Luxembourg Fund Governance Survey 2020

January 2021

pwc

The voice of corporate governance in Luxembourg

15 Years +1

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Foreword

Michael Delano
ILA Fund Committee Chairman
PwC Luxembourg Partner

On behalf of PwC and the Institut Luxembourgeois des Administrateurs (ILA) it gives me great pleasure to introduce our latest edition of the Luxembourg Fund Governance Survey.

This is our 10th edition of the survey, where we were fortunate enough to gather insights from the boards of 122 investment fund and management companies covering both liquid and alternative products. This record number of participants evidences the continued attention to governance given by market participants.

Furthermore, we believe that this exercise is even more important in the current environment. Our industry continues to experience deep transformations in the face of various concomitant factors – continued intensification of regulatory oversight, the current impact of the COVID-19 pandemic, and a post-Brexit environment that still needs to be defined.

This year's survey explores two new topics that will have lasting impacts on Luxembourg's fund industry. The first is the increasingly important responsibility of boards to oversee ESG criteria in response to the rapidly advancing EU regulatory agenda. The second is the rise of new governance practices in the wake of the COVID-19 crisis. Luxembourg-based funds and management companies have shown resilience in the face of the economic disruption brought on by the pandemic and were quick to follow the CSSF's guidance on remote working, both at management and board level. As the fund industry recovers from the COVID-19 crisis, it will be interesting to see in the next edition of our survey if any of the reactions to the pandemic have been long-lasting.

Our aim in preparing this survey is to provide boards with insights into current good governance practices and to further strengthen the overall governance framework of the Luxembourg fund industry. The Luxembourg asset management industry is very active in providing practical guidance to board members as evidenced by the numerous publications, events and courses developed by both ILA and ALFI, several of which are referenced in the results of the survey.

In conclusion, I would like to sincerely thank all of the respondents for the time they took to participate in the survey, the members of the ILA Fund Committee who designed the survey and analysed the results and last but not least, my colleagues from the PwC Luxembourg's Market Research Centre who were instrumental in putting this together.

I trust you will find the contents useful.

Mike Delano
ILA Fund Committee Chairman
PwC Luxembourg Partner

Introduction

About the 2020 survey

Governance has long been a priority for the Luxembourg fund industry, with a focus on robust oversight and investor protection. As the world responds to the COVID-19 pandemic, governance is more important than ever. To this end, ILA and PwC have once again collaborated to publish this 10th edition of the Luxembourg Fund Governance Survey. Since 2003, the survey has grown to become a recognised tool for better understanding governance practices in the Luxembourg fund industry.

With this edition of the survey covering more subject areas, delving into new topics, such as ESG oversight and new practices in the wake of COVID-19, it becomes the most comprehensive survey to date. Additionally, the number of survey participants increased by 27% compared to 2018, with answers collected from 122 respondents between June and September 2020. We sought out responses from board chairpersons and members, conducting officers and corporate secretaries, as the primary focus of the survey was to acquire first-hand knowledge of the inner-workings of boards at Luxembourg-based investment funds and management companies.

Highlights and key trends

This year's survey reveals that governance practices continue to evolve across the Luxembourg fund industry, with ESG, cybersecurity, and board diversity outlined as increasingly important topics for boards to address in the coming years.

With the growing integration of ESG in funds, there is mounting pressure from boards to require more ESG expertise in order to have the right composition, structure and processes in place to oversee ESG investments, as well as reduce the risk of stakeholder greenwashing.

With certain board members reporting that they lack sufficient information on cybersecurity, the COVID-19 crisis has only accentuated the need for boards to gain a better understanding of the potential risks and develop robust cybersecurity practices, especially as remote working is expected to continue to be common practice even after we have recovered from the COVID-19 crisis.

While we have observed an upward trend in the number of female board members compared with the last survey, the under-representation of women on boards remains an issue in Luxembourg, with women making up barely a fifth of board members. Beyond gender equality, the issue of diversity in race and ethnicity at the board level of funds and management companies also merits further investigation in future editions of the survey.

We note the role of the CSSF Circular 18/698 in converging practices within UCITS and alternative investment entities, particularly regarding the oversight of risk management and due diligence of delegates. Additionally, we see improvements in most areas, including the adoption of formal appointment procedures for new members, the proportion of independent board members and the increased frequency of board meetings. We also notice the increased use of sub-committees, the high number of board performance reviews, the increased disclosure of conflicts of interests at board meetings, and finally, the continued uptake of the ILA Certified Director Program.

General market information

Luxembourg is the world's second-largest fund centre and Europe's largest, with more than €4.67 trillion in assets under management (AuM).[1] Luxembourg has been at the forefront of the UCITS fund industry, accounting for 36% of the world's UCITS assets.[2] It is also the leading cross-border investment fund centre in the world, with a market share of almost 60% of cross-border fund distribution worldwide.[3]

Since the introduction of AIFMD, Luxembourg has also become a leading centre for alternative asset classes, including hedge funds, private equity, real estate, private debt and infrastructure. There are 345 management companies in Luxembourg (under Chapter 15 & 16) and 262 authorised Alternative Investment Fund Managers (AIFMs).[4] Alternative fund managers currently manage around €801.5 billion in alternative assets.[5]

Our sample

This year's larger sample of 122 participants provides a more representative picture of the Luxembourg fund industry, with 69% of Luxembourg-based UCITS AuM and 44% of AIF AuM represented,[6] a significant increase from our 2018 survey. Respondents from Luxembourg-based investment funds and management companies were mainly directors and conducting officers. Their answers fall into the following five categories:

- Super ManCos[7]
- UCITS ManCos[8]
- AIF ManCos[9]

(collectively "**ManCos**")

- UCITS[10]
- AIFs[11]

(collectively "**funds**")

In this year's survey, we drew information from fund promoters originating from 22 different countries, but primarily from the UK, Switzerland, Luxembourg, the United States and France. This is consistent with the responses from our 2018 and 2016 surveys - with Luxembourg regaining its place as one of the top three promoter locations in this edition of the survey. CSSF data on the entire population indicates main promoters' origin as being - by order of importance - Germany, Switzerland, France, Luxembourg and the UK.[12]

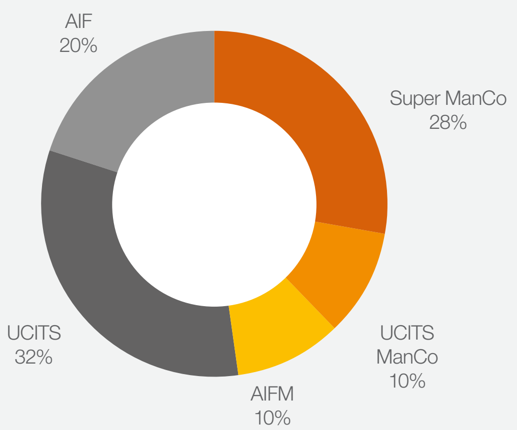
The number of management companies operating on a cross-border basis has continued to increase significantly since our 2018 survey – at least in the UCITS world: 62% of Super ManCos and 83% of UCITS ManCos are passporting their services. In the alternatives world, on the other hand, a majority of management companies do not need to passport their services as they primarily serve funds domiciled in Luxembourg.

Luxembourg funds predominantly appoint a management company in Luxembourg. For those who appoint a ManCo outside of Luxembourg, the preferred location is now Ireland – while it was the UK two years ago. The effects of Brexit on the industry's landscape are becoming increasingly apparent.

Alternative management companies in our sample are licensed for a wide variety of asset classes but appear to favour real estate, private equity and private debt. On the other hand, alternative funds represent a diverse mix of assets - including real estate, private debt, fixed income, equity and private equity.

1. CSSF data as of 31/10/2020
2. EFAMA, Q2 2020
3. PwC Global Fund Distribution Data, 2020
4. CSSF data as of 31/10/2020
5. EFAMA, Q2 2020
6. Based on Monterey data
7. Large management companies overseeing both UCITS and alternative funds; regulated under both regimes described below.
8. Management companies overseeing UCITS funds only; regulated under Chapter 15 of the Law of 17 December 2010.
9. Management companies overseeing alternative funds only; regulated under Chapter 16 of the Law of 17 December 2010 or under Chapter 2 of the Law of 12 July 2013 transposing the AIF Directive into Luxembourg law.
10. UCITS funds; regulated under the Law of 17 December 2010 transposing Directive 2009/65/EC relating to Undertakings for Collective Investment in Transferable Securities ("UCITS Directive").
11. Alternative Investment Funds; those funds that are not covered by the UCITS Directives.
12. CSSF "Origin of UCI initiators in Luxembourg" as of 30/09/2020. Classification based on % of number of UCI per country

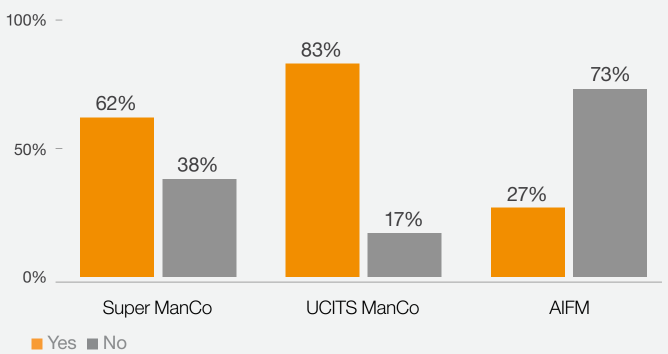
Figure 1: Sample composition



Sample Size = 122

Source: PwC AWM Research Centre

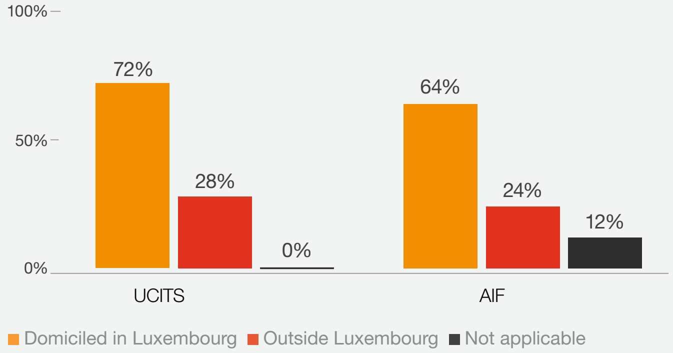
Figure 3: Are you passporting your services?



Sample Size = 57

Source: PwC AWM Research Centre

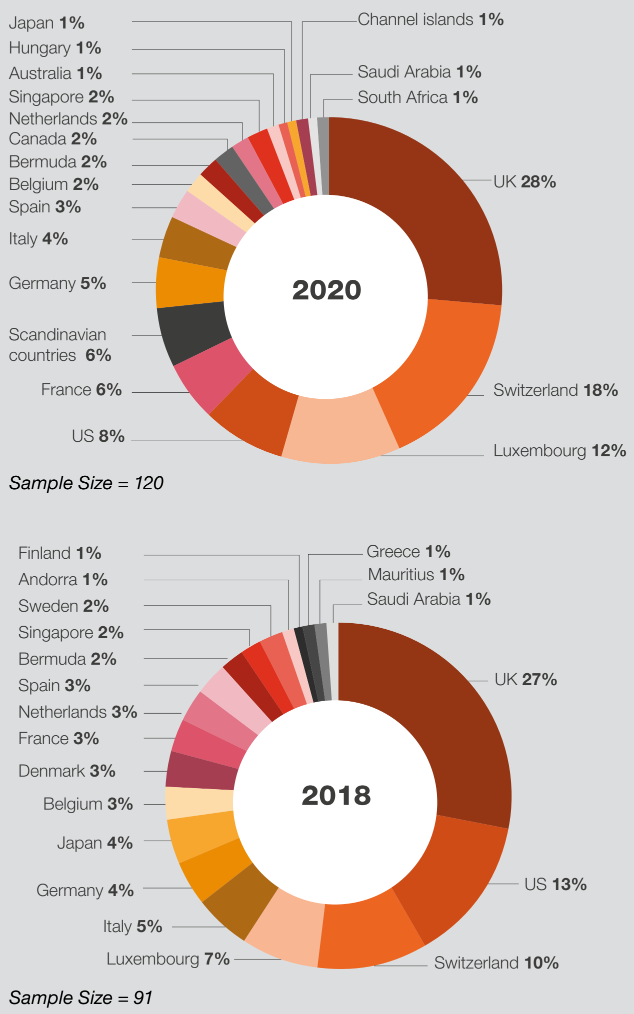
Figure 4: Have you appointed a ManCo?



Sample Size = 64

Source: PwC AWM Research Centre

Figure 2: Where is the promoter located?



Percentages may not add up to 100% due to rounding.
Source: PwC AWM Research Centre

Breakdown of survey areas

The survey was divided into the following key areas of interest:

1

Board composition

deals with matters such as the profile of board members (independence, expertise, age, gender, tenure) as well as appointment procedures and remuneration practices.

2

Board organisation

presents the practical aspects of board sessions like location, attendance, duration of board meetings and agendas for those meetings.

3

Roles & responsibilities of the board

addresses key issues such as management style of the board, oversight responsibilities, performance evaluation, continuing education and the ILA Certified Director program.

4

Conflicts of interest and legal liabilities

features information regarding the management of conflicts of interest as well as management and mitigation of directors' liabilities.

5

Code of conduct

examines board implementation of their adopted code and takes a closer look at the ALFI[13] code of conduct.

6

Current challenges and looking forward

explores how the shift towards ESG and the COVID-19 crisis have challenged current governance practices. It also considers the implications of the latest regulations as well as areas that will require extra attention from the board over the next two years.

13. Association of the Luxembourg Fund Industry; the official representative body for the Luxembourg investment fund industry

1 Board composition

Board size

Similarly to 2018, boards of management companies have, on average, 4 to 5 members, including the chairperson; on average UCITS boards have 5 members, while AIF boards have 3 to 4 members. Among our sample, the largest board consisted of 11 members belonging to a large UCITS fund. Indeed, the number of board members typically depends on the size of the fund, in terms of AuM, and the number of sub-funds overseen.

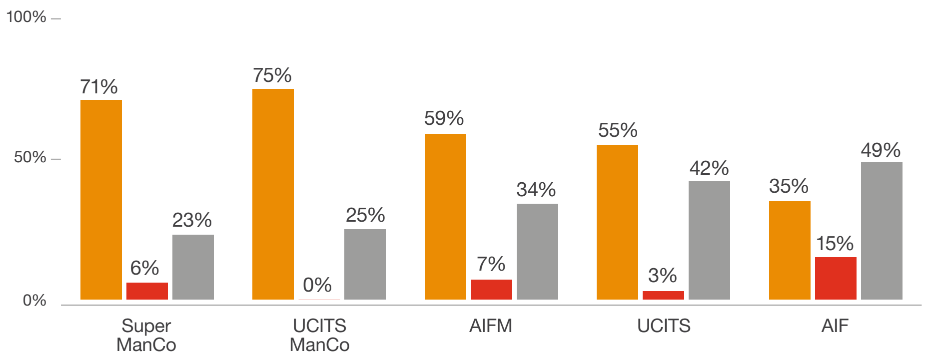
Directors' profile

In this year's survey, we sought out the standard profile of directors sitting on the boards of Luxembourg-based funds and management companies. We find that the typical board member possesses the following characteristics (see figure 6):

- is employed by the promoter
- has served 4 to 6 years on the board (consistent with 2018 survey results)
- has around twenty years of expertise in fund governance, portfolio management or as a managing director
- has not enrolled in the ILA certification
- is 52 to 55 years old (slightly higher than in the past two surveys)
- is male
- lives outside of Luxembourg & the Greater Region

We observe an increase in the proportion of independent board members from 30% in 2018 to 35% in 2020. It is worth seeing if this proportion continues to increase in future editions of the survey, especially among AIFs, for which independent board members now represent half of the board.

Figure 5: What is the profile of board members? (Employment status of board members)



■ Employed by the promoter / fund sponsor (or formerly employed by the promoter / fund sponsor)
■ Employed by a service provider or legal advisor
■ Independent

Sample Size = 513

Note: Sample size for this question is the total number of board members sitting on all boards in our sample for which we have at least information on employment status.

Source: PwC AWM Research Centre

Furthermore, we aimed to see whether the standard profile of directors varied based on their employment status. We notice that independent directors, in comparison with others (see figure 7):

- are slightly more experienced in their main field of expertise
- are much more likely to be enrolled in (or have received) the ILA certification
- are about 5 years older than executive directors
- are more likely to be female (28% compared to 19% employed by fund promoters or 9% employed by service providers)
- typically live in Luxembourg or the Greater Region

Figure 6: What is the profile of board members? (breakdown by entity category)

	Total	Super ManCo	UCITS ManCo	AIFM	UCITS	AIF
Sample size	513	145	53	44	186	85
Employment						
	Employed by the promoter (59%)	Employed by the promoter (71%)	Employed by the promoter (75%)	Employed by the promoter (59%)	Employed by the promoter (55%)	Independent (49%)
Years on board (mean)						
	5.3 years	5.9 years	4.5 years	4.3 years	5.7 years	4.4 years
Main area of expertise						
	Fund governance (17%) CEO / Managing Director (15%) Portfolio mngt (15%)	CEO / Managing Director (24%) Distribution / Sales (14%)	CEO / Managing Director (23%) Distribution / Sales (23%)	Portfolio management (29%) Finance / Accounting (19%)	Fund governance (20%) Legal (14%)	Fund governance (28%) Portfolio management (27%)
Years of experience in expertise area (mean)						
	22 years	23.6 years	24.4 years	19.4 years	22.4 years	18.7 years
ILA certification						
	Not started (83%)	Not started (89%)	Not started (80%)	Not started (83%)	Not started (80%)	Not started (79%)
Age (mean)						
	53.5 years old	54.4 years old	53.9 years old	52 years old	53.5 years old	52.2 years old
Gender						
	Male (78%)	Male (84%)	Male (77%)	Male (86%)	Male (69%)	Male (84%)
Place of residence						
	Outside Greater Region (53%)	Outside Greater Region (57%)	Outside Greater Region (60%)	Within Greater Region (61%)	Outside Greater Region (60%)	Within Greater Region (67%)

Note: Sample size for this question is the total number of board members sitting on all boards in our sample for which we have at least information on employment status.

Source: PwC AWM Research Centre

Figure 7: What is the profile of board members? (breakdown by employment status)

	Total	Employed by the promoter or fund sponsor	Employed by a service provider or legal advisor	Independent
Sample size	513	301	31	181
Years on board (mean)				
	5.3 years	5 years	5.8 years	5.7 years
Main area of expertise				
	Fund governance (17%) CEO / Managing Director (15%) Portfolio management (15%)	CEO / Managing Director (20%) Portfolio management (20%)	Fund administration / Operations (23%) CEO / Managing Director (19%)	Fund governance / Professional director (46%) Legal (11%)
Years of experience in expertise area (mean)				
	22 years	21.5 years	17.2 years	23.6 years
ILA certification				
	Not started (83%)	Not started (95%)	Not started (100%)	Completed or in the process (40%)
Age (mean)				
	53.5 years old	51.7 years old	48.8 years old	57 years old
Gender				
	Male (78%) Female (22%)	Male (81%) Female (19%)	Male (91%) Female (9%)	Male (72%) Female (28%)
Place of residence				
	Outside Greater Region (53%)	Outside Greater Region (73%)	Luxembourg & Greater Region (88%)	Luxembourg & Greater Region (74%)

Note: Sample size for this question is the total number of board members sitting on all boards in our sample for which we have at least information on employment status.

Source: PwC AWM Research Centre

Board diversity

Over the past few surveys, we have observed an upward trend in the number of female board members from 14% in 2016, to 16% in 2018 and 22% in 2020. However, the under-representation of women on boards remains an issue in Luxembourg, with women making up barely a fifth of board members.

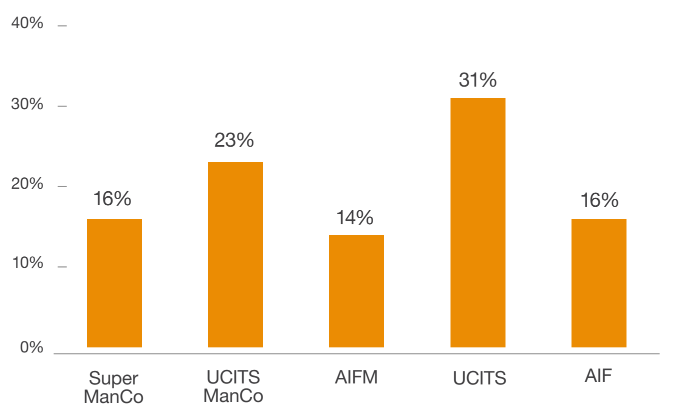
Indeed, a diverse board is more likely to benefit from diverse thinking - which can stimulate the board's creativity and signifies the first step to addressing long-term risks, such as those resulting from a lack of gender diversity (potential lawsuits, reputational damage). Beyond gender equality, the issue of diversity in race and ethnicity at the board level of funds and management companies merits further investigation in future editions of the survey.

Chairperson appointment

The practice of appointing a permanent chairperson has increased among UCITS and AIFs since our 2018 survey. Indeed, boards are increasingly stepping away from the previous approach of only appointing meeting chairs to designating a permanent chairperson to ensure consistency, organisation and efficiency, which reflects the leadership role of a board chair both during and outside of board meetings. However, the proportion of AIFM boards appointing only meeting chairpersons has been increasing since our 2016 survey, begging the question whether AIFMs will converge their approach in line with best governance practices.

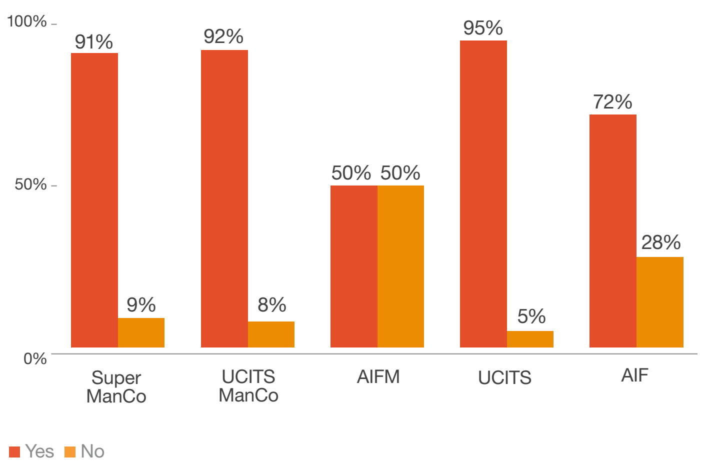
Appointing a strong board chairperson (in the corporate governance sense) is consistent with global corporate governance trends as leadership is much more than chairing an individual meeting, rather it is an on-going process over the entire year. In addition to matters related to meetings - such as steering discussions, setting the tone of the board and ensuring that conclusions are reached in a timely manner - the chairperson should also be involved in liaising with the Company Secretary and CEO. This is critical when setting meeting agendas, ensuring follow up of action points between meetings, being the first point of contact for board issues and escalation, and generally ensuring continued governance on an on-going basis.

Figure 8: **Average percentage of female board members**



Sample Size = 412 Source: PwC AWM Research Centre

Figure 9: **Has the board appointed a permanent chairperson?**

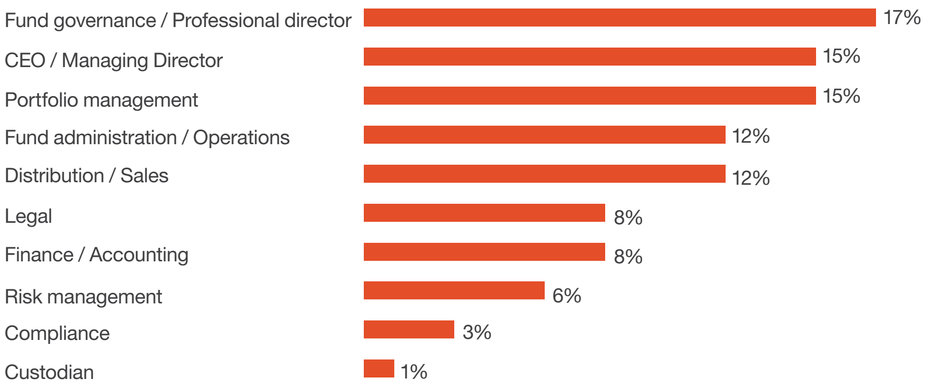


Sample Size = 122 Source: PwC AWM Research Centre

Board expertise

Collectively, each board member's area of expertise should be complementary and cover skills required for the overall board to fulfil its responsibilities to investors. This year's survey displays a great diversity and balance of expertise across board members of funds and management companies. Compared to 2018, more directors with experience in high-level leadership positions were represented as well as more board members with backgrounds in legal and finance/accounting. Coverage in areas of portfolio management, fund administration/operations and distribution/sales stayed consistent.

Figure 10: What is the main area of expertise of each board member?



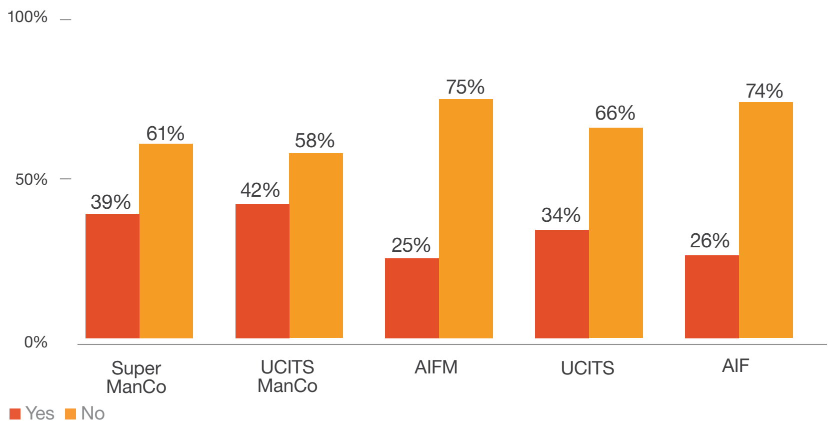
Sample Size = 486

Note: Sample size for this question is the total number of board members sitting on all boards in our sample for which we have at least information on employment status.

Source: PwC AWM Research Centre

To ensure that a balanced mix of skills in line with the strategy and specifics of the fund are included on the board, funds and management companies have started developing a board skills matrix, although the adoption rate appears to be slower among AIFMs and alternative funds. However, many boards have an informal skills matrix that they rely on for the board assessment and/or hiring process.

Figure 11: Do you have a board skills matrix?

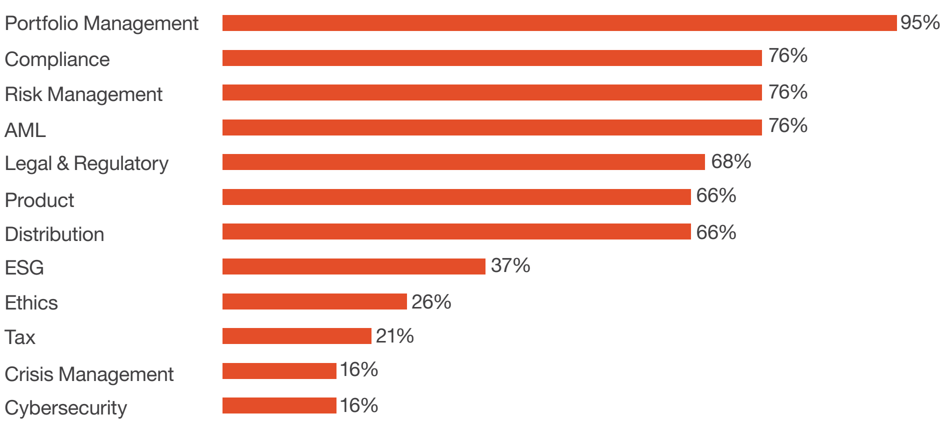


Sample Size = 118

Source: PwC AWM Research Centre

For those that have a board skills matrix, skills that are most often listed are in portfolio management, compliance, risk management, and AML. However, we notice that knowledge of legal & regulatory updates is also high in demand, reflecting boards' increased monitoring of the legal and regulatory environment and its evolution. Additionally, CSSF Circular 18/698 raised the requirements on distribution oversight, increasing the need for distribution expertise on boards. Finally, investors' appetite for ESG funds and the related upcoming EU regulatory agenda have pushed boards of funds and management companies to require that their members be not only up-to-date but also driving the agenda regarding ESG developments and their implications on the Luxembourg fund industry.

Figure 12: If a board skills matrix is in place, what are the skills that must be on the board?



Sample Size = 38

Note: Multiple choice question

Source: PwC AWM Research Centre

Appointment procedures

In this year's survey, a majority of the boards reported not having formal procedures in place for appointing new directors – with the exception of Super ManCos, who appear to be developing such procedures.

The process of selecting board members remains nevertheless essential as it is an important part of ensuring diversity of skills on a board, as well as a diversity of status (independent, employed by the promoter, etc.). Indeed, the ALFI Code of Conduct recommends board composition be balanced and diverse in order to help the board to have better discussions and hence make better-informed decisions.

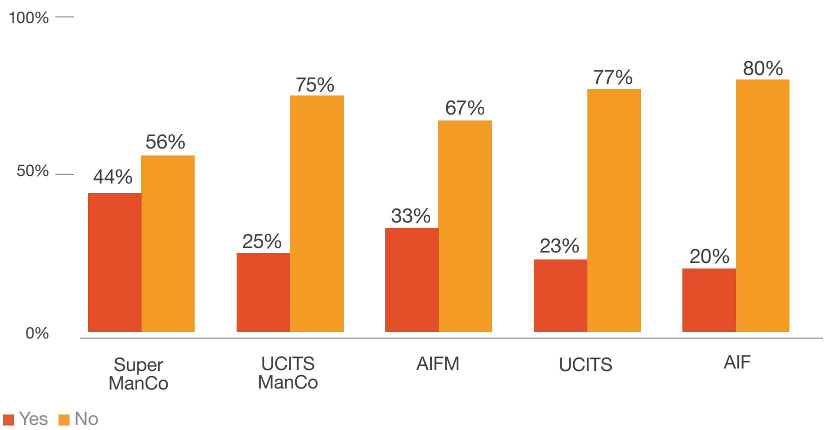
We observe that the preferred way for finding new directors is through referrals from existing board members or service providers (80% of boards), while only a minority use executive search (18% of boards).[14] At the next stage of the assessment process, boards typically prefer to use interviews.

In line with previous years' findings, two-thirds of boards have written terms of appointment for independent directors. This is part of an upward trend, particularly in the UCITS world, and this year we notice that 75% of UCITS ManCos have written terms of appointment for independent directors compared to 67% in 2018 and 50% in 2016. However, only a third of boards have written terms for chairpersons and executive directors (those that are employed by the promoter). While this distinction has been present in past surveys, we remain surprised that there is such a distinction between executive and independent directors as they face the same responsibilities and legal liabilities in relation to the role.

A large majority of boards have procedures in place that allow new directors to gain an understanding of the promoter group, management company and funds managed. This due diligence takes place at various stages, typically prior to appointment, via induction programmes, and is periodically repeated throughout the director's term.

Furthermore, this year's survey reveals that a large majority of boards do not yet have formal procedures in place for succession planning. A possible reason for this is that most boards do not have a term limit in place for directors serving on the board, and if they do, the average term limit is around 10 years. Indeed, various EU texts consider that after 12 years, a director will no longer be considered independent, giving way to the periodic renewal of independent non-executive directors.

Figure 13: Does the board have formal procedures for selecting and appointing new members?



Sample Size = 122

Source: PwC AWM Research Centre

14. These figures are not mutually exclusive – a board may source new directors from different means in parallel (referrals, executive search or others).

Directors serving at both management company and fund level

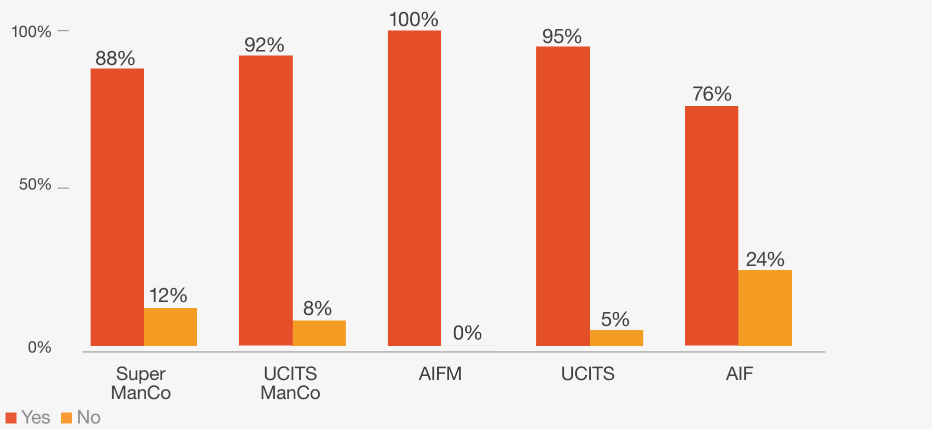
The practice of appointing directors on both the board of the management company and the board of the fund managed by the ManCo still seems largely accepted in the UCITS world but is not commonly seen in the alternatives world. When the practice is adopted, only one to two directors typically sit at both levels. Over the past surveys, we have observed the number of Super-ManCo directors sitting at both levels decline from an average of 4.7 in 2014 to 2.4 in 2016, and even further, to 1.3 this year.

While this practice may improve communication between the ManCo and the managed funds, it also increases the risk of potential conflicts of interest, which is why the CSSF has made it clear in its Circular 18/698 that the majority of directors should not sit on both boards.

RC appointment

This year's survey highlights that a large majority of boards have appointed an "RC" or "Responsable du Contrôle" (i.e. AML compliance officer) from their management company. The practice appears slightly less common among our alternative investment fund respondents – possibly due to more self-managed structures in areas such as real assets.

Figure 14: Have you appointed an RC from the management company?



Sample Size = 122

Source: PwC AWM Research Centre

Publicly available information on directors

Transparency is the first step to evaluating a board's level of diversity, which is why it is encouraging to see that the trend of making information on the board's composition publicly available has continued in this edition of the survey. In line with past surveys, funds are largely disclosing names and job titles of their directors. Additionally, a majority of AIFs disclosed a short biography, a practice also seen in the US and UK.

Only a minority of boards, however, disclose the number of years of service or the age of the directors. We note the privacy rights contained within the GDPR[15] may minimise certain disclosures of identifiable data, such as age or addresses of directors. ALFI & ILA's joint "Guidance on Directors' Reports"[16] also encourages more transparency regarding areas such as directors' background, their length of service and the board's policy on diversity. The proportion of respondents disclosing the types of skills brought to the board is fairly low, an issue that may prevent investors from assessing whether a board is appropriately composed.

Figure 15: What information on directors is provided in publicly available fund documentation (e.g. prospectus, annual report, etc.)?

	UCITS	AIF
Name	97%	92%
Job title	77%	68%
Short biography / Background	41%	72%
Address	49%	24%
Date of appointment / Number of years of service	18%	56%
Skills brought to the board	8%	28%
Age	3%	16%
Other	10%	0%

Note: Multiple choice question

Other information mentioned: Country of residence, Nationality, Remuneration

Source: PwC AWM Research Centre

15. The *General Data Protection Regulation 2016/679* is a regulation in EU law on data protection and privacy for all individuals within the European Union and the European Economic Area. It also addresses the export of personal data outside the EU and EEA areas.
16. Available on the ILA and ALFI websites – for example, in the *ALFI Code section* of the ALFI website (www.alfi.lu)

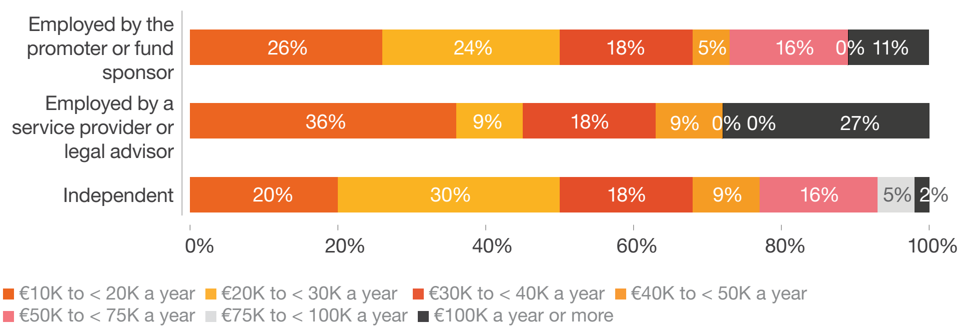
Director remuneration

Similar to previous years surveys, board member remuneration varies depending on role – executive, non-executive or independent director. While it is normal for independent directors to be paid for the role, executive directors (those employed by the promoter or fund sponsor directly) tend not to receive remuneration specific to their position – with only 12.6% reported to receive additional compensation for serving on the board of the ManCo or the fund. Similarly, a portion, only (35.5%) of non-executive directors (those employed by a service provider or legal advisor) are paid specifically for acting in their role.

Median remuneration for independent non-executive directors is in the €20,000 to €40,000 per year bracket for the main fund, but this rises to a total of €50,000 to €75,000 across the family of funds. With the increasingly high levels of responsibility and expertise required from directors, as well as the very active regulatory agenda, we expect remuneration to continue trending upwards in future editions of the survey.

The ALFI Code of Conduct requires that board remuneration be disclosed either on an individual or collective basis. In this year's sample, more than 50% of funds and ManCos disclose directors' remuneration in annual reports. While disclosure on an individual basis is more common among UCITS, disclosure on an aggregate basis is far more observed in the AIF world.

Figure 16: What is the remuneration received by individual board members in respect of the main fund, before deduction of any taxes and exclusive of VAT if applicable?

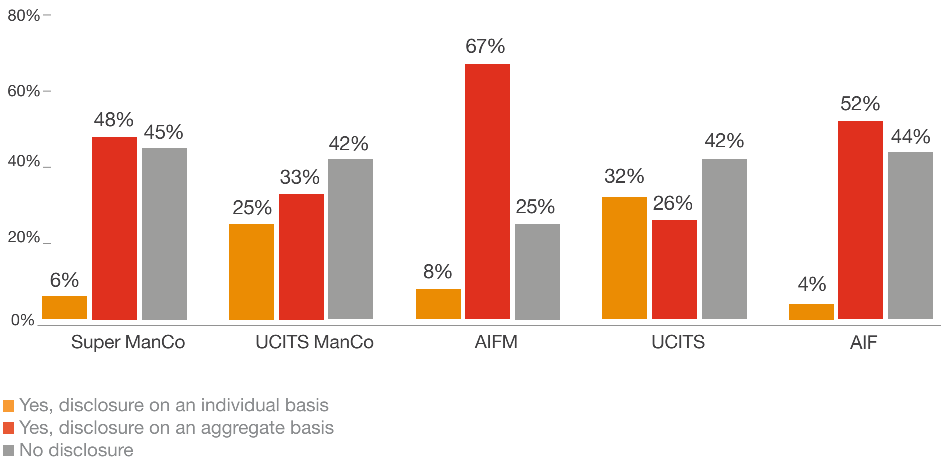


Sample Size = 213

Note: Sample size includes all board members receiving specific remuneration for their role.

Source: PwC AWM Research Centre

Figure 17: Is director's remuneration disclosed in the annual report?



Sample Size = 120

Source: PwC AWM Research Centre

2 Board organisation

Board meetings

Meeting frequency and attendance

This year's survey shows an increase in the total frequency of board meetings among Luxembourg-based funds and management companies, with the average number of meetings taking place per year rising from 5.5 in 2018 to 7.7 in 2020, pointing to an increased commitment from the board to meet the needs of investors and other stakeholders, in the context of market disruption caused by the COVID pandemic. Additionally, the increase in frequency that is particularly noticeable among ManCo boards may be related to the quarterly minimum set out in the CSSF Circular 18/698. Similar to results from our 2016 survey, the high frequency of board meetings among AIF/AIFM boards may also be attributed to our sample, which is tilted towards real asset investments, which requires boards to meet more frequently to approve any new investments in the fund's portfolio.

Though board meetings primarily take place in Luxembourg, the COVID-19 crisis has led UCITS boards to increase the number of meetings held outside Luxembourg, while boards of AIFs/AIFMs have opted for phone or videoconference meetings, especially as they had already adopted the practice for shorter-notice items in the agenda, such as approving new investments.

When meetings are held physically, a large proportion of board members are in the room – in line with our findings from the previous years. Compared to our 2012 survey, the board members have reduced the frequency of attending board meetings by proxy and prefer to attend physically or by phone.

Similar to the findings from our 2018 survey, the majority of Luxembourg-based funds continue not to publish attendance records, and overall, only a third of boards (37%) have a policy on board attendance. Nonetheless, it should be emphasised a high level of attendance is demonstrated by directors at the meetings of the entities covered in the survey. This continues, therefore, to be a missed opportunity to demonstrate the board's commitment to its institutional investors who may value the disclosure of the attendance record in the annual board report, a practice that has been recommended by the ILA/ALFI Guidance notes to the ALFI Code of Conduct: "Guidance on Directors' Reports".[17]

Circular resolutions

Around 90% of Luxembourg-based boards use circular resolutions - an increase from our previous findings - most likely due to COVID-19 imperatives. Indeed, circular resolutions are a popular mechanism as they allow directors to pass a resolution without having to hold a formal meeting. Indeed, resolving administrative matters and making decisions between board meetings were the most common circumstances for using circular resolutions. However, the protocol for using circular resolutions must be clear as they are not meant to act as a substitute for dealing with important issues that require formal meetings. On average, boards use about 9.6 circular resolutions a year, and we notice that Super ManCos tend to use more circular resolutions, most likely due to them overseeing more funds.

17. Available on the ILA and ALFI websites – for example, in the *ALFI Code section* of the ALFI website (www.alfi.lu)

Meeting duration and agenda

The average number of hours directors spend reviewing board papers prior to each board meeting slightly decreased from 6.5 in 2018 to 5.3 in 2020. This may be due to the larger sample being more representative of the behaviours of directors in the Luxembourg fund industry, or that directors, since our 2018 survey, have adapted to the heavier workload.

Board papers are generally disseminated five to six working days prior to board meetings. In the UCITS world, about half of the boards surveyed use digital portals for sharing board packs. In the alternatives world, the most common practice is to send board papers as a pdf by email. Whilst changing, this practice still remains less common than receiving board papers as a pdf via email. Surprisingly, only a third of pdfs received by email are password-protected, raising cybersecurity concerns.

In line with our 2018 survey, we find that board meetings last, on average, three and a half hours. Once again, meetings appear to last longer in the UCITS world, which explains why directors may have to spend more time preparing. The majority of respondents (85%) are pleased with the duration of board meetings; however, we note that 15% of Super ManCo respondents and 17% of UCITS ManCo respondents felt that the meetings were too short, most likely because they face additional responsibilities from overseeing more than one fund. At the same time, 17% of UCITS ManCos respondents said that the meetings were too long, indicating that while boards in the UCITS world may have a heavier, more complex agenda, extending the duration of their meetings may not be a solution that suits everyone.

Figure 18: How many circular resolutions does the board use on average per year?

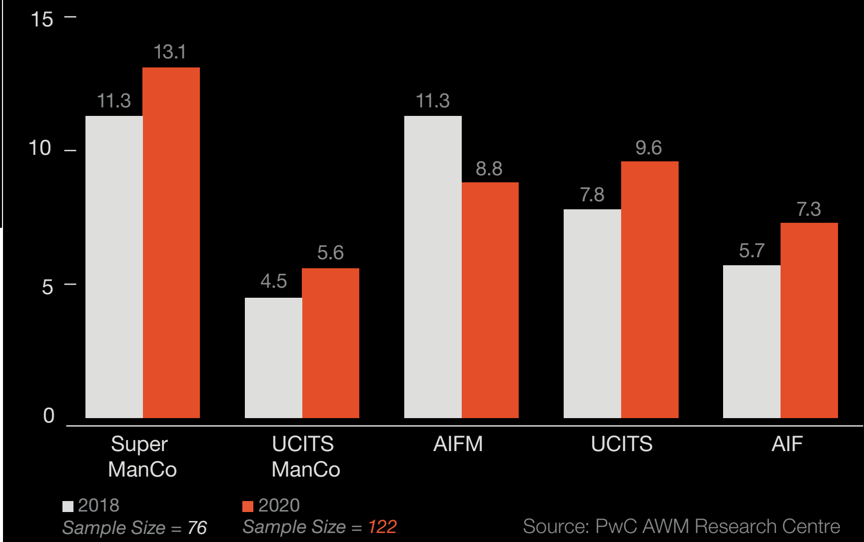


Figure 19: What is the average estimated time directors spend reviewing the board papers prior to each board meetings? (in hours)

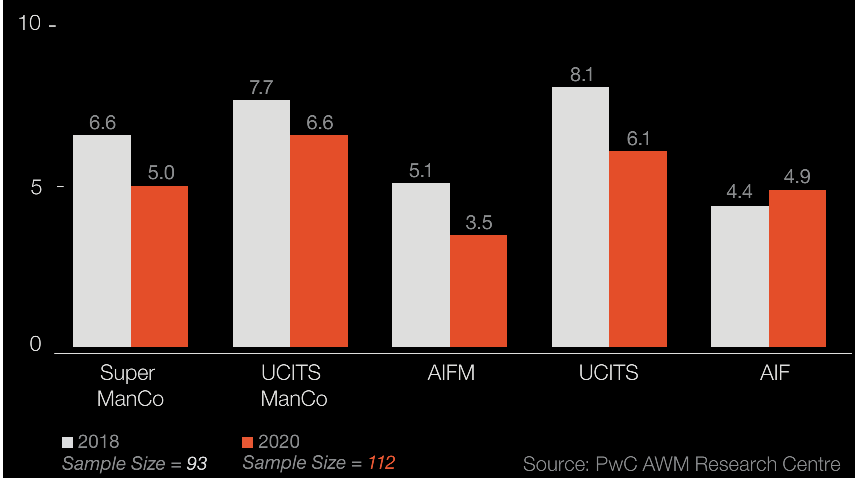
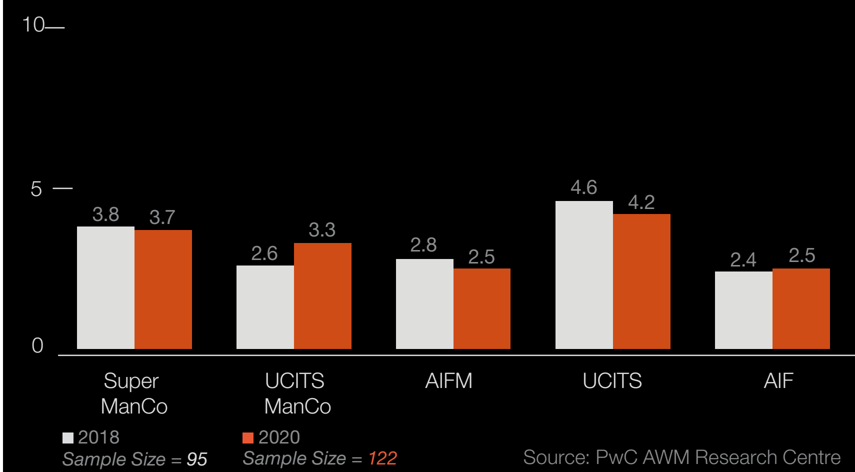


Figure 20: What is the average duration of a board meeting? (in hours)



Since our 2018 survey, the practice of having a standard agenda has become even more common across all categories of boards. Agendas tend to include a vast array of key reports to be supplied periodically to the board per ILA's guidance,[18] although the frequency of review varies by item. The table below summarises the review periodicity of items by board type:

18. See documents titled "*Directors FAQ – Luxembourg investment funds*" and "*AIF and AIFM – A practical guide for directors*" available to ILA members on the ILA website (www.ila.lu)

Figure 21: Review periodicity of the different items constituting the board agenda

		Super ManCos	UCITS ManCos	AIFMs	UCITS	AIFs
AML / KYC report		At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
BCP (Business Continuity Plan) reporting		Periodically	Periodically	Periodically	Periodically	Ad-hoc
Budget and TER		Periodically	At each meeting	Periodically	At each meeting	Periodically
Central administration report (includes fund administration and transfer agent report)		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
Compliance report		At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Conflicts of interest		At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Custody report		Periodically	At each meeting	Periodically	At each meeting	At each meeting
Cybersecurity report		Periodically	Periodically	Periodically	Periodically	Ad-hoc
Distribution report		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
Fair valuation report		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
Audit	Internal Audit report	At each meeting	At each meeting	Periodically	Periodically	Ad-hoc
	External audit findings report	Annually	Annually	Annually	Annually	Annually
Investment manager report		At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Investment restriction breaches		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
Investor complaint report		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
Liquidity management		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
ManCo / Conducting officer report		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
New product approval		At each meeting	At each meeting	Ad-hoc	Periodically	Ad-hoc
Prospectus update		Periodically	At each meeting	Ad-hoc	Periodically	Ad-hoc
Regulatory & legal updates		At each meeting	At each meeting	Periodically	At each meeting	At each meeting
Regulatory correspondence		At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Risk management report		At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Tax update		Ad-hoc	At each meeting	Ad-hoc	Periodically	Ad-hoc
UBO reporting		Ad-hoc	Periodically	Ad-hoc	Periodically	Periodically
Financial statements of the ManCo	Annual	Annually	Annually	Annually	Never	Ad-hoc
	Monthly or quarterly	At each meeting	At each meeting	Periodically	Never	Ad-hoc
Financial statements of the fund	Annual	Annually	Annually	Annually	Annually	Annually
	Semi-annual	Ad-hoc	Annually	Ad-hoc	Annually	Never

Note: Average of respondent answers. The scale used was the following: "At each meeting", "Periodically", "Ad-hoc" and "Never" and for some items "Annually", "Ad-hoc" and "Never".

Source: PwC AWM Research Centre

On average, boards of UCITS ManCos review the greatest number of reports at each meeting, followed by Super ManCos, UCITS and AIFs, while AIFMs review the least. However, it should be noted that while AIFM boards review fewer reports, they meet more often than the other boards due to the nature of alternative investments and the subsequent responsibilities of the boards managing them.

The most frequently reviewed reports are the following: AML/KYC, central administration, compliance, conflicts of interests, distribution, fair valuation, investment management, investment restriction breaches, investor complaints, liquidity management, ManCo/ conducting officer, regulatory & legal updates, regulatory correspondence, annual financial statements of the fund and external audit findings.

Those viewed less frequently concern cybersecurity, internal auditing, new product approval, prospectus & tax updates, UBO reporting and the semi-annual report of the fund.

The increased complexity of UCITS funds is reflected in this table (see figure 21) as boards in the UCITS world review the budget and TER, custody, prospectus and tax updates on a more frequent basis than their counterparts to be consistent with the open-ended, daily NAV cycle of most UCITS.

Invitation of non-board members

Inviting a selected group of external representatives to attend board meetings in person and to report on important topics is generally considered in line with good governance practice. From ILA's list of recommended non-board member attendees,[19] we find that this year, the external auditor, compliance officer, ManCo / conducting officer, investment manager and risk manager were the most frequently invited. The fund administrator, transfer agent and depository were most frequently invited at the fund board level.

19. See documents titled *"Directors FAQ – Luxembourg investment funds"* and *"AIF and AIFM – A practical guide for directors"* available to ILA members on the ILA website (www.ila.lu)

Figure 22: : Invitation periodicity of non-board members to attend board meetings

	Super ManCos	UCITS ManCos	AIFMs	UCITS	AIFs
External auditor	Annually	Annually	Annually	Annually	Annually
Global distributor	Never	Periodically	Not applicable	At each meeting	Not applicable
Compliance officer	At each meeting	At each meeting	At each meeting	At each meeting	Periodically
ManCo / Conducting officer	At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Investment manager	Ad-hoc	At each meeting	At each meeting	At each meeting	At each meeting
Internal auditor	Periodically	Periodically	Ad-hoc	Ad-hoc	Ad-hoc
Internal legal advisor	Periodically	At each meeting	Ad-hoc	Periodically	Ad-hoc
External legal advisor	Never	Ad-hoc	Ad-hoc	Ad-hoc	Ad-hoc
Risk manager	At each meeting	At each meeting	At each meeting	At each meeting	At each meeting
Fund administrator	Ad-hoc	Periodically	Periodically	At each meeting	At each meeting
Transfer agent	Ad-hoc	Ad-hoc	Periodically	At each meeting	At each meeting
Depository	Ad-hoc	Periodically	Periodically	At each meeting	At each meeting

Note: Average of respondent answers. The scale used was the following: "At each meeting", "Periodically", "Ad-hoc" and "Never" and for some items "Annually", "Ad-hoc" and "Never".

Source: PwC AWM Research Centre

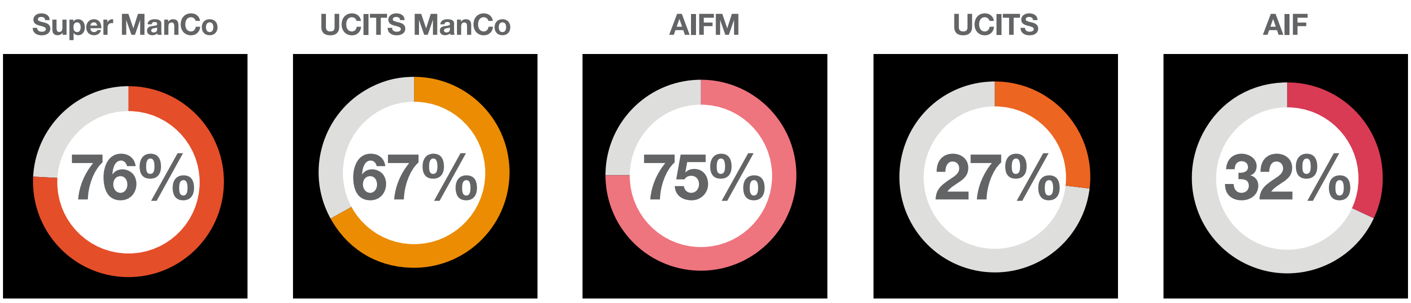
Formal committees

This year's survey reveals that a majority of management companies' boards have established at least one or more sub-committees, especially Super ManCos, as overseeing a large number and variety of funds requires a greater specialisation of roles. On the other hand, the majority of fund boards do not have any formal committees in place, relying more on their designated ManCo to organise operational meetings. Since the implementation of the AIFMD, we have however noticed a gradual increase in the proportion of established sub-committees among AIFMs from 50% in 2016 to 55% in 2018, and now, 75% in 2020.

In line with our 2018 findings, the committees that tend to be the most commonly established are valuation and risk. This year, investment management has surpassed remuneration as one of the top three most common formal committees across all categories of respondents. The audit committee has not gained as much traction as predicted in our 2016 survey following the introduction of the Audit Reform Directive.

Finally, this year's survey highlights the rise of the executive and product committees among Super ManCos and UCITS ManCos and that of the distribution oversight committee, which is starting to become more popular among Super ManCos following CSSF Circular 18/698.

Figure 23: **Proportion of boards that have established one or more sub-committees**



Sample Size = 119

Source: PwC AWM Research Centre

Figure 24: **Formal committees established by the board**

	Super ManCo	UCITS ManCo	AIFM	UCITS	AIF
Audit committee	18%	17%	8%	5%	8%
Client acceptance committee	30%	25%	25%	3%	0%
Distribution oversight committee	21%	8%	0%	3%	0%
Remuneration committee	30%	25%	33%	3%	4%
Valuation / Price committee	45%	42%	67%	14%	20%
Risk committee	39%	33%	25%	5%	8%
Investment management committee	30%	33%	42%	0%	20%
Executive committee	39%	42%	17%	3%	0%
Compliance committee	18%	17%	0%	5%	4%
Product committee	24%	33%	8%	8%	0%
Other	27%	8%	8%	3%	0%

Source: PwC AWM Research Centre

3

Roles and responsibilities of the board

Management style and relationship with the promoter

In line with previous years findings, the prevailing management style within Luxembourg boards is still "active board discussions on existing issues, high-level oversight and management by exception".

The ALFI Code of Conduct requires boards to conduct themselves in a fair and independent manner, particularly in their relationship with the promoter or fund sponsor. The Code also recommends that boards consider appointing independent non-executive directors.

It is encouraging to see that compared to our 2018 survey, more respondents believe that the fund board has a distinct position separate from the promoter, with only 6% of UCITS and AIF boards seeing themselves as an integral part of the promoter's operations.

Review of fund documentation

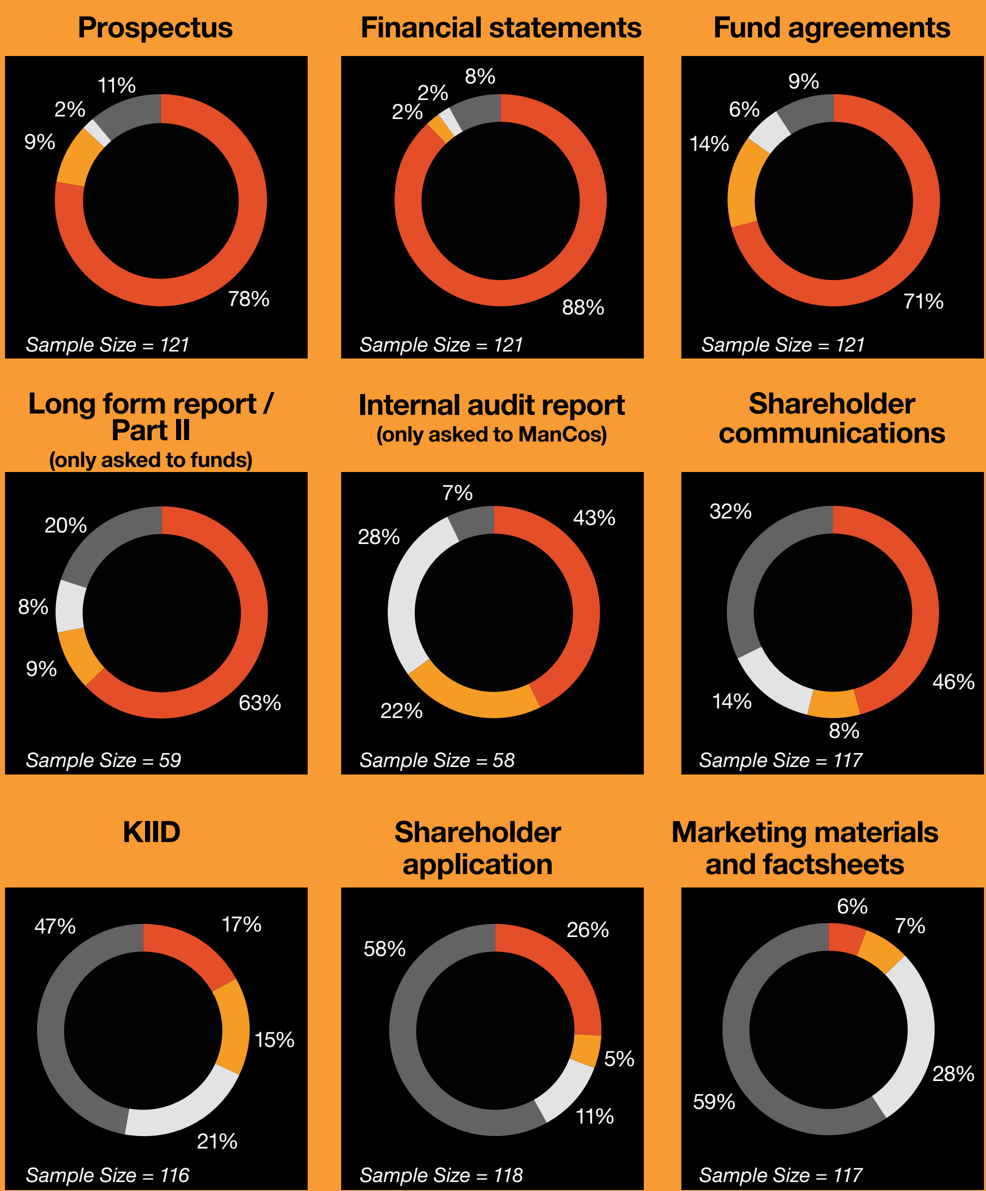
One of the board's major responsibilities at both the management company and fund levels is the review of fund documents. In Luxembourg, the majority of funds examine a variety of documents, including the prospectus, financial statements, fund agreements and shareholder communications. The documents mentioned above are mostly approved by boards prior to issuance/publication. The financial statements of the fund are systematically approved by all fund boards as well as by a majority of ManCo boards. The long form report is approved prior to issuance by a majority of UCITS boards.

This year's survey also reveals that, in practice, most of the boards do not review the KIID (Key Investor Information Document), with only a fifth of UCITS boards approving it prior to issuance. Furthermore, a majority of boards do not review shareholder application forms, marketing materials and factsheets. Since the CSSF Circular 18/698 states that ManCos are responsible for ensuring that fund marketing is carried out in compliance with legal and regulatory provisions in place, ManCo boards should ensure that robust processes exist for the oversight of marketing materials, even if the function has been delegated.

ILA guidance[20] on this matter also indicates that fund directors should approve changes to the prospectus, sign material fund-related agreements and ensure that information on the fund's financial situation is disclosed in accordance with applicable legal and regulatory requirements.

20. See document titled "*Directors FAQ – Luxembourg investment funds*", available to ILA members on the ILA website (www.ila.lu).

Figure 25: **Does the board review the following documents? If yes, what is the timing of board involvement? (all respondents)**



Source: PwC AWM Research Centre

- Approved prior to issuance / publication
- Ratification (formal) post issuance
- Provided for information
- Not applicable / No review

Oversight of service providers

Oversight of service providers is another major responsibility of boards, particularly since European regulators and the CSSF have underlined the importance of due diligence when it comes to functions that are outsourced or delegated. We also note that as of 1 April 2020, the amendments to AIFMD and UCITS rules with regards to depositaries and safekeeping of assets are now in effect. Management companies will thus have new duties to take into account when performing due diligence on depositaries of UCITS and AIFs.[21]

In line with our previous survey, a majority of our respondents continue to perform due diligence on initial appointments as well as periodic assessments of the following service providers:

- Fund administrator
- Custodian / Depositary
- External auditor
- Transfer agent
- Investment manager / advisor
- Legal advisor

Additionally, more than a fifth of respondents perform periodic calls for tenders regarding the external auditor. For other service providers, periodic calls for tender only take place in a minority of boards.

On the other hand, most management companies perform the following functions internally:

- Risk manager
- Internal auditor
- Compliance function
- Global distribution

This year's survey highlights that boards received a mix of operational reports from delegates including breaches/ errors, outsourcing, complaints, IT/cyber incidents and business continuity plans/ testing.

Figure 26: Does the board receives operational reports from delegates? On which topics?

	Total	Super ManCo	UCITS ManCo	AIFM	UCITS	AIF
Sample Size	122	34	12	12	39	25
Breaches / errors	88%	82%	92%	75%	92%	92%
Outsourcing	52%	53%	75%	25%	59%	44%
Complaints	70%	59%	58%	58%	87%	68%
IT / Cyber incident	59%	62%	58%	58%	69%	40%
Business continuity plans / testing	54%	53%	58%	50%	62%	44%
Fraud	45%	32%	42%	33%	62%	44%
Other	8%	9%	17%	17%	5%	4%

Source: PwC AWM Research Centre

21. See Commission Delegated Regulation (EU) 2018/1618 amending Delegated Regulation (EU) 231/2013 (the "AIFMD Delegated Regulation"); and Commission Delegated Regulation (EU) 2018/1619 amending Delegated Regulation (EU) 2016/438 (the "UCITS Delegated Regulation") (together the "Delegated Regulations").

Oversight of investment management

Similar to our 2018 survey, we find that a large majority of boards (72%), both at the management company and fund level, receive regular reporting from the investment manager in order to exercise oversight over the portfolio management function. Additionally, 62% of boards also exercise their responsibilities by supervising the investment strategy and verifying coherence with the general investment policy of the fund. However, only half of management company boards reported being involved in setting the investment policies (including the risk profile) even though this is a regulatory requirement. We are not sure if this question was misunderstood, but encourage boards to review their practice in this area.

When it comes to the investment performance of the fund, in line with previous years, most of the boards in our survey receive regular reporting from the investment manager and monitor the investment performance. Whilst monitoring and questioning performance, we note that only a quarter of boards actively intervene in case of underperformance. CSSF Circular 18/698 has assigned ManCos the responsibility of ensuring that investments made by the investment manager comply with the objectives and strategy of the fund. It is recommended that boards challenge the asset manager in case of continued underperformance and where necessary require a remediation plan to be put in place.

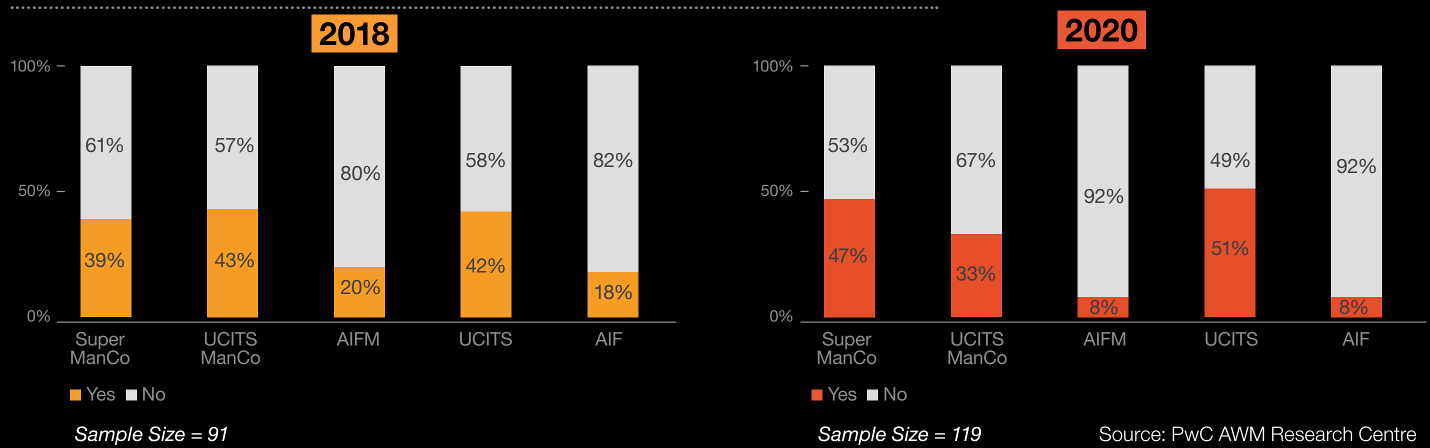
Oversight of fund expenses

Transparency of fund expenses has been a long-standing discussion in the fund industry. Whilst a fixed TER (Total Expenses Ratio) can be seen as a way of guaranteeing shareholders a certain level of service and continuity, a variable TER is intended to ensure only real costs are transferred to shareholders (as opposed to setting a perhaps arbitrary fixed TER, which may in the end either advantage or disadvantage investors). Unsurprisingly, regulators have started to pay attention to the implementation of fixed TERs. Some regulations, such as RDR in the UK and MiFID II in Europe, have put pressure on funds to unbundle expenses in order to improve transparency and investor protection.

In this year's survey, we observe that the proportion of Luxembourg-based entities charging shareholders fixed TERs has increased slightly among UCITS and Super ManCos. On the other hand, more entities in the alternatives world have moved away from fixed TERs since our 2018 survey – not only for transparency reasons but also because it is more difficult for them to forecast costs in advance. We advise all boards to review rationale behind their chosen practice as questions from the regulator around the rationale for their choice of a fixed or variable TER are increasingly likely.

Boards should review fund expenses and their impact on fund returns to ensure that the expenses charged by the fund remain reasonable, fair and appropriate. This year's survey reveals that about half of the boards are involved in the monitoring of fund expenses. Moreover, we note that in the alternatives world, a majority of boards confirmed reviewing budget vs. actual expenses. Interestingly, only a third of our respondents reported comparing the fund's expenses to their competitors, with the largest proportion being 44% from UCITS boards and the smallest proportion 17% from AIFM boards.

Figure 27: Are the fund expenses covered by a fixed TER?



Source: PwC AWM Research Centre

Oversight of risk management

On average, boards surveyed this year review the effectiveness of their risk management process on an annual basis, however it is more common in the UCITS world to review this process quarterly.

Compared to our 2018 survey, more boards (more than 90%) surveyed this year believed that they receive sufficient reporting on more areas, including market and performance risk, credit risk, regulatory risk, counterparty risk, liquidity risk, valuation risk, operational risk and collateral risk.

In line with our previous survey, cybersecurity risk is still the main area of risk where the boards (28%) do not yet receive sufficient reports. In the wake of the COVID pandemic, as companies adapt their systems quickly to allow remote working, cybersecurity certainly became a hot topic. Boards are being pulled into the digital wave at rapid pace, requiring them to be more vigilant and aware of security issues, reading emails in public areas, and sending confidential data in an unprotected format. More importantly, boards must set the tone on cybersecurity, and empower the Chief Investment Security Officer (CISO) to create a long-term cybersecurity strategy aligned with the business needs and requirements.

We also note that 42% of AIFM respondents do not appear to have sufficient reporting on tax risks.

Overall, boards appear well-versed in risk management issues. A large majority of boards collectively have sufficient knowledge of risk management. Moreover, we also note that a third of AIF boards seem highly skilled in risk management, having all directors individually knowledgeable in that area.

Oversight of distribution

Multiple distribution models exist in the Luxembourg fund industry. This year's survey reveals that global distribution is largely performed in-house either by the ManCo or by a separate entity within the investment manager group, most likely to take advantage of their own distribution network.

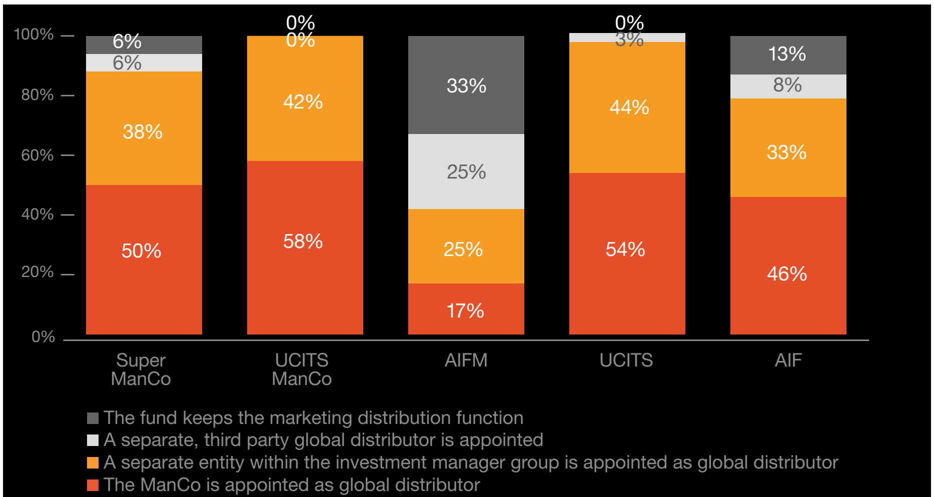
A majority of ManCo and fund boards indicated that they perform due diligence on their distribution function. All UCITS ManCo boards and UCITS boards performed distribution due diligence either themselves or via their ManCo (for those answering at a fund level). Compared to 2018, many more AIFs are performing due diligence on their distributor but around one-fifth of AIFs and AIFMs still lag behind. This could likely be attributed to differences in the distribution model of alternative funds (e.g. with private direct distribution to a small number of repeat institutional investors) or the nature of their lifecycle (e.g. being a closed-ended fund which ceases distribution in the first 12-18 months, once it is fully committed).

CSSF Circular 18/698 assigns ManCos the responsibility of implementing and ensuring the follow-up of the marketing policy and distribution of the funds it oversees. When the distribution function is delegated to a third party, boards remain responsible for the oversight of said delegate. ILA's guidance brochures[22] include good practice advice to directors of Luxembourg funds in the field of distribution oversight.

Global distribution, by its very nature, is a complex activity due to the variety of investors (retail and institutional) and the large number of countries where funds are being distributed. As such, there are a variety of risks that can affect distribution. In line with our previous survey, participants highlighted AML compliance and failure to comply with local jurisdiction sales and marketing laws as the most important risks.

It is hardly surprising that AML compliance is currently in the spotlight. MiFID II became applicable as of January 2018. The 5th AML Directive was implemented in March 2020 in Luxembourg, and the 6th AML directive went into effect for EU member states on 3 December 2020. These regulations strengthen the rules in a number of areas, including reporting obligations, penalties for non-compliance, data privacy and respect of country-specific regulations.

Figure 28: How does the fund handle global distribution?



Sample Size = 121

Source: PwC AWM Research Centre

Involvement outside of board meetings

CSSF Circular 18/698 emphasises that board members must devote the necessary time and attention to their duties, and even defines a threshold on the time spent and number of mandates for board members (1,920 hours per annum and 20 mandates). ALFI and ILA have issued joint guidance[23] on time capacity to help directors assess their time commitment.

However, the question remains for directors on how to best allocate their time between board meetings and what tasks to prioritise. In our survey, we find that a director's engagement outside of board meetings varies widely. In a large majority of boards, directors participate in ad-hoc meetings (91%) and sign agreements (81%). However, in less than a third of boards, directors perform on-site due-diligence of investment managers or other service providers.

22. See documents titled "*Directors FAQ – Luxembourg investment funds*" and "*AIF and AIFM – A practical guide for directors*", available to ILA members on the ILA website (www.ila.lu)
23. See document titled "*Board member time capacity*" available on the ILA and ALFI websites (www.alfi.lu), and document titled "*Getting on Board – A guide for accepting company Directors' mandates*" available to ILA members on the ILA website (www.ila.lu)
24. See brochure titled *"Board evaluations – Enhancing Board Effectiveness*" available to ILA members on the ILA website (www.ila.lu) and the note "*Board evaluations*" available on the ILA and ALFI websites (www.alfi.lu).
25. Available to ILA members on the ILA website (www.ila.lu).

Board performance reviews

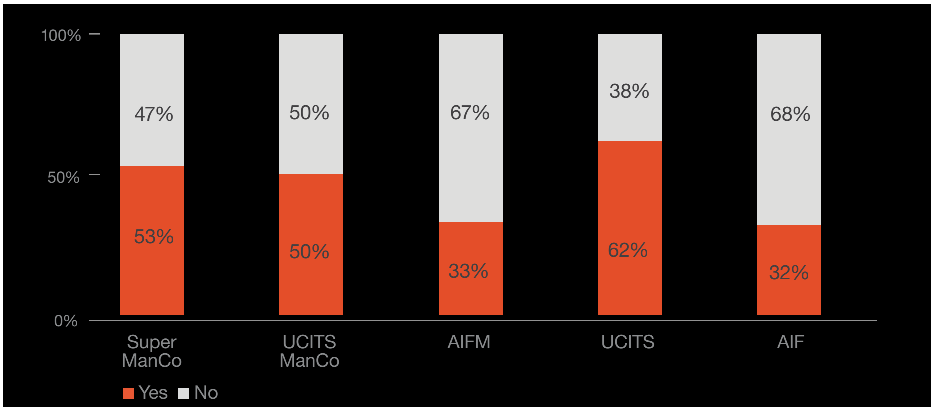
To help ensure good levels of governance are maintained, and as institutional investors and regulators pay increased attention to board effectiveness, the number of boards undergoing performance evaluations has increased since 2018, especially among UCITS ManCos (from 29% in 2018 to 50% in 2020). Currently, the practice of board evaluation remains more prevalent in the UCITS world than in the alternative one.

Of those who perform a board evaluation, they tend to do so on a regular basis (mainly every year), with the exception of AIFs. The majority of the AIF boards who perform a board evaluation complete this evaluation process every 2 or 3 years. Furthermore, about a fifth of boards still perform their evaluation on an ad-hoc basis. We expect an increase in the prevalence of board evaluations over future editions of the survey.

When board evaluation is performed, all ManCo respondents confirmed their board evaluation processes were documented, and in most cases, led to the implementation of a remedial action plan. Evaluation of individual director's performance has not, however, become the norm.

The ALFI Code of Conduct recommends boards ensure that directors are collectively competent to fulfil the board's responsibilities. In line with this, ILA and ALFI have issued guidance notes[24] on board evaluations in an effort to assist boards with getting comfortable with the practice in Luxembourg. If boards are looking for inspiration, ILA has issued a Board evaluation questionnaire[25] that is available on their website.

Figure 29: Do you evaluate the board's performance?



Sample Size = 122

Source: PwC AWM Research Centre

Board training

Practice around continuing professional education remains mixed. Directors continue to spend more time on training taken on a personal basis than on those provided by the board. On average, they spend 1 to 2 days on training provided by the board and 3 to 4 days on training taken on a personal basis every year. We can conclude that respondents in our survey are proactive in ensuring that they remain knowledgeable and capable of keeping up with the responsibilities of the board.

Training provided by the board is most often in the areas of AML/KYC and legal & regulatory developments. As the CSSF circular 18/698 laid out reporting requirements and introduced scenarios in the area of AML/CTF, we expect boards to continue receiving extensive training provided by the promoter in this area.

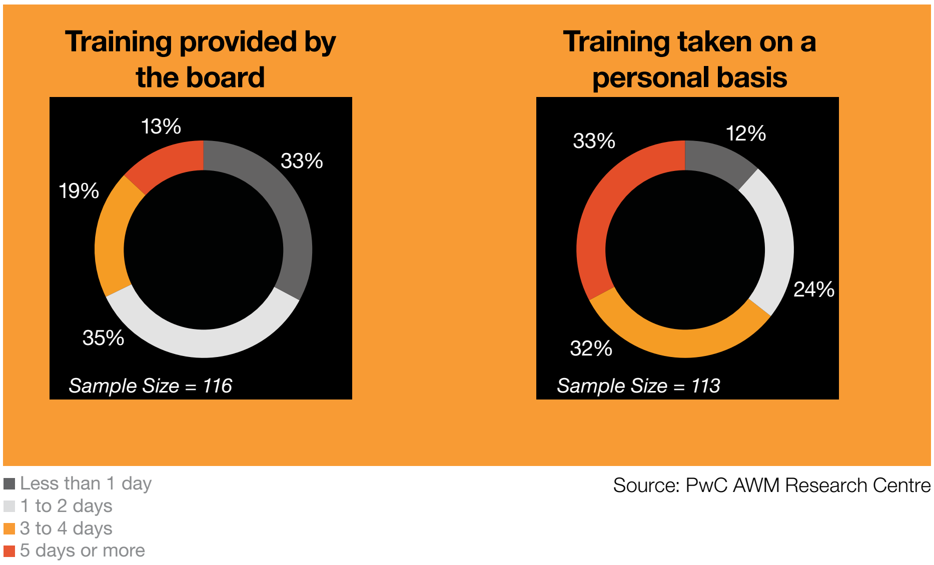
While the most sought after areas for training taken on a personal basis also include AML/KYC and legal & regulatory developments, more than half of directors surveyed are also pursuing training in SRI/ESG investments, an increasingly popular topic.

ILA Certified Director program

In 2012, ILA introduced a certification program for directors sitting on Luxembourg boards to develop members into highly qualified, effective and respected directors. Additionally, this ensures continued promotion of good practices in Luxembourg in the corporate governance field.

Around 17% of directors surveyed are enrolled in the ILA certification process, of which 16% have completed the process and 1% are in the process. The majority of directors enrolled in the certification are independent non-executive directors, with more than one-third of such directors having completed the process. Once certified, directors are required to maintain their knowledge with training that continues to foster their professional skills, and they must also meet annual Continuing Professional Development requirements.

Figure 30: **How many days have directors spent on average on continuing professional education in the last twelve months?**



Source: PwC AWM Research Centre

4 Conflicts of interest and legal liabilities

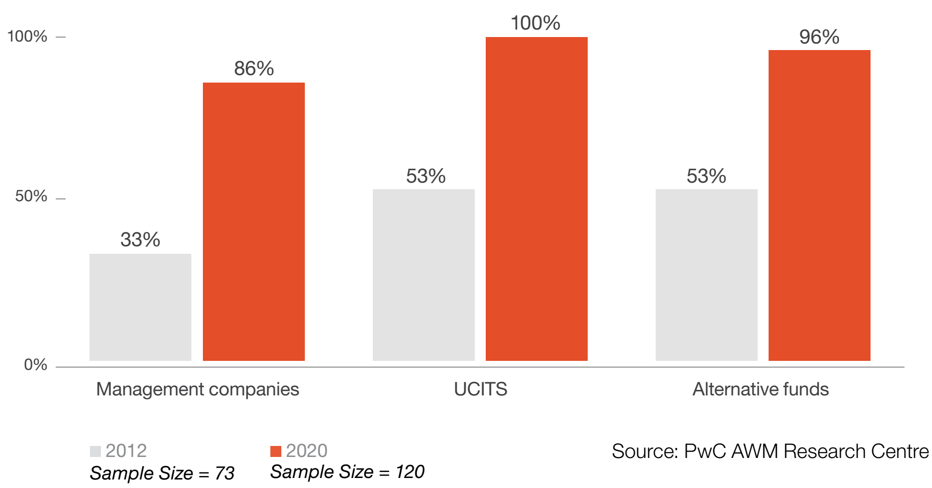
Conflicts of interest

Conflicts of interests remain at the forefront of regulatory attention, especially in alternative investments on account of various cases pursued by regulators such as the SEC and the FCA. These cases have put a spotlight on deficiencies in private equity, venture capital and hedge fund structures due to the large asymmetry of information between managers and investors. More generally, in the overall fund industry, there is an inherent level of misalignment between manager's and investors' respective interests in a fund.[26] CSSF Circular 18/698 also sets out minimum requirements on how conflicts of interest should be dealt with by Luxembourg-based ManCos. It outlines requirements, such as having a clear policy for conflicts of interest for identifying, mitigating, managing and disclosing potential conflicts of interest, along with obligations to keep records of conflicts of interest, and in certain cases, obligations to inform investors.

The majority of Luxembourg-based boards maintain a register of conflicts of interest. Moreover, all of the Super ManCo and UCITS ManCo boards surveyed, as well as 83% of AIFM boards, indicated that there is a written policy in place for identifying and handling conflicts of interest. The number of boards asking for conflicts of interest to be declared at each board meeting as a standard agenda item has increased over the past surveys, with a large majority of boards referring to these conflicts of interest in the register mentioned above.

In most cases, directors are allowed to invest in the funds they oversee, with restrictions, and this practice is common in this year's survey among Super ManCos, UCITS ManCos and UCITS funds. However, more than half of AIFM directors are prohibited from investing in the funds they oversee to avoid the potential for conflicts of interest.

Figure 31: **Proportion of boards asking for conflicts of interest to be declared at each board meeting as a standard agenda item**



Source: PwC AWM Research Centre

26. For example, the carried interest compensation structure typically found in many alternative funds can give the manager an incentive to make riskier or more speculative investments than what would normally be in the best interests of the fund's investors in order to generate a greater compensation. This is sometimes mitigated by co-investment requirements, which ensure that the manager puts its own capital at risk alongside the capital of investors.

Legal liability

Legal liability is an important topic in this intensely regulated fund investment environment. Liability may potentially arise from breaches in a vast array of obligations, such as inadequate implementation and oversight of risk management, errors in accounts, incorrect valuations, not filing accounts within legal or regulatory deadlines or improper use of corporate assets. For this reason, board members must be kept aware of their liabilities, including potential sanctions.

In line with previous surveys, we observe mixed practices for making directors aware of their legal liability. According to our survey, 77% of board directors self-inform on legal liability, of which 31% of boards overall rely only on self-information. Half of boards receive a briefing from an internal and/or external counsel, pointing to a need for directors to receive up-to-date information regarding the extent of their legal liability, especially given the increased potential sanctions and fines from regulators.

For directors employed by the promoter, liabilities are more often mitigated through insurance – with the exception of UCITS ManCo boards, which are also often covered by an indemnity provided by the promoter. We observe a wide mix of mitigation practices when it comes to independent directors, but self-insurance appears to be a common option, followed by indemnities and insurance provided by the fund.[27] Moreover, half of the boards in our sample review the insurance coverage every year, and the balance reviews the insurance coverage on an ad-hoc basis.

Figure 32: How is the board made aware of the extent of its legal liability, including sanctions?

	Total	Super ManCo	UCITS ManCo	AIFM	UCITS	AIF
Sample Size	121	33	12	12	39	25
In letters of appointment	28%	24%	25%	17%	38%	24%
Specific training	27%	33%	17%	17%	31%	24%
Briefing by internal and/or external counsel	49%	45%	58%	25%	54%	52%
Self information	77%	67%	83%	100%	64%	96%
Of which: Self information only	31%	33%	25%	58%	26%	28%

Multiple choice question

Source: PwC AWM Research Centre

27. These options are not mutually exclusive – all three may apply in many situations.

5 Code of conduct

Adopting a code of conduct is a practice encouraged by both institutional investors and regulators to ensure that all board members uphold their fiduciary responsibilities and follow the same set of principles, which include but are not limited to - honesty, fairness, respect for the integrity of markets, competence, transparency, and, finally, respect for rules and regulation.

Three-quarters of UCITS ManCo and SuperManCo boards have adopted a code of conduct; on the other hand, only half of AIF boards have done so. The ALFI code is always the preferred choice for Luxembourg-based boards, and only a minority of boards adopt more than one code to abide by.

With the exception of UCITS funds, all other categories exhibited a higher disclosure rate regarding the adoption of a code of conduct than in 2018, with 81% of Super ManCos and 91% of AIFs disclosing their practice. Those boards that disclose the adoption of a code of conduct mainly do so in the financial statements and/or the board of director's reports.

Boards should also regularly check that their governance practices are in line with their adopted code of conduct. These checks, which are recommended by ALFI and ILA, should ideally be done once a year as a mapping exercise and can be linked as a reference for the board's evaluation assessment. Overall, more than half of the boards in our sample follow this practice, and we notice that those in the UCITS world are the most vigilant.

The ALFI Code of Conduct

ALFI provides its Code of Conduct as a guiding framework to Luxembourg-based investment funds and ManCos for board members to align their stated principles and practices with those recommended by the industry. A large majority of our respondents continue to be satisfied with ALFI's principles-based approach, with only 10% wishing that the code was more prescriptive.

However, for the ALFI Code of Conduct to remain up-to-date and relevant, it needs to adapt to the changing demands of regulators and institutional investors. This year's survey results have demonstrated that guidance regarding ESG[28] and board diversity (not limited to only gender diversity) has never been more requested (50% and 42%, respectively, indicating that these issues are not sufficiently addressed in the ALFI code).

28. ESG stands for Environmental, Social and Governance factors - those that are central in measuring the sustainability and ethical impact of an investment in a company or business.

6 Current challenges and looking forward

ESG

A trend towards ESG products and ESG integration has been seen in the past few years, with sustainable funds capturing a significant portion of inflows in Europe and some asset managers announcing that they will integrate ESG within their entire range of products. It must be emphasised that, in our 2020 survey, more than half of the directors surveyed are already pursuing training in SRI/ ESG investments.

A majority of respondents believe that their board has the right composition, structure and processes in place to oversee ESG investments. Furthermore, we note that more than a third of boards already take ESG criteria into account when reviewing the investment process.

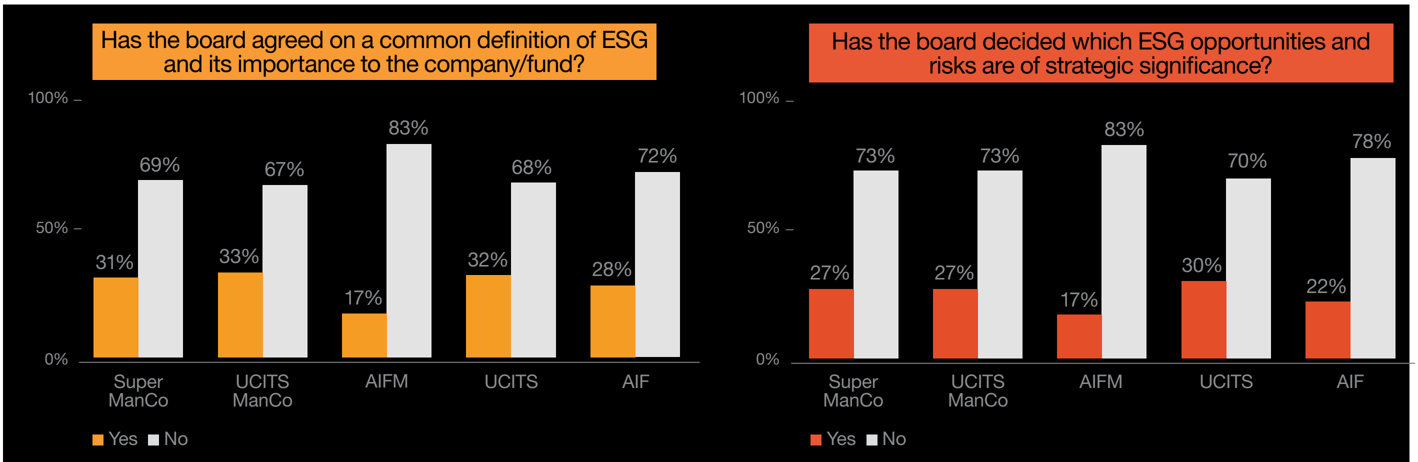
Although most of the boards surveyed have started to perform oversight on ESG topics, they seem to do so without having put in place a formal definition of ESG or having discussed opportunities and risks.[29] Indeed, around 70% of the boards in our sample report not having a common definition of ESG, nor have they distinguished which ESG opportunities and risks are of strategic significance. Less than a third of boards regularly review ESG messages and communications to stakeholders, which suggests boards may need to be more attentive to these and potential “greenwashing” as more asset managers begin to integrate ESG elements into their portfolios.

After having observed mixed levels of ESG oversight across our sample, it appears ESG strategy is largely driven at the level of the fund sponsor rather than at ManCo or fund level. However, with the rapid uptick of ESG features and continuously increasing investor demand, we expect boards to get more involved in this area in the future.

EU regulators have become more aware of the financial services industry’s role in mitigating sustainability risks and have taken an increasingly hard-line approach with regards to implementing relevant legislation. For instance, on 29 December 2019, the European Commission published the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector. The regulation is part of a number of initiatives adopted by the European Commission as part of its Action Plan on Sustainable Finance launched in March 2018. The majority of the new disclosure obligations will be applicable as of 10 March 2021.

The new Sustainable Finance Disclosure Regulation (SFDR) introduced various disclosure-related requirements for financial market participants and financial advisors at the entity, service and product levels. It aims to provide more transparency on sustainability within the financial markets in a standardised way, thus preventing greenwashing and ensuring comparability. Both the EU Action Plan and the SFDR represent a landmark change in the industry that stands to transform sustainable finance from an optional consideration to a focal point of the European financial industry.

Figure 33: Dealing with ESG



Source: PwC AWM Research Centre

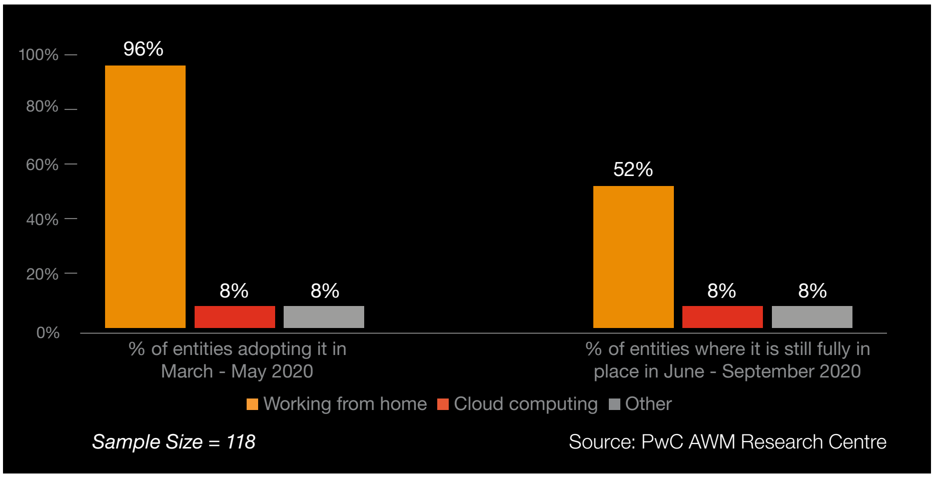
29. At the time the survey was being completed, many organisations were still in the process of setting up their ESG policies which is the probable reason for the responses.

COVID-19

While the world has been impacted profoundly by the COVID-19 crisis in 2020, the investment fund industry has fared better than other industries. This year's survey includes a section to address the impact of COVID-19 on governance practices of Luxembourg-based funds and management companies.

Nearly all entities in our sample started working from home in the wake of COVID-19 and about half continued to do so throughout the summer of 2020. We expect cloud computing to be adopted in the long term, but for now, only 8% of entities reported using cloud computing in the wake of the pandemic and show no signs of reverting to their previous practices. Additionally, about 8% of entities started using other practices, such as extending reporting deadlines, using VPN access to their network, and adjusting swing pricing policies.

Figure 34: **Have you used any flexibility of regulations provided in the wake of the COVID-19 crisis? To which extent are these practices still in place?**



Overall, our respondents have highlighted the following areas as those that have been the most impacted by the COVID-19 crisis: business continuity, signature of documents, IT systems and medium to long-term performance of products. They also underlined the fact that the pandemic also reduced new business opportunities and fundraising possibilities.

Figure 35: **In your opinion, what have been the top 5 areas impacted by the COVID-19 crisis?**

Total		Super ManCo		UCITS ManCo		AIFM		UCITS		AIF	
#1	Business continuity	#1	Business continuity	#1	Signature of documents	#1	Business continuity	#1	Business continuity	#1	New business opportunities
#2	Signature of documents	#2	IT systems	#2	New business opportunities	#2	New business opportunities	#2	New business opportunities	#2	Fundraising
#3	New business opportunities	#3	Signature of documents	#3	Medium to long-term performance of the products	#3	Internal communication	#3	Medium to long-term performance of the products	#3	Business continuity
#4	IT systems	#4	Internal communication & Employment related issues	#4	Business continuity	#4	Fundraising	#4	Communication with investors	#4	Signature of documents
#5	Medium to long-term performance of the products	#5	Communication with investors	#5	Fundraising	#5	IT systems	#5	Signature of documents	#5	Medium to long-term performance of the products

Source: PwC AWM Research Centre

On 20 March 2020, the Luxembourg government adopted a regulation introducing measures regarding the remote adoption of corporate approvals so as to ensure both the safety of the participants and the business continuity of Luxembourg companies and other entities in response to the Coronavirus (COVID-19) sanitary crisis.

In October 2020, the law of 23 September 2020[30] concerning the holding of meetings in companies and other legal entities entered into force with effect until 30 June 2021. As such, companies and other legal entities will be able to convene meetings without requiring the physical presence of participants, both at shareholders' and management body's levels until that deadline.

On 10 April 2020, the CSSF released Circular 20/740 providing guidance to professionals subject to anti-money laundering and counter-terrorism financing (AML/CFT) in relation to the money laundering and terrorism financing risks and AML/CFT implications of the COVID-19 pandemic.

Several times over the year, the CSSF issued communiqués calling entities under its supervision to use telework in response to upsurges of COVID-19 cases.

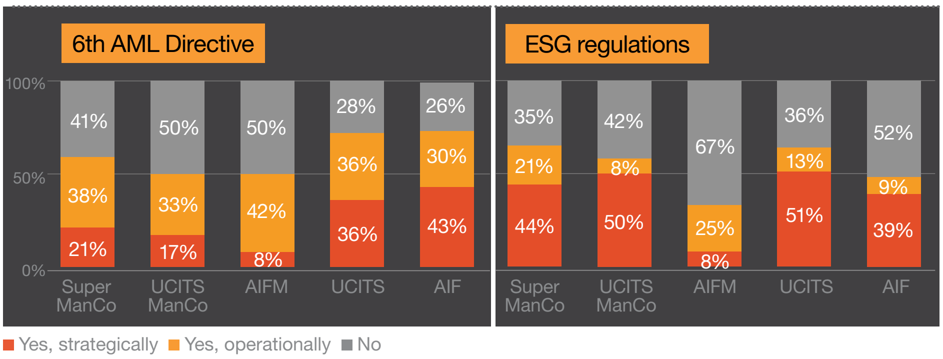
Looking forward

In order to prepare boards for the coming years and to highlight the governance-outlook, we have included a looking forward section in which we explore participants' level of preparedness with regards to upcoming new regulations. This year, we mainly focus on the 6th AML Directive and the new ESG regulations.

The 6th AML Directive is intended to complement and reinforce the 4th AML Directive by establishing a set of minimum rules regarding criminal liability in relation to money laundering. It must be implemented by Member States in their national legislation by no later than 3 December 2020. In our survey, we saw various levels of reviews regarding the strategic and operational implications of the upcoming regulation, but it is clear that a majority of boards, especially those of management companies, have yet to give it much attention.

The scope of this survey's questions regarding ESG regulations was limited to the EU Regulation 2019/2088 (Sustainable Finance Disclosure Regulation) on disclosures for asset managers and investment funds relating to sustainable investments and sustainability risks. The majority of boards of UCITS ManCos and UCITS funds have reviewed the implications of this regulation strategically, with the AIF world lagging behind. However, few have yet to consider the operational implications. It is essential that fund boards consider the oversight of this regulation seriously as the CSSF has recently stated that it plans to rely on them to self-certify their compliance with the SFDR regulation before the initial deadline of 10 March 2021.

Figure 36: **Has the board reviewed the implications of the following upcoming regulations?**



Sample Size = 120

Sample Size = 120

Source: PwC AWM Research Centre

30. This new law revokes the law of 20 June 2020 while retaining the same measures concerning the holding of meetings in companies and other legal entities and extending them until 30 June 2021.

Moreover, the European Securities and Markets Authority (ESMA) published on 3 May 2019 technical advice on the integration of sustainability risks and factors in MiFID II, AIFMD and UCITS Directive.[31] The proposed amendments consider three main areas:
(1) organisational requirements (ensuring that ManCos/AIFMs have the knowledge and skills to integrate sustainability risks), (2) operating conditions (identifying conflicts of interests linked to the integration of sustainability risks) and (3) risk management (implementing a policy for ManCos/AIFMs to assess sustainability risks).

In a post-Brexit environment, which still needs to be defined, we see various topics of importance, including issues revolving around substance and delegation. As Luxembourg and Ireland become new destinations for UK asset managers to establish ManCos in the EU without having to relocate their staff, regulators in these countries have enforced a new staffing requirement – demanding that a minimum of three full-time employees be present in these newly set up ManCos. Additionally, in August, ESMA called into question the existing delegation model that permits ManCos of funds domiciled in the EU to delegate various functions to service providers outside the bloc.

In line with our survey from past years, respondents were asked to highlight the top 5 areas they anticipate as requiring additional attention from the board in the coming 12-24 months. Unsurprisingly, the focus of the industry remains on legal and regulatory changes, as well as governance and compliance. This is due to the growing regulatory burden that takes a lot of time and energy from directors who must be constantly focused on their primary goal of investor protection.

However, this year, we observe two new important topics: (1) ESG – in line with new EU regulations and increasing interest for sustainable investment products from investors, and (2) liquidity management – an important topic in a time of economic uncertainty brought forth by the COVID-19 pandemic. It should be noted that as of 30 September 2020, ESMA requires "managers" (UCITS ManCos and AIFMs) to stress test the assets and liabilities of the open-ended funds they manage.[32] These guidelines are supplementary to the existing requirements on liquidity stress testing in the AIFMD and UCITS Directive. Additionally, AIFs' boards also consider investment performance oversight, valuation and pricing to be important areas.

31. See ESMA Final Report On Integrating Sustainability Risks and Factors in the MiFDI II and Final Report On Integrating Sustainability Risks and Factors in the UCITS Directive and AIFMD

32. See ESMA Guidelines on liquidity stress testing in UCITS and AIFs 16/07/2020

Figure 37: Top 5 areas requiring additional attention from the board in the coming 12-24 months

Super ManCo		UCITS ManCo		AIFM		UCITS		AIF	
#1	Law & regulation changes	#1	Investment performance	#1	Law & regulation changes	#1	Law & regulation changes	#1	Law & regulation changes
#2	ESG	#2	Law & regulation changes	#2	ESG	#2	ESG	#2	Market developments
#3	Governance	#3	Market developments	#3	Governance	#3	Governance	#3	Investment performance
#4	Liquidity management	#4	Distribution	#4	Market developments	#4	Market developments	#4	Valuation and pricing
#5	Compliance	#5	Liquidity management	#5	Compliance	#5	Compliance	#5	ESG

Source: PwC AWM Research Centre

Conclusion

As the world's second-largest and Europe's No.1 fund domicile, Luxembourg has a history of strong governance practices, and this year's respondents show a clear commitment towards upholding this tradition even during the economic disruption brought on by the pandemic.

We note that CSSF circular 18/698 played an important role in creating a convergence of practices across UCITS and alternative investment entities, particularly regarding the oversight of risk management and due diligence of delegates. We expect to see an increased convergence of these practices in the future.

With the rapid development of ESG products, regulators have been giving more attention to the responsibilities of stakeholders in the fund industry, including boards of funds and management companies. The new Sustainable Finance Disclosure Regulation (SFDR), applicable from 10 March 2021, will introduce various disclosure-related requirements for financial market participants and financial advisors at the entity, service and product levels. However, boards will also play a growing role in overseeing ESG investments and ensuring that funds comply with the SFDR regulation. Indeed, both the EU Action Plan and the SFDR represent a landmark change in the industry that stands to transform sustainable finance from an optional consideration to a focal point of the European fund industry.

The majority of funds and ManCos reacted promptly and properly in response to the COVID-19 crisis. The regulators played an important part in their transition towards stability, publishing many regulations to help the financial entities pass this difficult time. We have yet to see if the boards of Luxembourg's funds and management companies will revert to their prior governance practices or retain some of the new practices adopted during the pandemic.

We achieved our largest sample size of 122 participants, a significant increase from our previous survey, resulting in a more representative picture of the Luxembourg fund industry, with 69% of Luxembourg-based UCITS AuM and 44% of AIF AuM[33] accounted for in this year's survey. We are pleased with the respondents' continual adoption of new governance policies and best industry practices, but we have also highlighted areas that should be addressed more vigorously in the future. The high response rate continues to demonstrate that the survey has grown to become a recognised tool for better understanding governance practices in the Luxembourg fund industry.

33. Based on Monterey data

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