? It doesn't seem right that banks alone are too big.

Next let's consider the spectrum from simple businesses to the highly complex. Banks are certainly highly complex. But more complex than nuclear power or the frontiers of technology? What about hospitals? Complexity isn't really a feasible category.

Finally, the implications for society. The board of the Tokyo power company managing the leaking Fukushima plant is certainly on the line as far as society is concerned and banks are not the only organisations at the far end of the implications-for-society spectrum. For them, as for power companies and care homes, additional regulations are appropriate, not a separate regime.

My view is that we shouldn't single out bank boards other than for enhanced specific regulation.

The new regime

There is regulation aplenty. Even a cursory examination shows that this is a crowded field. Individual banks have their own internal requirements. As for all listed companies, there is the framework set by the Financial Reporting Council through the combined code and by the ABI guidelines, revised this year. Then for the industry we have had the Walker review of 2009, the Basel Committee principles of 2010 and now have the rulebook requirements of two new regulators, the PRA and the FCA. The Salz report has added another industry-specific element.

At a European level we have the European Commission through CRD IV as well as the EBA guidelines. Finally at Company Law level we have Section 172 of the Companies Act and this year the Parliamentary Commission on Banking Standards.

And it isn't finished. Sir Richard Lambert is setting up a new independent body monitoring standards in the UK. And coming along soon we have the prospect of additional requirements as amendments to the Banking Reform Bill. All this excludes the structural proposals, including John Vickers' report, Dodd-Frank and Liikanen.

What does the multiplicity of requirements mean in practice? Let me give examples of some issues. One is the reconciliation between Section 172 of the Companies Act, which requires directors to act in the interests of a wider stakeholder group. This is difficult to square with some of the highly specific requirements of the regulators, which effectively require the non-executive directors to act on their behalf – the term “policemen” has been mentioned. The right volume of lending to small businesses is another example of the difficulties of reconciling different stakeholders.

Then there is the ability to find people to sit on the board. Yes, people are available – but are they the right people? It looks as if non-executive directors will increasingly have to be drawn from those recently retired from the industry to ensure

that they have both time and knowledge to do the job. There is a diminishing chance of a wider view from people outside the industry, of getting enough people from outside the UK and certainly no chance of getting serving CEOs of other companies. If there was a danger of groupthink before, it's greater now.

Finally there is the issue of the European requirement through CRD 4, which needs to encompass the UK unitary and Continental two-tier boards. The reference in Directive 2013/36 is to a “management body”. This is going to be a problem applied to a unitary board when considering the relationship between the Executive Committee and the board.

All guilty

What does all this amount to? A successful board will cover strategy, money and people, as well as what regulators want. The coming regime looks suspiciously as if there will not be such a thing as a bank board that meets the expectations of key stakeholders.

I don't believe this is intentional. Every individual stakeholder wants a piece of the action – it's rather like the scene in Agatha Christie's *Murder on the Orient Express* where all the conspirators take it in turns to stab the corpse. Everyone wants to do something, or at least be seen to be doing something. Some of this is downright visceral – a sense of punishing the banking wrongdoers for the misery they have inflicted on others. Some might just be a desire to cover one's back. Just as it has been said one cannot be too rich or too thin, so some clearly feel that banks cannot be overregulated.

So it's easy to see why feelings have run high. The concern must be that the totality of the regulation, where everyone wants their stab, will make boards unable to satisfy the expectations, indeed requirements, being laid down for them. And that will be bad for banks, regulators and the economy. There needs to be sufficient countervailing pressure to give coherence to the way bank boards are expected to operate. Otherwise UK banking really will be a corpse. ■

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