

***An investigation into the degree to
which companies listed on the ISEQ
comply with the independence
requirements of the Combined Code
2008.***

Author: Aaron Dunworth.

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Research Supervisor: *Mr. Paul McDevitt,
Department of Business,
School of Business,
Letterkenny Institute of Technology.*

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Abstract.

The study of corporate governance and the most appropriate way to regulate it, first became a mainstream topic post the failure of Enron in 2002. Since then much discussion has taken place on the best way to regulate the governance of companies and to ensure that companies are governed in a manner that reflects the interests of its shareholders. America with the introduction of Sarbanes-Oxley took a legislative backed approach, whilst the UK and Ireland adopted a “comply or explain” approach. This “comply or explain” approach gives companies a choice of whether to apply the Combined Codes guidelines on corporate governance within their company or not. One area given prominence in the Combined Code is the appointment of independent non-executive directors to the board and committees within the company, their main role being to ensure that the directors run the company in the appropriate manner. This research looks at whether Irish listed companies are complying with the various sections of the combined code regarding the appointment of independent non-executive directors to the board and committees.

This study has revealed that Irish listed companies are in most cases fully compliant with the Combined Code provisions and believe that proper corporate governance policies are important to their business. However the study has also revealed that many companies are compliant with the provisions of the combined code but not with its spirit. Although respondent companies have stated that they have appointed the appropriate number of independent non-executive directors, the criteria used for such appointments has being manipulate to such an extent that their appointment has become ineffective in achieving its desired goals.

The study has revealed that the “comply or explain” approach is flawed and has allowed manipulation of the combined codes guidelines which has had a direct influence on some of Irelands recent corporate scandals e.g. Anglo Irish Bank.

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Chapter 1.

1.Introduction.

1.1. Prologue.

Companies around the world have suffered during the economic recession of the past few years. Some of the worlds largest companies e.g. Lehman brothers, collapsed along with the entire banking system of Iceland.

What was the cause of this sudden downturn in the world economy after an extended period of economic growth? There is no simple answer to this question. The fact is that it was a combination of a number of factors including the collapse of the American sub prime market, loose regulation of the banking system and the improper governance of companies.

Whatever the reason, the current economic situation has refocused attention on the governance of companies. Question marks have being raised over the effectiveness of the Combined Code and its ability to regulate those who control the decision making by companies.

Grant Thornton’s yearly investigation into Irish corporate governance practices have exposed a culture of box ticking amongst Irelands’ listed companies, “what we are lacking is compliance with regulations, and, even more importantly, enforcement of compliance and strong sanctions for non-compliance.” Grant Thornton 2010. Many corporate governance experts believe it is time to implement new corporate governance regulation in Ireland backed by legislation with penalties for non compliance. Legislative backing should ensure that companies view compliance with the combined code as more than just a box ticking exercise.

The recent failures have led the researcher to ask the following questions:

- Has the current system of corporate governance regulation failed?
- Where have the mistakes being made in the current regulation?

- Is it time for a new legislative backed system of corporate governance regulation as opposed to the current “comply or explain” approach?

1.2. Research Questions and Objectives.

My research question is:

- To what extent do companies listed on the Irish Stock Exchange comply with the independence requirements of combined code?

My research objectives are:

- To determine if companies listed on the Irish Stock exchange are complying with the following requirements of the combined code 2008:
 - **A.3.2:** Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.
 - **A.3.3:** The board should appoint one of the independent non-executive directors to be the senior independent director.
 - **A.4.1:** There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors.
 - **B.2.1:** The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. Where remuneration consultants are appointed, a statement should be made

available of whether they have any other connection with the company.”

- The number of years service a company believes it can receive from an independent non executive director and still regard them as independent.
- The number of external boards a company believes an independent non executive director may participate in and still perform their roles and responsibilities effectively.

1.3 Justification for the Research.

Over fifty percent of the largest economies in the world are companies. Thus the proper governance of these companies is as important to the global economy as the proper governance of entire countries. The importance of having formal corporate governance principles and practices in place first became clear in 2002 after a series of corporate meltdowns, frauds and other failings led to the destruction of billions of dollars of shareholder wealth, the loss of thousands of jobs, the criminal investigations of dozens of executives, and record breaking bankruptcy filings. Corporate failures have indeed happened in the past but the reason these scandals became the most widely reported “was the sense that every one of the mechanisms set up to provide checks and balances failed at the same time” Monks & Minow 2004. Implementation of the Sarbanes-Oxley Act in the USA in 2002 and a greater emphasis on compliance with the Combined Code in the UK and Ireland (both of which are discussed in more detail later) followed. These new regulations were introduced to ensure that failures on such a scale did not occur again. However less than a decade later the governance of companies and the mechanisms put in place to ensure the failures of the past were not repeated are the subject of much debate.

The scale of the corporate failures at Enron, Parmalat, Tyco and Worldcom have being exceeded by corporate failures at Lehman brothers in the USA,

Anglo Irish Bank and the Quinn Group in Ireland and the entire financial sector in Iceland. If the problems occurred last time due to the absence of national controls over the governance of companies, what was the cause of the failures this time? Recent studies carried out by the Securities Commission of Malaysia and the ODCE have highlighted a growing trend amongst companies of complying with the form rather than the substance of regulations and best practices. This is what happened in both Enron and Satyam who both failed amid corporate governance irregularities. Enron had the proper mechanisms in place to ensure good corporate governance, while Satyam had award winning corporate governance practices. However both companies failed amid corporate governance problems due to the fact that no one in either company followed the guidelines (Satyam failed less than a year after winning a prestigious corporate governance award).

Another failure highlighted by both studies was the gap between what the appointments of independent directors were supposed to achieve by being appointed to the board and what in practice they had actually achieved. The Securities Commission found that independent directors were not being as effective as planned and blamed this on the fact that “some independent directors may serve on multiple boards, diluting the attention and focus that should be reserved for each individual company. Some have become board fixtures – part of the corporate furniture – such that they appear too intimate with the company to be deemed independent.” Given the huge importance of the role independent directors’ play in ensuring the successful governance of companies this finding is cause for concern. This led the researcher to ask if the same problems were to blame for the failures in the governance of companies in Ireland over the last two-three years.

With this in mind this research will explore the levels of compliance with the Combined Code 2008 amongst companies listed on the Irish Stock Exchange and also highlight any shortcomings or failures with the current corporate governance requirements in Ireland. The research will also aim to determine whether the independent directors that have being appointed to the boards of

Irish Plc's are indeed independent. The researcher will also highlight any problems uncovered with the current system of corporate governance regulation and give recommendations for improvement.

This research will be useful to anyone interested in the governance of companies listed on the Irish Stock Exchange including investors, regulators and those carrying out further research into this area as the research will:

- Determine the attitude of directors of Irish listed companies to proper corporate governance.
- Determine the levels of compliance with the Combine Code 2008 amongst companies listed on the Irish Stock Exchange.
- Outline some of the shortcomings and failures of the current regulation of corporate governance.
- Suggest possible solutions to the above mentioned shortcomings and failures.

Chapter 2.

Literature Review.

“The proper governance of companies will become as crucial to the world economies as the proper governing of countries”. Wolfensohn c1999

2.1 Introduction.

2.1.1 What is corporate governance?

Corporation: “n.1 a group of people authorised to act as an individual and recognised in law as a single entity esp. in business.” Oxford English Dictionary

Governance:”n.1 the act or manner of governing.2 the office or function of governing.3 sway, control.” Oxford English Dictionary.

Govern: “v.1 tr. Rule or control with authority; conduct the policy an affairs of. 2a tr. Influence or determine (a person or a course of action).b intr. be the predominating influence.” Oxford English Dictionary.

Thus corporate governance is the set of processes, customs, policies, laws, and institutions affecting the way a corporation is directed, administered or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. Corporate governance has therefore been in existence for as long as corporations themselves. The study of the subject is less than half a century old and has now “become one of the central issues in the running and the regulating of modern enterprises.” Tricker. B ,2009.

2.1.2 Evolution of corporate governance.

Corporate governance came to prominence with the advent of the corporation in the late 19th century. The growth in the number of corporations and the growing separation between owners and managers necessitated regulation to

ensure the owners' interests were protected. Berle and Means (1932) drew attention to this growing separation. They observed that "the rise of the modern corporation has brought a concentration of economic power which can be compared on equal terms with the modern state.....The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation..."Berle and Means 1932

The next major developments in corporate governance occurred in the 1970s. In the United States the significance of independent outside directors was recognised and audit committees were introduced. Debates also arose around board duties towards other stakeholders. Interest in the governance of companies due to a number of corporate governance problems features in the report of inspectors appointed by the UK government Department of Trade such as reports into Pergamon Press (1971) involving Robert Maxwell, Rolls Royce (1973) and Lonrho (1976).

In the 1980s due to the lack of regulation on corporate governance cracks began to appear. These corporate governance problems were brought into the public domain due to the Guinness case and the failure of Robert Maxwell's companies. It was seen that more control over the governance of companies was needed, "Boards dominated by powerful executive directors were seen to need checks and balances, particularly where the posts of chief executive director and chairman of the board were combined and the outside directors were weak" Tricker. B, 2009.

In 1992 the Cadbury report was published. It developed proposals and codes of best practice aimed at enhancing the governance of companies and prevent their collapse. Many reports followed around the world all aimed at enhancing the governance of companies and offering protection to the interests of shareholders. As the 21st century began corporate governance seemed to be well developed around the world. However disaster struck which propelled corporate governance to the forefront of business issues. Seven of the 12 largest bankruptcies were filed in 2002. Companies like

Enron, Tyco and WorldCom will forever be linked to corporate failure. In terms of corporate governance issues, Ahold, Enron and WorldCom all suffered from:

- “Questionable ethics,
- Inappropriate behavior of senior figures,
- Aggressive earnings management,
- Weak internal control,
- Risk management,
- Shortcomings in accounting and reporting.” Crawford 2007.

These companies were also involved in the following questionable accounting practices.

<u>Company</u>	<u>Country</u>	<u>What went wrong</u>
Ahold	NL	earnings overstated
Enron	USA	inflated earnings, hid debt in SPEs
Parmalat	Italy	false transactions recorded
Tyco	USA	looting by CEO, improper share deals, evidence of tampering and falsifying business records
WorldCom	USA	expenses booked as capital expenditure
Xerox	USA	accelerated revenue recognition

One might ask, why are these failures so important, don't companies fail all the time? Corporate failures have indeed happened in the past but the reason these scandals became the most widely reported “was the sense that every one of the mechanisms set up to provide checks and balances failed at the same time” Monks & Minow 2004.

In response to the above failures the United States introduced the Sarbanes-Oxley Act and in the UK and Ireland although already in existence the Combined Code on Corporate Governance was deemed to be of utmost

importance. These measures were aimed at preventing such collapses from happening again.

However history often repeats itself and despite the introduction of legislation and guidelines many large companies fell into turmoil again e.g. the banks in Ireland, Lehman brothers (which filed for chapter 11 bankruptcy on September 15 2008, the largest in U.S history) in America and the complete collapse of the banking system in Iceland. Once again many jobs were lost, billions of dollars was wiped of shareholder wealth and CEO's were being investigated again. Due to these failures and other factor (collapse of the sub-prime market in the United States) the world was plunged into a worldwide recession, "the magnitude of the current recession could be the most severe in decades, perhaps comparable to the Great Depression." Gascon. C.S 2009.

2.1.3 The need for corporate governance guidelines/legislation.

In the wake of the spectacular collapses of Enron, Polly Peck and Maxwell, there were calls for guidelines/legislation to be enacted to ensure such collapses would not happen again. Sir Adrian Cadbury in 1999 stated that "the governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of the resources. The aim is to align as nearly as possible the interests of individual, corporations and society." The United States and the UK and Ireland have different approaches to regulating corporate governance. The United States implemented the Sarbanes-Oxley Act in 2002 and made compliance with it compulsory for public companies listed on an American Stock Exchange. However the UK and Ireland adopted a principle based approach with public companies being encouraged to comply rather than being required to comply.

2.1.4 Sarbanes-Oxley Act 2002.

The aim of the Act is "To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes." Sarbanes-Oxley Act 2002. The legislation set new or

enhanced standards for all U.S. public company boards, management and public accounting firms. It does not apply to privately held companies. The Act contains 11 titles, or sections, ranging from additional corporate board responsibilities to criminal penalties, and requires the Securities and Exchange Commission (SEC) to implement rulings on requirements to comply with the new law. All public companies (including foreign companies listed on an American Stock exchange) must comply with the provisions of the Sarbanes-Oxley Act 2002.

Debate continues over the perceived benefits and costs of SOX. Supporters contend the legislation was necessary and has played a useful role in restoring public confidence in the nation's capital markets by, among other things, strengthening corporate accounting controls. SEC Chairman Christopher Cox stated in 2007: "Sarbanes–Oxley helped restore trust in U.S. markets by increasing accountability, speeding up reporting, and making audits more independent." Opponents of the bill claim it has reduced America's international competitive edge against foreign financial service providers, saying SOX has introduced an overly complex regulatory environment into U.S. financial markets. "The new laws and regulations have neither prevented frauds nor instituted fairness. But they have managed to kill the creation of new public companies in the U.S., cripple the venture capital business, and damage entrepreneurship." Wall Street Journal 2008.

2.2 The Combined Code.

2.2.1 Evolution of the Combined Code.

The Combined Code was developed by consolidating and refining a number of different reports and codes concerning opinions on best practice within corporate governance. The first such report issued was the Cadbury report 1992 (report on the financial aspects of corporate governance). The Cadbury Report was a response to major corporate scandals associated with governance failures in the UK (such as Robert Maxwell's executive abuses).

The Cadbury code outlined the first explicit guidelines on corporate governance in the UK. The first combined code was issued in 1998 (combining the Cadbury report 1992, the Greenbury report 1995 and the Hemple report 1998), with UK companies being required to report on their compliance from year ends beginning on or after 1st November 2003. Since 1998 the combined code has gone through a number of revisions, usually in response to the recommendations made by various reports on issues covered by the code. Reports that have had an influence on the combined code include the Turnbull Report 1999, the Smith report 2003 (review of audit committees), the Tyson report 2003 and the Higgs report 2003 (review of the effectiveness of non-executive directors).

2.2.2 Overview of the combined code.

The combined code contains two sections:

Section 1 deals with companies while Section 2 deals with Institutional share holders.

This is further subdivided as follows:

A: Directors

B: Remuneration.

C: Accountability and Audit.

D: Relations with Shareholders.

E: Institutional Shareholders.

The code has been structured using a three tier approach: main principles, supporting principles, code provisions with companies needing to disclose compliance with both the main principles and supporting principles. The Combined Code adopts a principles-based approach in the sense that it provides general guidelines of best practice. This contrasts with a rules-based (as exists in the United States with the Sarbanes-Oxley Act 2002) approach which rigidly defines exact provisions that must be adhered to. A principles based approach was selected as the over arching goal is good corporate governance by whatever means, "While it is expected that companies will comply wholly or substantially with its provisions, it is recognised that

noncompliance may be justified in particular circumstances if good governance can be achieved by other means.” Combined code 2008. The last amendments to the combined code were made in 2008. A newly amended combined code is scheduled for issue sometime in 2010.

2.2.3 Who does the combined code apply to?

Irish incorporated companies listed on the Irish Stock Exchange are required to comply with the Combined Code. Although the Code does not form part of the Listing Rules of the ISE listed companies are obligated to state in their annual report (1) how they have applied the principles of the Code; and (2) whether they have complied with the Code’s provisions and if not to explain any non-compliance (known as ‘comply or explain’). The objective of this approach is to “maximize transparency, allowing investors to make informed investment decisions, while, at the same time, not imposing a ‘one size fits all’ governance regime on a diverse corporate sector.” www.ise.ie

2.2.4 Levels of compliance.

Compliance with the combined code is important as it shows the company’s commitment to achieving best standards in corporate governance. It is also seen by investors to be important, “In a survey of over 200 institutional investors it was found that 80% of respondents would pay a premium for well governed companies, from 11% in Canada to 40% in Egypt” Global Investor Opinion Survey, 2002. In the light of such information it would seem reasonable to assume that companies would apply with the provisions, however this does not seem to be the case. In Grant Thornton’s corporate governance review 2009 only 51% of companies claimed full compliance with the combined code, while in 2010 only 36% of companies claiming full compliance. They also believe that the principles based approach and the comply or explain requirement of the Irish stock exchange has “resulted in compliance with the letter of the guidance, but not its spirit,” Grant Thornton 2009. Many companies in Ireland seem to be paying lip service to the

combined codes provisions and are only doing the minimum required to be seen as compliant.

2.3 Independence.

2.3.1 What is independence?

Independence is defined as “2.a. Not depending on another person for one’s opinion or livelihood.³, unwilling to be under an obligation to others.” Oxford English Dictionary.

In relation to independent directors, Sir Adrian Cadbury states that they should be “independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment, apart from their fees and shareholding.”

However in relation to non-executive directors no tests of independence have been laid down, the Hampel report stated “we do not consider it practicable to lay down more precise criteria for independence. We agree that it should be for the board to take a view on whether an individual director is independent in the above sense.” This has led to a situation where each company has a different definition of what they believe independent to be and thus trying to determine what independence is, is “like nailing jelly to a ceiling.” Chambers and Weight 2008. Furthermore companies do not publish what their tests of independence are. This makes it impossible to determine whether their approach is achieving what it is supposed to achieve i.e. independent directors, or is used as a tool by which the company directors can control appointments to the board and thus control the board.

The combined code 2008 outlines the following test which must be considered when determining independence:

- “has been an employee of the company or group within the last five years;

- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election."

However this is still a long way from actually defining independence. A close friend of the director could still be deemed to be independent when in reality it is likely that they are not. To further complicate the matter a 2004 study found that 91% of respondents believed that independence of mind is more important than independence in spirit." Moxey P

2.3.2 Role of independent non-executive directors.

The importance of the role that independent non-executive directors have in ensuring the proper governance of the company they are involved in cannot be overlooked. General Electric's 2002 annual report states that "At the core of corporate governance, of course, is the role of the board in overseeing how management serves the long-term interests of share owners and other stakeholders. An active, informed, independent and involved board is essential for ensuring GE's integrity, transparency and long-term strength." The roles and responsibilities that independent non-executive directors have in companies are varied. The combined code outlines a

number of areas where independent non-executive directors should be present within a company which are:

“A.3.2: Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.” Combined Code 2008.

The independent non-executive directors are appointed to the board to attempt to ensure the directors act in the best interests of the shareholders. Some of their responsibilities include monitoring and challenging the performance of directors and the management team, challenging the status quo when necessary and reviewing financial performance against budgeted targets(For a full list see appendix III).

“A.3.3: The board should appoint one of the independent non-executive directors to be the senior independent director.” Combined Code 2008.

The role of the senior independent is to assess the performance of the board/chairperson and be available to shareholders if they believe their concerns are not being resolved through the normal channels of chairperson or managing director/ chief executive or if such contact is not appropriate. The senior independent director should also act as the voice of the non executive directors and also act as the ‘conscience of the Board’.

“A.4.1: There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors.” Combined Code 2008.

The role of the nomination committee is to monitor, review and evaluate the structure, size and composition of the board and to lead the process for all board appointments (Executive, Non-Executive and Chairperson), and make recommendations to the board in this regard. Responsibilities of the

nomination committee include identifying and nominating candidate for vacant positions and assessing the time commitment for board/committee positions and ensuring that the candidate has sufficient time to fulfil them(For a full list see appendix III).

“B.2.1: The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.”
Combined Code 2008.

The role of the remuneration committee is to advise the Board on the remuneration policies for the Managing Director/ Chief Executive, the Chairperson, Executive Directors, the Company Secretary and the members of the Management Team it is designated to consider. responsibilities of the remuneration committee include reviewing the suitability of performance measurement criteria for members of the management team and administering any share option schemes the company has for members of the management team(For a full list see appendix III).

“C.3.1 The board should establish an audit committee of at least three, or in the case of smaller companies, two independent non-executive directors. In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman.” Combined Code 2008.

The role of the audit committee is to monitor and review internal control, external audit, accounting and external reporting. Responsibilities of the audit committee include reviewing the effectiveness of the companies IT systems, internal controls, environmental affairs, legal matters, and pension investment performance and acting as a link between the board and its external auditors(For a full list see appendix III).

The combined code 2008 also outlines the role of the non-executive director, “As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of that performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors, and in succession planning.” Combined code 2008. If the non-executive director carries out these roles while being independent they should greatly enhance the governance of the company.

2.3.3 Do independent non-executive directors contribute to company effectiveness?

Although the above would suggest that non-executive directors greatly increase company effectiveness, their effectiveness in practice has been widely debated. Support has come from many areas. Independence of members is intended to make the board and committee’s more effective and thus reduce the risk of failure; Uzan et al 2004 found “that the boards of companies that have not committed fraud have a higher percentage of outside and independent directors than do the boards of fraud companies.” This finding is consistent with Fama and with Fama and Jensen, who argued that higher percentages of independent directors increase the effectiveness of board oversight. A 2004 survey entitled effectiveness of independent directors found that 96% of companies believed that non-executive directors ensure compliance with governance and 82% believed they controlled a combined chairman/ CEO role. Loarch et al 2001 believes that unbalanced boards (dominated by inside directors) are increasing the risk of company failure by “compromising their ability to provide independent oversight and to act in the best long-term interests of the companies and their public shareholders.” Lorsch et al further adds that an unbalanced “board cannot be trusted to

monitor management's decisions and actions objectively. This is particularly true when insiders are in control of the board's compensation and audit committees." These problems would be overcome by complying with the combined code. Higgs 2003 also believes "that a board is strengthened significantly by having a strong group of non-executive directors with no other connection with the company. These individuals bring a dispassionate objectivity that directors with a closer relationship to the company cannot provide."

However there is much criticism of the role. The arguments center on the ability of the non-executive director to carry out their role. Hooghiemstra & van Manen 2004 state that "regarding the provision of information, nonexecutive directors depend upon the management board. [...] If the management board intentionally withholds information, it is almost impossible [for non-executive directors] to find out." This is backed up by Nowak and McCabe 2003 who found "that the CEO (and the executive board) has the controlling power over information", which places restrictions on the independent members' ability to do their job. Another frequent argument is that no director can be truly independent. This is due in part to an absence of any definition of independence and has resulted in people being appointed to the position of independent directors who were not independent such as "the non-executive who went to school or college with the director; or who is an executive director on a second board to which the chief executive on the first board belongs in a non-executive capacity." Chambers and Weight 2008.

2.4 The Irish experience.

Ireland has like many other countries around the world felt the effects of the economic downturn. As a result the corporate governance policies of many companies has being called into question with more and more people calling for the combined codes comply and explain approach to be abandoned in favor of a legislative approach, "the Code should be enforceable by incorporating into legislation key provisions, such as the requirement for independent audit committees, and backing them with a framework of

effective sanctions for non-compliance;” Grant Thornton 2009. However speaking at a corporate governance conference the Tánaiste and Minister for Enterprise, Trade and Employment, Ms. Mary Coughlan stated that she believed a “comply or else” approach would only serve to hinder Irish business. She also pointed out that there is 97% compliance with the combined code amongst Irish companies (this contrasts with the findings of the Grant Thornton corporate governance review 2010) and that the European Commission and the “Risk Metrics 2009” assessment ranked Ireland in the top six Member States in terms of the quality of information disclosure and explanation.

However while most Irish listed companies claim compliance with the Combined Code, problems have arisen when some companies deviated from the principles of the code. In Ireland, post the Anglo Irish bank scandal Sean Fitzpatrick had to resign “from non-executive roles on the boards of public companies Smurfit Kappa, Aer Lingus and Greencore, as well as from Experian and Gartmore Irish Growth Fund. The directorships of FitzPatrick interlocked with those of former Anglo non-executives Gary McGann (Smurfit Kappa chief executive) and Ned Sullivan (Greencore chairman); FitzPatrick sat on their boards and they sat on his.” Slattery 2010. Furthermore in 2010 Grant Thornton found that only 77% of companies had a board comprised of at least half independent non-executive directors, compared to 87% in 2009. Grant Thornton also found that a number of companies have “independent directors” who do not satisfy the combined codes’ independence criteria outlined above.

2.5 Conclusion.

The proper governance of companies is extremely important to the world economy. It is worth noting that 50%+ of the largest economies in the world are companies so the importance of proper corporate governance cannot be overlooked. Adherence to proper corporate governance procedures should ensure that the internal directors do not have unfettered powers and any

problems caused by “agency theory” will be minimized. This should ensure the company is run in the best interests of the shareholders.

The combined code was issued to ensure that the governance of public companies is compliant with best practices in corporate governance.

Companies listed on the Irish Stock Exchange must state in their annual report whether or not they comply with the code. This comply or explain approach has “resulted in compliance with the letter of the guidance, but not its spirit,” Grant Thornton 2009. This is obviously not the intention and has led Grant Thornton to call for compliance with the code to be made a regularity requirement as Sarbanes-Oxely is in the United States. However in Ireland as proper governance is the overriding objective non-compliance is acceptable, “if good governance can be achieved by other means.” Combined code 2008.

One of the main provisions of the code is the appointment of independent directors to various board position within the company i.e. company board and the audit, remuneration and nomination committees. However the success of this measure has received equal levels of support and criticism. Supporters believe that the presence of independent member on the boards and committees ensures the company cannot be dominated by individuals which had led to failures in the past e.g. Robert Maxwell and the failure of the Maxwell group of companies. However the provision is criticised as the independent members are reliant on the insider directors for the information. This allows insider directors to somewhat control the actions of independent members. Another of the main criticisms is that the term independence is not defined in the combined code and has led to many non independent people been made independent directors(a practice that has become well know in recent times due to various scandals including Sean Fitzpatrick and Anglo Irish bank).

Corporate governance and in particular the independence requirements in spite of the various reports and codes is still a complex area with varying degrees of compliance and success. Corporate governance is also constantly changing and when the dust settles in the wake on the recent company

failures we will no doubt have another change in what is consider effective corporate governance.

Chapter 3

Research Methodology.

3.1 Introduction.

Research is a way of obtaining answers to a question. It can be defined as follows “an activity that we all undertake to learn more about our environment and the impact we have upon it (Ryan, B., Scapens, R.W., Theobald, M., 2002). Research is about discovery and entails disagreement, criticism, chance and error (Ryan, B., Scapens, R.W., Theobald, M., 2002).

Research methodology is:

1. "the analysis of the principles of methods, rules, and postulates employed by a discipline"
2. “the systematic study of methods that are, can be, or have been applied within a discipline" *Websters dictionary.*

This chapter is devoted to the theoretical and conceptual considerations that affected the particular research design adopted so as to complete this study.

3.1.1 Research aims and objectives.

- To determine if companies listed on the Irish Stock exchange are complying with the following requirements of the combined code 2008:
 - A.3.2: Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.

- A.3.3: The board should appoint one of the independent non-executive directors to be the senior independent director.
 - A.4.1: There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors.
 - B.2.1: The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.”
- The number of years service a company believes it can receive from an independent non executive director and still regard them as independent.
 - The number of external boards a company believes an independent non executive director may participate in and still perform their roles and responsibilities effectively.

3.1.2 Research design.

Research Design: A plan for collecting and utilizing data so that desired information can be obtained with sufficient precision or so that a hypothesis can be tested properly. A research design will contain clear objectives, derived from your research question(s), specify the sources from which you intend to collect data and consider the constraints that the research will have as well as discussing ethical issues. Saunders et al 2007.

3.2 Research philosophy.

The purpose and context of research can differ greatly from pure research involving the development and testing of a hypothesis, to applied research which is used in the social sciences and attempts to enhance our understanding of a situation, issue, problem or phenomena.

The first step the researcher must take in their design of a research strategy is to identify the most suitable philosophy to pursue.

3.2.1 Positivist research.

A positivist approach to research is one that is suited to “working with an observable social reality and that the end product of such research can be law like generalizations similar to those produced by the physical and natural sciences” Remenyi et al 1998, p 32. It is a structured approach to data gathering which is analysed and interpreted in both a factual and statistical manner facilitating replication whereby repeated examination yields the same results. Therefore it is suited to the physical and natural sciences where there is one truth. A key distinction of this method is the fact that “the researcher is independent of and neither affects or is affected by the subject of the research” Remenyi et al 1998 pg 33.

Other distinguishing features of the positivist approach are that it is a deductive approach as it involves the development of a theory that is subjected to a rigorous test. Collis and Hussy 2003. It also uses “large samples, the location is artificial, reliability is high, validity is low and it generalizes from one sample to a population.” Hussy and Hussy 1997.

3.2.2 Interpretive research (phenomenology).

“Interpretivism is an epistemology that advocates that it is necessary for the researcher to understand differences between humans in our role as social actors.” Saunders et al 2007. It emphasizes the difference between conducting research among people rather than objects such as computers. Interpretive research seeks to understand the subjective reality of those being

studied, making sense of their motives, actions, and intentions in a way that is meaningful to the research participants. Saunders et al 2003; Walliman 2001.

Other distinguishing features is that an interpretive approach accepts that there are many truths and that generalisability is not of crucial importance as the world is ever changing and cannot be reduced to law like generalizations.

The following outlines the advantages and disadvantages of using either a positivism or an interpretive epistemology.

Research Paradigm	Advantages	Disadvantages
Positivism	<ul style="list-style-type: none"> • Economical collection of large amounts of data • Clear theoretical focus for the researcher at the outset • Greater opportunity for researcher to retain control of research process 	<ul style="list-style-type: none"> • Inflexible- direction often cannot be changed once data collection has started • Weak at understanding social processes • Often does not discover the meanings people attach to social phenomena
Phenomenology/ Interpretive	<ul style="list-style-type: none"> • Facilitates understanding of how and why • Enables the researcher to be alive to changes which occur during the research process • Good at understanding social processes 	<ul style="list-style-type: none"> • Data collection can be time consuming • Data analysis is difficult • Researcher has to live with the uncertainty that clear patterns may not emerge • Generally perceived as less credible by non-researchers'

(Saunders, M., Lewis, P., Thornhill, A., 2000).

3.2.3 Research philosophy adopted.

The researcher has chosen the interpretive approach as it will enhance the researchers understanding of the varying approaches to corporate governance and independence within Irish public companies. Both the researcher and the participants could introduce bias to the findings using this approach as they interpret the questions in their own way. The research methodology and the research questions have been designed to limit this possibility.

3.3 Research focus.

The objective of the research has four main classifications. Exploratory, explanatory, descriptive and correlation.

3.3.1 Exploratory studies.

Exploratory research is a valuable means of finding out “what is happening; to ask questions and to access phenomena in a new light’ Robson 2002 pg 59. It is particularly useful to clarify an understanding of a problem, if unsure of its precise nature. Therefore it is often used to investigate the possibilities of undertaking a research study or to develop, refine or to test measurement tools or procedures. Kumar 1999.

3.3.2 Explanatory studies.

Explanatory studies aim to establish the causal relationship between variables. The emphasis is on studying a situation or a problem in order to explain the relationship between the variables. “Explanatory research attempts to clarify how and why there is a relationship between two aspects of a situation or phenomenon.” Kumar 1999.

3.3.3 Descriptive studies.

The objective of descriptive research is “to portray an accurate profile of persons, events or situations” Robson 2002 pg 59. It attempts to “describe

systematically a situation, problem, phenomenon, service, program or attitudes towards an issue. Kumar 1999.

3.3.4 Correlation studies.

Correlation refers to the extent to which two variables are related to each other. Therefore correlation research attempts to discover a relationship, association or interdependence between two or more aspects of a situation. Kumar 1999.

3.3.5 Research focus adopted.

Prior to any intensive research being carried out exploratory research was conducted to investigate the possibility of undertaking a research study in the selected area.

Descriptive research will then be used to describe the level of compliance with the combined code amongst Irish public companies.

3.4 Research tools

3.4.1 Data required.

The data required by the researcher will dictate the research tool(s) adopted.

3.4.2 Qualitative.

“...Qualitative researchers tend to select a few participants who can best shed light on the phenomenon under investigation. Both verbal data (interview comments, documents, field notes) and nonverbal data (drawings, photographs, videotapes) may be collected” (Leedy & Ormrod, 2001, p. 102). Qualitative is used predominantly as a synonym for any data collection technique that generates or uses non-numerical data.

3.4.3 Quantitative.

“Quantitative researchers identify one or a few variables that they intend to study and then collect data specifically related to those variables. Specific methods of measuring each variable are identified and developed, with attention to the validity and reliability of the measurement instruments. Data is collected from a population, (or from one or large samples that represent the population), in a form that is easily converted to numerical indices” (Leedy & Ormrod, 2001, p. 102). Quantitative is predominantly used as a synonym for any data technique that generates or uses numerical data.

3.4.4 Information required.

The information required in this research is quantitative in nature and since the study is descriptive in nature it provokes statistical and diagrammatical analysis.

3.5 Data collection methods.

There are two categories of data collection primary and secondary. The research will first consider primary research and the methods used for its collection.

3.5.1 Primary data.

There are several methods available for collecting primary data. The choice of method will depend on the purpose of the study, the resources available, the data required and the skills of the researcher. Each method has its own specific advantages and disadvantages and the researcher must select the method(s) that will provide the data required to answer the research question while considering their constraints

3.5.2 Interviews.

“An interview is a purposeful discussion between two or more people.” Khan and Cannell 1957. Interviews are a useful data gathering technique as they are interactive allowing the interviewer or interviewee to clarify certain aspects of the data which cannot be done with other methods. This helps to increase the usefulness of the data as misunderstandings in the data gathering. Interviews can be used for both quantitative and qualitative data but is particularly relevant to qualitative data. Interview can be of three types, structured, semi-structured, and unstructured.

3.5.3 Structured interview.

“Structured interviews use questionnaires based on a predetermined and standardised or identical set of questions...” Saunders et al 2007. Questions are asked in a prescribed manner and interaction between the interviewer and interviewee is kept to a minimum. Structured interviews are most often used to collect quantifiable data and are sometimes referred to as quantitative research interviews.

3.5.4 Semi-Structured.

In comparison to structured interviews, “semi-structured interviews are non-standardised and although the researcher will have a list of themes and questions to be covered that may change from interview to interview” Saunders et al 2007. The order of the questions will change based on the flow of the interview and additional questions may be asked based on answers already give. Thus a semi-structures interview is much more interactive than a structured one. It is therefore more suitable to gathering qualitative data.

3.5.5 Unstructured interviews.

Unstructured interviews are completely interactive and informal. There is no predetermined list of questions and the interviewee if is given the opportunity to speak freely about events. It “suffers difficulties both in terms of data analysis, interviewer bias and comparability as each interviewee can be asked

different questions.” Kumar 1999. It is useful for exploratory research, research on sensitive topics and when little is known about the topic area.

3.5.6 Questionnaires.

“General term including all data collection techniques in which each person is asked to respond to the same questions in a predetermined order” Saunders et al 2007.”Questionnaires are usually not good for exploratory research or other research that requires large numbers of open ended questions.” Saunders et al 2007. Questionnaires “work best with standardised questions that you can be confident will be interpreted in the same way by all respondents.” Robson 2002. They require careful design to ensure a sufficient response from the population.

3.6.1 Merits of questionnaires.

- “Distributed to a large population.
- Data is standardized enabling comparisons.
- Data is easily analysed.
- Quick and simple for respondent to complete.
- Respondents have time to consider their answers.
- Address a larger number of issues in an efficient way.
- Permit anonymity, increasing the likelihood of genuinely held opinions.”
Kumar 1999
- Less expensive than other methods, especially if e-mail is used.

3.6.2 Demerits of questionnaires.

- “Response rate can be low.
- Ambiguous questions are not clarified.
- Spontaneous answers (which may be closer to the truth) are not obtained as there is time to reflect on answer.
- Responses may be affected by other questions as respondents can read entire questionnaire before answering.

- Responses cannot be supplemented with other information.” Kumar 1999.
- It may be completed by someone other than the target respondent.

3.7 Observation.

“The systematic observation, recording, description, analysis and interpretation of people’s behaviour” Saunders 2007. Its emphasis is on discovering the meanings that people attach to their actions. There are two broad types of observation participant observation and structured observation.

3.7.1 Participant observation.

This is where the “researcher attempts to participate fully in the lives and activities of subjects and thus becomes a member of their group, organization or community.” Gill and Johnson 2002, pg 144. It is however used very little in business research. A participant can be either a:

- Complete participant: A full member of the group who takes part in all activities
- Complete observer: Not a member of the group and does not take part in but observes all activities.

In the above two categories those being observed do not know the researchers identity or objectives.

- Observer as participant: The researcher is essentially a spectator.
- Participant as observer: The researcher takes part in the activities.

In the above two categories those being observed know the researchers identity and objectives.

3.7.2 Structured observation.

“Structured observation is concerned with the frequency of events. It is characterized by a high level of predetermined structure and quantitative analysis” Saunders et al 2007. It is useful for collection of data at the time that it occurs rather than relying on second hand accounts. However the research must be in the research setting at the time of the event. It is also a very slow and costly method of data collection.

3.8 Case study.

A case study is a study “that involves the empirical investigation of a particular contemporary phenomenon within its real-life context, using multiple sources of evidence.” Saunders 2007. A case study involves an in-depth analysis of a particular firm. The researcher will use multi methods (interviews, questionnaires, observation and inspection of documents) to gain an in depth understanding of that particular organisation. A case study is a rich data source with much detailed information gathered however it suffers from bias both in the interpretation of the results and the data gathered (do workers behave differently when you are present and observing them). The researcher will have to ensure they remain independent in order for their findings to be reliable.

3.9 Research tools adopted.

After reviewing the research tools available, the researcher that questionnaires and interviews were best suited to the research question(s). Questionnaires were chosen as the method of data collection most appropriate for achieving the objectives of this study as the majority of the research questions are closed ended; the data is also descriptive and quantitative in nature. The population is geographically dispersed and questionnaires will provide the easiest access to this information.

3.10 Secondary data.

Secondary data is “data used for a research project that was originally collected for some other purpose.” Saunders et al 2007. The value of the data used will depend on its source and author(s) (which influences its validity and reliability) and its relevance to the particular subject area. Secondary data can be documentary secondary data; survey based secondary data, and multiple-source secondary data.

3.10.1 Evaluation of secondary data.

The researcher found a large volume of valid and reliable literature that had been peer reviewed and written by highly respected author(s). Some research did show bias, However this was balanced by sourcing articles supporting both sides of the issues relevant to the research. There was no shortage of literature on the research topic however there was a lack of information which focused on the Irish situation. This information however would be gathered during primary research so was not deemed to be a significant weakness of the secondary research.

3.11 Questionnaire design.

After examining the literature, the questionnaire was carefully designed by the researcher. All of the questions contained in the questionnaire are closed ended questions.

The questions in the questionnaire are designed around the research question and objectives. Gaps in the literature were identified and the questions are designed to gather data that will fill these gaps.

A pilot test was carried out prior to using the questionnaire for data collection. The purpose of the pilot test is to refine the questionnaire so that respondents will have no problems when answering the questions and there will be no problems in recording the data.

Post pilot testing the last question on the first link was changed to a remainder to the respondent to fill in the questions on the second link. The question relating to the effect that sitting on external boards had on independence was modified to determine what effect sitting on external boards had on independent non-executive effectiveness.

3.11.1 Questions.

A sample of the questionnaire can be found in appendix IV

3.11.2 Research population.

The research population is the 57 companies listed on the Irish stock exchange (see appendix I for complete list).

3.11.3 Sampling process.

Sampling is when items are selected at random from a population and used to test hypotheses about that population. Alternatively a census can be carried out which means applying the tests to the entire population. For this research a census will be carried out as all the companies are easily accessible and as the population is relatively small a census will give a greater chance of receiving the required response.

3.11.4 Delivery method.

The next task was to select the method by which the questionnaires would be sent to the target respondents. The following table outlines the methods available and their respective advantages and disadvantages:

<u>Method.</u>	<u>Advantages.</u>	<u>Disadvantages.</u>
<p><u>Through the post, fax, drop off, etc.</u></p> <p>Involves sending the questionnaire to predetermined respondents with a covering letter. Generally used when there are a large number of geographically dispersed respondents.</p>	<p>Wider access and better coverage</p> <p>Provides anonymity</p> <p>Relatively low cost</p> <p>Larger sample size</p> <p>Respondents complete questionnaire at own pace</p>	<p>Questionnaire must be simple</p> <p>Low response rate</p> <p>Points of clarification are not possible</p> <p>Follow-up of non-response is difficult</p>
<p><u>In person.</u></p> <p>Requires face-to-face contact with respondents. Generally makes use of smaller samples to gather opinions and when dealing with sensitive issues</p>	<p>Establish empathy and interest in the study</p> <p>Can probe complex issues</p> <p>Clarify respondents' queries</p> <p>High response rate</p>	<p>Expensive in time and cost</p> <p>May lead to interviewer bias</p> <p>Difficult to obtain wide access</p> <p>Relatively small sample size</p>
<p><u>Over the telephone.</u></p> <p>A form of personal interviewing which is used to obtain information quickly. Generally used to gain access to respondents that are geographically dispersed.</p>	<p>Provides personal contact</p> <p>Wide geographic coverage</p> <p>Easy and quick access</p> <p>Can be done with the aid of a computer</p>	<p>Short interview time</p> <p>Limited to listed telephone owners</p> <p>Can be expensive</p>
<p><u>Electronic.</u></p> <p>Administered via the intranet and internet through the use of email. An increasingly popular method for collecting data.</p>	<p>Easy to administer</p> <p>Global reach</p> <p>Fast data collection</p> <p>No interviewer bias</p> <p>Low cost</p>	<p>Loss of anonymity</p> <p>Can be complex to design and issue</p> <p>Limited to computer users</p>

(Hair Jr, J.F., Money, A.H., Samouel, P., Page, M., 2007).

The delivery method chosen was electronic as this offered the best chance of the necessary response rate. The use of e-mail also allowed the researcher to use the online survey site www.surveymonkey.com to administer the questionnaire. This had two advantages, firstly it allowed the questionnaire to be filled in electronically which reduced the time needed to respond thus it should increase the response rate and secondly it ensured full anonymity as respondents were not identified by the site.

3.12 Data analysis.

The researcher decided to use the computer program, Microsoft Excel, for data analysis. The package that hosts the online questionnaire displays the results in percentages. These percentages were then entered into Microsoft Excel to generate charts. As all research questions are closed they are already categorised.

3.13 Credibility of the research.

Credibility refers to the objective and subjective components of the believability of a source or message. Traditionally, credibility has two key components: trustworthiness and expertise, which both have objective and subjective components. Raimond 1993 pg 55 subjects findings to the “how do I know? Test:...will the evidence and my conclusions stand up to the closest scrutiny?”. Gill and Johnson believe that “there exists no independent form of evaluating different research strategies in any absolute terms”. They do however suggest using validity, reliability and generalisability to assess the researches credibility. Thus to ensure the credibility of the research attention will to be paid to the validity, reliability and generalisability of the research conducted.

3.14 Validity of the research.

Validity can be defined as “ the extent to which the data collection method or methods accurately measures what they were intended to measure or the extent to which research findings are really about what they profess to be

about.” Saunders et al 2007. There are two types of validity: internal validity refers to the establishment of causal relationships and external validity refers to the extent to which the results of the research are applicable beyond the immediate setting of the research.

3.15 Reliability of the research.

Reliability is “the extent to which data collection technique or techniques will yield consistent findings, similar observations would be made or conclusions reached by other researchers or there is transparency in how sense was made from the raw data” Saunders et el 2007. Reliability of the research refers to the consistency of the results obtained.

3.16 Generalisability.

Generalisability is “the extent to which the findings of a research study are applicable to other settings.” Saunders et al 2007.

3.17 Evaluation of the credibility of the research.

Readers can evaluate the credibility of this research as they explore the links between the research question, the research objective, the field questions and the findings from the research methodology adopted.

3.18 Ethical issues.

Research ethics are “the appropriateness of the researcher’s behavior in the relation to the rights of those who become the subject of the research project, or who are affected by it” Saunders et al 2007. The methods chosen for this research will be subject approval from an ethics committee to ensure it is carried out in an ethical manner.

3.19 Limitations of the research.

The researcher had the constraints of time (being a student with a part time job), financial (privately funded) and human resources (only one researcher).

The research methods were chosen to provide the highest quality results while minimizing the impact of those constraints.

Other limitations include the dispersed geographical location of the target population.

The research is also subject to the limitations that questionnaires suffer from (which are highlighted above) which may affect the credibility of the research.

3.20 Conclusion.

This research was carried out to determine the degree to which companies listed on the ISEQ comply with the independence requirements of the Combined Code 2008. The research will take the form of interpretative research using the inductive approach. It will be exploratory in nature leading to descriptive research. The data will be quantitative establishing the variations in compliance and will be presented in statistical and diagrammatical form. Survey and questionnaires are the research tools adopted to collect the primary data. Questionnaires will be distributed to the entire population. Data will be analysed using Microsoft excel.

Chapter 4.

Analysis and Findings.

4.1 Introduction.

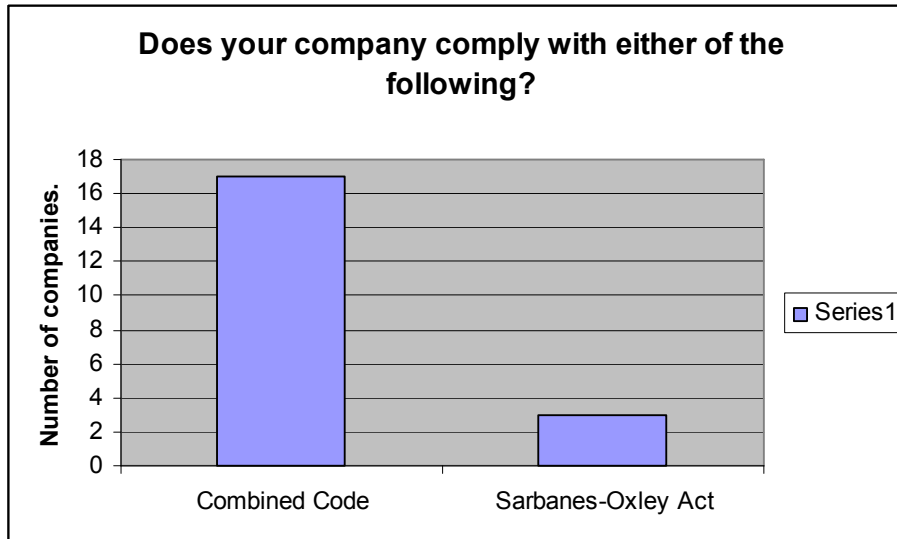
The purpose of this chapter is to study and analyse the data collected during the primary research. This will involve an examination of the questionnaire responses in order to determine the level of compliance amongst Irish public listed companies with the independence requirements of Combined Code on Corporate Governance.

4.2 Analysis of survey results.

The questionnaire was sent to the 57 companies listed on the Irish Stock Exchange (A list of the companies to who the questionnaire was sent to along with a copy of the questionnaire is contained in appendix I). At the end of the data collection period a total of 20 responses were received, yielding a 34.48% response rate (response results can be found in Appendix V).

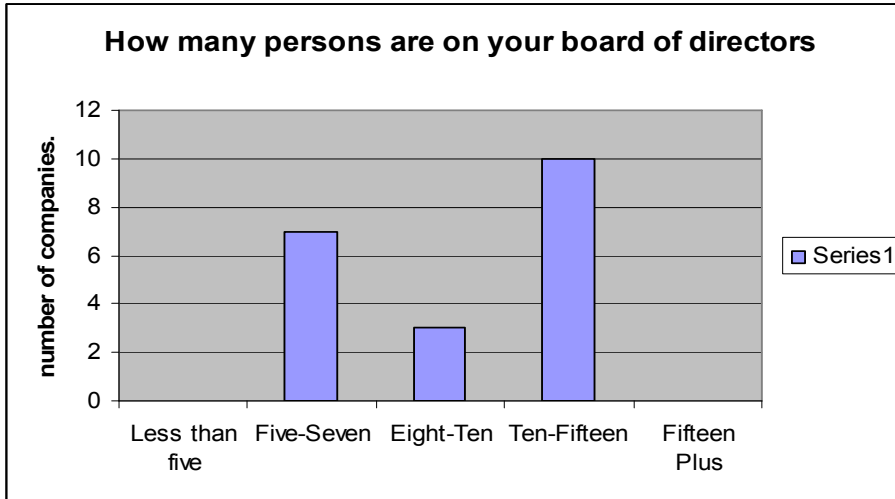
The questionnaires were sent to the head of investor relations in each company as corporate governance is most associated with investors relations as opposed to the other heads e.g. finance, marketing.

Respondent were first asked to identify whether their companies complied with the Combined Code or Sarbanes Oxley Act. (As Irish companies with a listing on an American Stock Exchange are required to comply with the Sarbanes Oxley Act 2002). 17(85%) companies complied with the Combined code whilst 3(15%) complied with the Sarbanes Oxley Act.



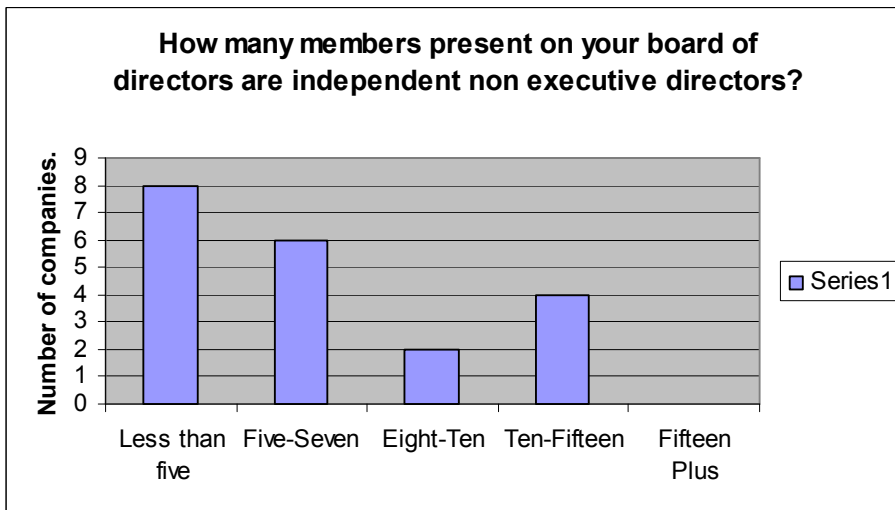
The next twelve questions focused on determining whether companies comply with various sections of the combined code.

Questions 2 and 3 deal with section A.3.2 of the combined code which states that “Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors”.



All companies have a board of directors in excess of five members with a majority [50% (10)] of companies having a board of between ten and fifteen members.

The following question aimed to determine how many of these members were independent non executive directors.



As all companies listed on the stock exchange would be regarded as big companies so they should as per the combined code have a board made up of at least half independent non executive directors. With the size of boards

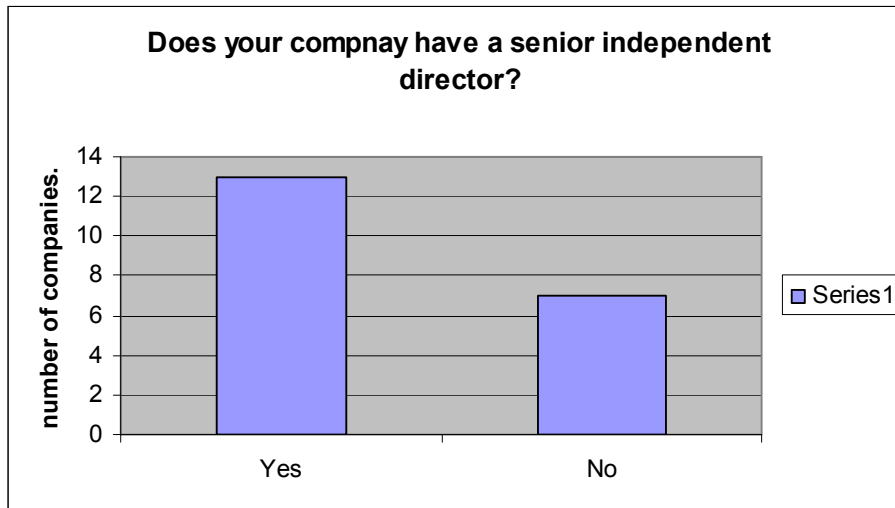
being between five and fifteen members the number of independent non executive directors present on the board would be expected to be between three and eight (if the combined codes provisions are followed). The results conform to this expectation as the number of independent non executive directors present on the board as per the results conformed to these expectations.

Further analysis of the results shows full compliance in this area. Taking the results from question two and using the provision in A.3.2 to determine the expected levels of independent non executive directors and then cross referencing the expected results with the actual results from question three we see that companies are fully compliant in this area. This is represented in the following table:

Number of companies	Number of board members.	Number of expected independent non executive board members.	Number of companies with expected number of independent non executive board members.
10	10-15	5-8	12
3	8-10	4-5	-
7	5-7	3-4	8

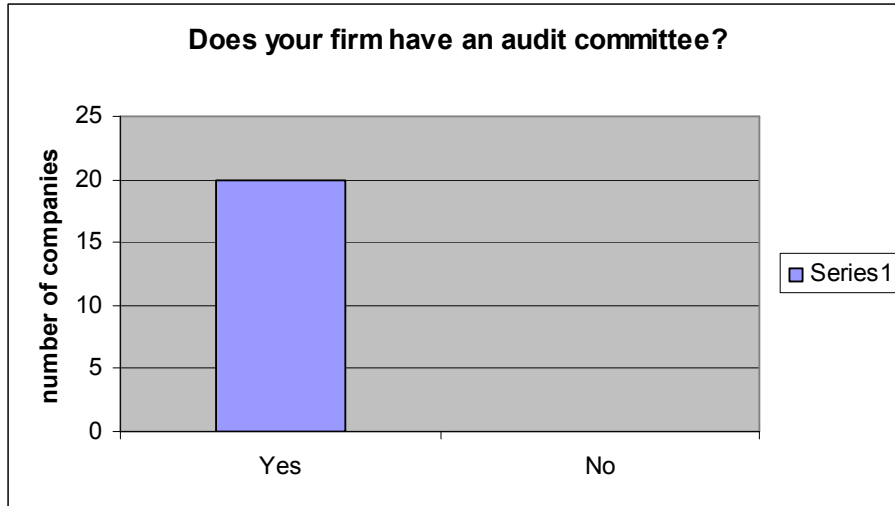
Some companies have a board made up of in excess of 50% independent non executive directors with 20% (4) companies having between ten and fifteen independent board members.

Question 4 deals with section A.3.3 of the combined code which states “The board should appoint one of the independent non-executive directors to be the senior independent director. The senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or finance director has failed to resolve or for which such contact is inappropriate.”

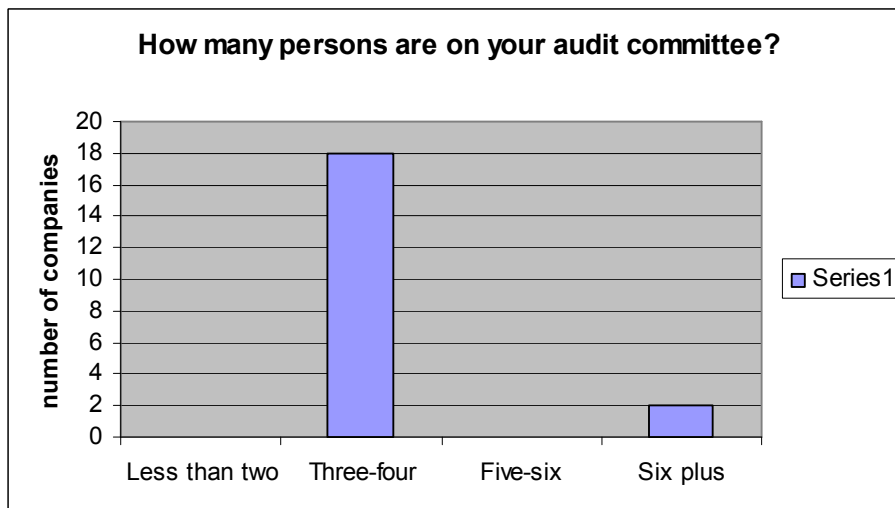


Of the responses received 13(65%) companies had a senior independent director whilst 7(35%) did not.

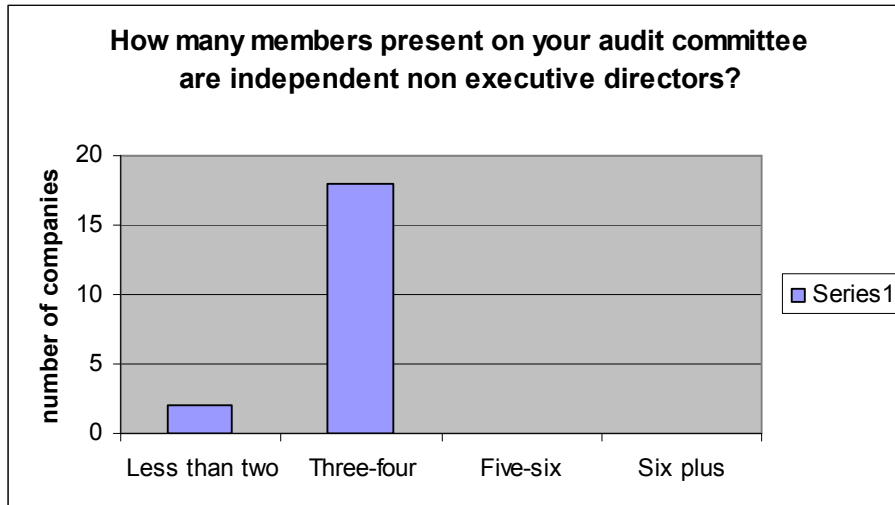
Questions 5, 6 and 7 deals with section C.3.1of the combined code which states that “The board should establish an audit committee of at least three, or in the case of smaller companies, two independent non-executive directors. In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman.”



As expected given the importance to a business of an audit 100% (20) of companies that responded have an audit committee in place.

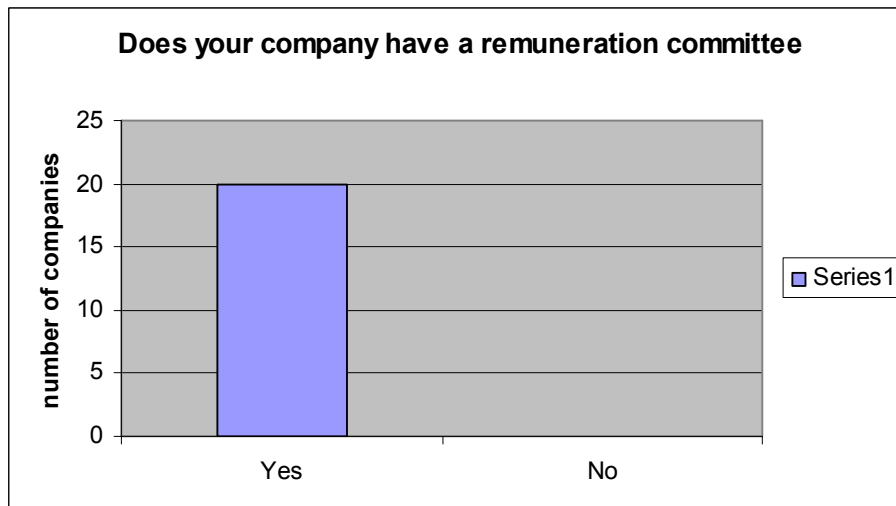


A majority of companies 90% (18) have an audit committee of between three and four members whilst the remainder have an audit committee in excess of six members.

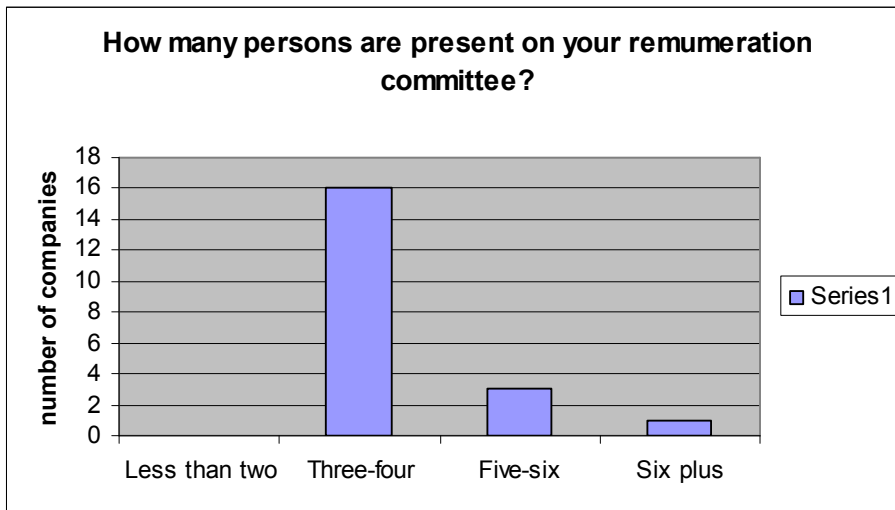


Companies in this area are not fully complying with section C.3.1 as their audit committees are not made up exclusively of independent non executive directors. Instead companies have opted for an audit committee made up of a majority of independent non executive directors

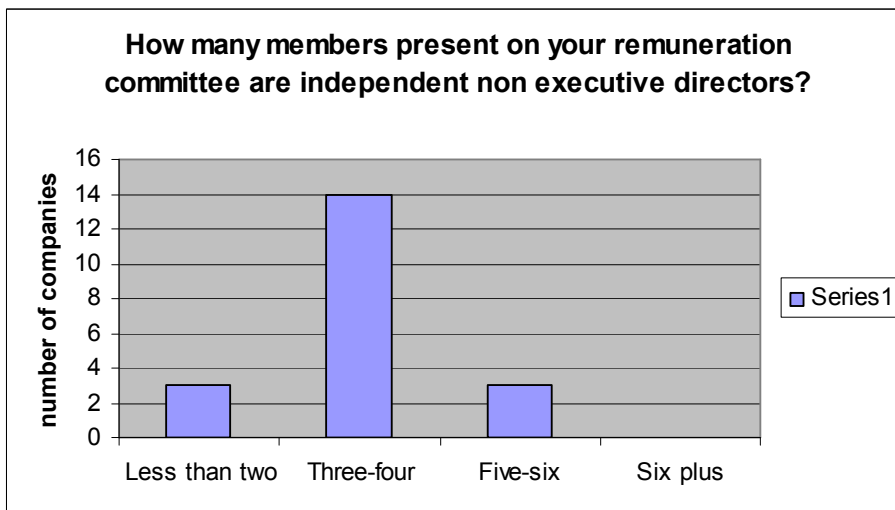
Questions 8, 9 and 10 deal with section B.2.1 of the combined code which states “The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.”



All 20 companies (100%) that responded have a remuneration committee in place.

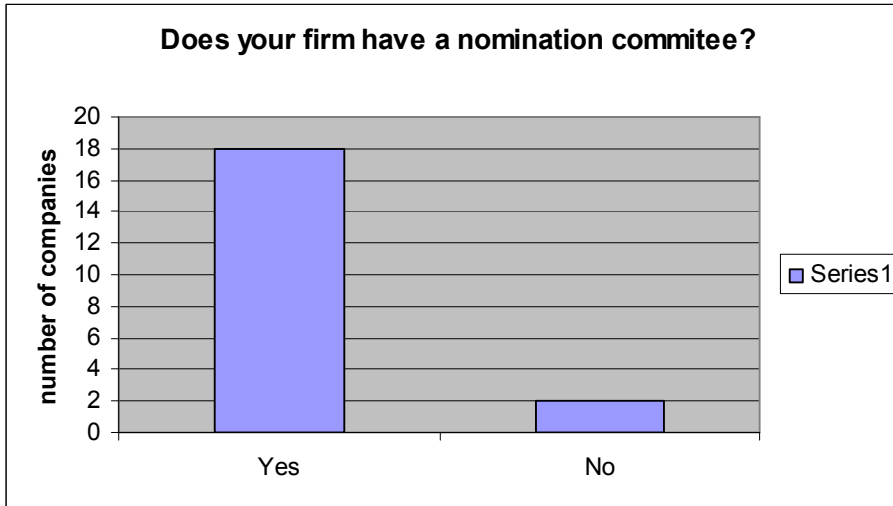


Each company has a remuneration committee of in excess of three members as prescribed by section B.2.1. A majority of companies 80% (16) have a remuneration committee of between three and four members whilst the remainder have an audit committee in excess of five members.

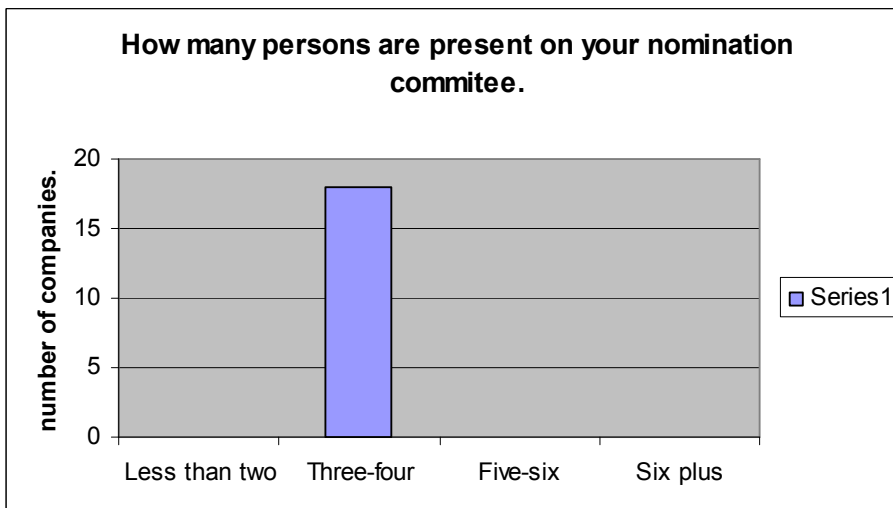


As with the audit committee not every company has a remuneration committee made up exclusively of non independent directors, instead having a mix of independent and non independent members. However their remuneration committees are made up of a majority of independent non executive directors which should ensure that they carry out their duties in the desired way however as with audit committees the committees' objectivity will be reduced due to the presence of non independent directors on the committee.

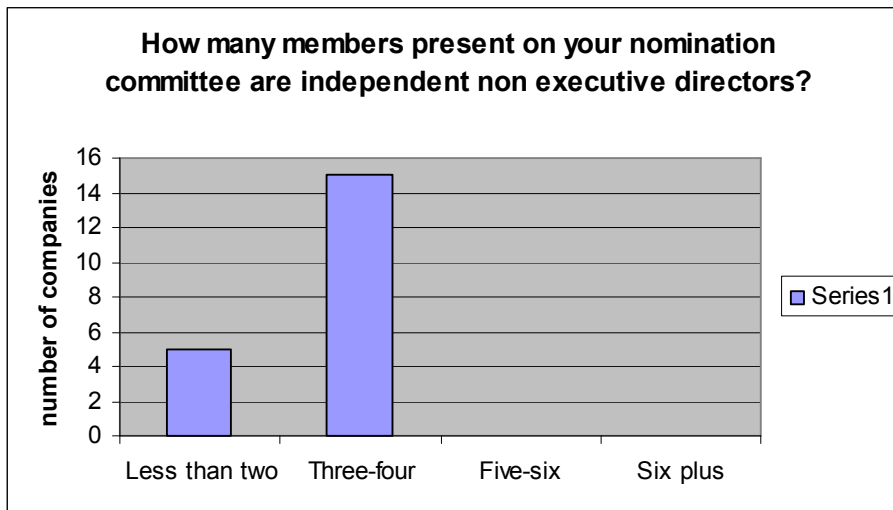
Questions 11, 12 and 13 deal with section A.4.1 of the combined code “There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors.”



Of the companies who responded 18(90%) had a nomination committee whilst 2(10%) have no such committee. This is the first instance of companies not having one of the committees outlined in the combined code.

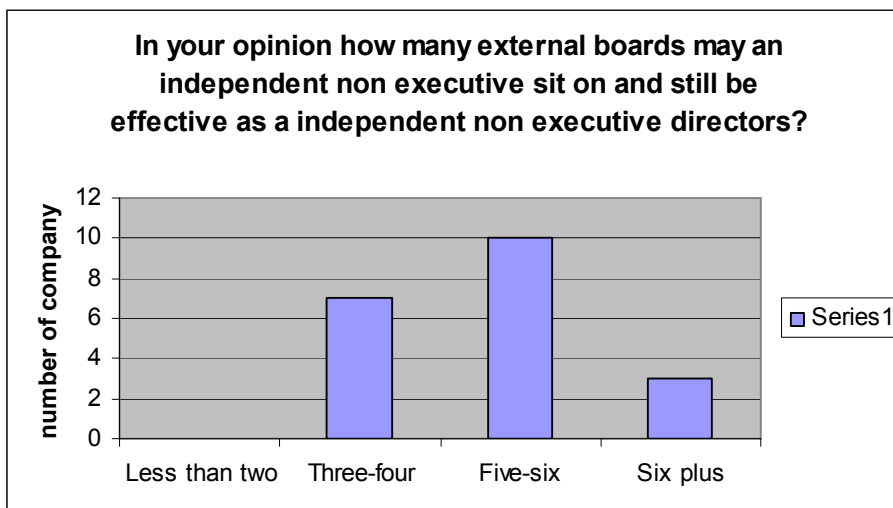


All companies have a nomination committee of in excess of three members as prescribed by section A.4.1 with 100% (18) companies having a nomination of between three and four members.

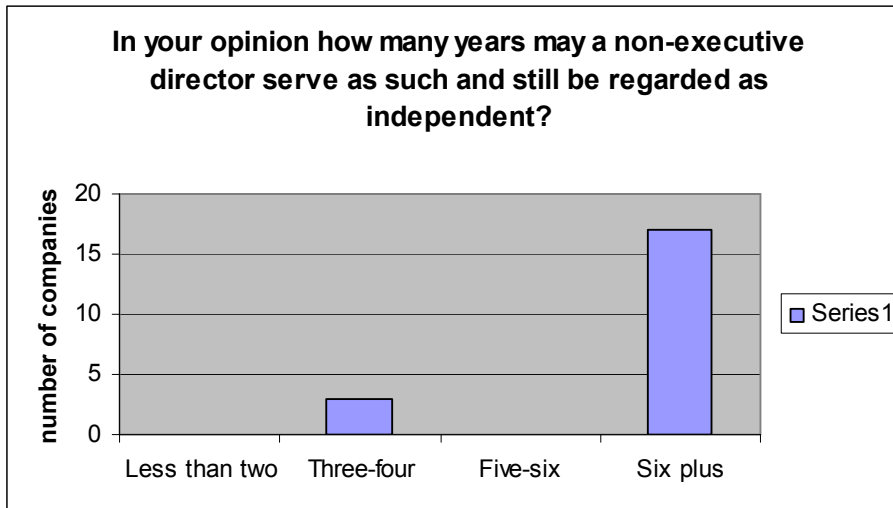


Companies in this area have followed the combined codes recommendations with a majority of members on the nomination committee being independent non executive directors.

Questions 14 and 15 deal with the independence and effectiveness of independent board members and is critical to the success of corporate governance as a whole.



This is one area where the combined code does not prescribe any requirements so as expected the responding companies have varying views. With regards to the number of external boards an independent non executive may sit on a majority of companies 50% (10) believed that participating on between five and six external boards is the maximum before an independent director's ability to operate effectively is reduced. However 15% (3) believed that independent directors may sit on in excess of six external boards.



In this area the combined does prescribe some independence tests (as outlined in the literature review) but a complete definition of what constitutes independence is not provided. With regard to terms of service 85% (17) companies believed that an independent director could still remain independent after in excess of six years service. However the other 15% (3) believed that between three and four years was the longest an independent non executive directors before their independence became impaired.

Chapter 5.

Recommendations and conclusions.

5.1 Introduction.

In this chapter the main findings of the research are summarised and linked to the literature, conclusions are drawn and recommendations are made.

Furthermore suggestions for further areas of research are derived based on the findings of the study.

A review of the literature led to the following research question and objectives:

My research question is

- To what extent do companies listed on the Irish Stock Exchange comply with the independence requirements of combined code?

My research objectives:

- To determine if companies listed on the Irish Stock exchange are complying with the follow requirements of the combined code 2008:
 - A.3.2: Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.
 - A.3.3: The board should appoint one of the independent non-executive directors to be the senior independent director.
 - A.4.1: There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors.

- B.2.1: The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.”
- The number of years service a company believes it can receive from an independent non executive director and still regard them as independent.
- The number of external boards a company believes an independent non executive director may participate in and still perform their roles and responsibilities effectively.

This was achieved through an extensive review of the literature related to the topic area and also through primary research collected via questionnaires administered to companies listed on the Irish Stock Exchange.

5. 2 Conclusions.

Upon review of the findings the researcher discovered a high level of compliance with the requirements of the combined code within Irish listed companies. All companies complied with either the combined code or with the Sarbanes Oxley Act. However there are a number of areas where companies are not complying fully with the combined codes requirements.

All companies were compliant with provision A.4.1, with some companies having more than half the board of directors made up of independent non executive directors. However the benefit of this is undermined by the varying views on the effectiveness of independent directors as outlined in the literature review and discussed later in this chapter.

In relation to the various committees outlined in the combined code all companies were compliant with the related combined code provisions (apart from two companies who did not have a nomination committee). The committees all had in excess of the required three members. However companies did not fully comply with the requirement to have the committees made up exclusively of independent non executive directors with companies instead preferring to have committee made up of a majority of independent non executive directors.

This presents a number of problems as the presence of non independent directors on the committees reduced their objectivity and may lead to decisions being made which are not in the best interest of the shareholders. Also the presence of non independent directors and the questionable independence of the so called independent members could lead to the committees being controlled by the directors, removing their effectiveness in protecting the interests of shareholders.

One area where there was a lack of compliance was in the appointment of a senior independent director. The senior independent director is an important point of contact for disgruntled shareholders with other roles ranging from leading the other independent directors in a review of the chairman's performance and developing knowledge of all major shareholders concerns so these can be addressed at board. Given the importance of the role (and the recent increase in disgruntled shareholders), I would have expected a greater number of companies to have appointed a senior independent director.

One area where companies had differing views was in relation to the number of external boards an independent non executive director may sit on and still be effective and to the length of service a company could receive from an independent non executive director. Given that it is the ability of independent non executive directors to do their job effectively and their independence is at the heart of the combined code the researcher believes that more uniformity in this area is needed. If there is a failure in either of these areas the entire

corporate governance system of the company is compromised and will be deemed ineffective.

All companies agreed that independent directors could sit on in excess of three boards and still be effective at ensuring strong governance within the company. However 50% (10) believed that participating on between five and six external boards is acceptable while 15% (3) believed that independent directors may sit on in excess of six external boards. This area has received a lot of attention recently, due to the fact that many independent non executive directors were sitting on an excessive number of boards which affected their ability to perform their role effectively and their independence (due to the fact that persons often sit on each others boards) e.g. Sean Fitzpatrick who sat on the boards of Anglo Irish Bank, Smurfit Kappa, Aer Lingus, food group Greencore, Gartmore Irish Growth Fund and the DDDA. Recently the financial regulator Matthew Elderfield and the European commission have released proposals to limit the number of boards on which a director may sit on at one time to three or less. Mr Elderfield has even proposed that the chairman of financial institutions be prohibited from sitting on any other boards. Both sets of proposals are currently out for public consultation so they may be amended before introduction however they do highlight the need for reform in this area.

With regard to the number of years service a company may receive from independent non executive directors there is again varying views. The combined code in outlining independence test suggested a period of nine years service may be obtained from independent non-executive directors before independence is impaired. The research found that 85% of companies believe a service period of over six years was acceptable, while the remaining 15% believed that between three and four years was acceptable. These are widely varying opinions and the researcher believes more uniformity is needed in this area in order to ensure a strong system of governance exists within listed companies. The researcher believes that the length of service allowable from independent non executive directors need to be defined more

precisely and reduced from the nine years outlined in the combined code. Nine years is an excessively long time in the business world.

Business planning takes place in three phases: operational (day to day), tactical (1-2years) and strategic (5 years plus). Under the combined codes provisions independent directors may sit on a board for a period exceeding the companies' strategic outlook. This means that independent directors will be on the board from the start to the end of the project and have been involved in decisions on the project at all stages of its development. This is effectively leading to a situation where independent directors are reviewing their own work and thus the researcher believes they will lose their objectivity in analysing the projects progress. Mr Elderfield has proposed that board appointments be reviewed every three years while the Sarbanes Oxley Act 2002 the term of office of directors is limited to five years and no director may serve for more than two terms (whether consecutive or not).

Overall the results show that compliance amongst Irish companies with the combined code is high with companies (with a few exceptions) being fully compliant with the investigated areas. This surprised the researcher after reviewing the literature and in the light of recent corporate scandals (such as occurred in Anglo Irish Bank, DCC and the Quinn group (see appendix II for more detailed information on the scandals)) in Ireland it was expected that more companies would not have complied all of the requirements of the Combined Code. The researcher believes this is due to companies complying with the minimum requirements of the combined code but not putting much emphasis on them in practice. The researcher believes this is due to the "comply or explain" approach which has led companies to do just enough so that no "explaining" is necessary. This is supported by Grant Thornton who found that the comply or explain approach "resulted in compliance with the letter of the guidance, but not its spirit," Grant Thornton 2009.

5.3 Recommendations.

1. This research highlights the fact that although the combined code has its reasons for adopting a “comply or explain” approach (as outlined in the literature review), it has led to a situation where companies can claim full compliance when they are far from compliant. They are compliant in body but not spirit. The researcher believes that the combined code must have some legislative backing if it is ever to be fully effective. The legislative backing need not cover the entire combined code just what I believe to be the key areas i.e. independence requirements and the make up of boards and committees (the researchers recommendations in these areas are outlined below). Legislative backing and penalties for non compliance in these areas should ensure the combined code is complied with in body and spirit.
2. The researcher would recommend that all committees are made up of exclusively with non independent directors being prohibited from performing any role directly or indirectly in these committees. These requirements should be backed by legislation as above to ensure compliance is achieved. The financial regulator in his consolation paper has proposed that the committees be made up of a majority of independent non-executive directors. I believe that a committee made up exclusively of independent non executive directors would be much more objective in its decision making and serve the needs of the shareholders better. Also at the present time companies have committee with a majority of independent members which as high lighted a number of times above has led to problems leading the researcher to believe that a new approach as outlined above is needed.
3. The researcher agrees with the proposals of both the financial regulator and the European commission that would limit the number of boards a director may sit on to three or less. This will have a two fold

effect. Firstly it will ensure that directors have the necessary time available to perform their duties in a professional manner. Secondly it will minimise any effect being had on independence due to interlocking directorships (directors becoming linked due to sitting on each others boards). These requirements should be backed by legislation as above to ensure compliance is achieved.

4. The researcher believes that a maximum service period of three years being imposed for independent non executive directors. The researcher believes that a service period of three years will ensure that independent non executive directors will remain objective when making decisions on company policies and investments and will remove self review. Like the Sarbanes Oxley the researcher would not prevent the same independent non executive director from serving more than one term, but unlike the Sarbanes Oxley Act would not allow them to serve consecutive terms and would recommend a period of six years between terms. This is to eliminate any self review and ensure that objectivity is present. Again these requirements should be backed by legislation as above to ensure compliance is achieved.

5. The researcher would encourage both the regulators and the government to ensure that companies are made aware of the importance of having a senior independent non executive director and they should be encouraged to appoint one. However the researcher would not recommend that this be enforced by legislation as it is unlikely to lead to corporate governance failure due to non compliance while the recommendations outlined above may lead to such a failure.

The researcher would like to highlight the fact that although the above recommendations are the researcher believes necessary to ensure proper corporate governance other areas such as competitiveness need to be taken into account. A difficult balance needs to be achieved between the need for regulation and the need for free markets. Upon introduction of the Sarbanes

Oxley Act in 2002 (which is backed by legislation) led some companies to delist from the American stock exchanges as the requirements were too onerous while Piotroski 2008 found that “following the act's passage, smaller international companies were more likely to list in stock exchanges in the U.K. rather than U.S. stock exchanges”. On December 21st, 2008 a Wall street journal editorial stated, "The new laws and regulations have neither prevented frauds nor instituted fairness. But they have managed to kill the creation of new public companies in the U.S., cripple the venture capital business, and damage entrepreneurship”.

At this present time any adverse effect on competitiveness or the countries' economy would be disastrous and care will have to be taken to ensure any adverse affect due to regulation would be minimised. It should be remembered that Sean Fitzpatrick argued against regulation saying it would destroy the banking industry and look what happened. I believe my recommendations would enhance competitiveness and economic development in the long run. The researcher heard a quote that said “What makes a bad leader is not bad decision making, but an absence of decision making ”. The researcher would strongly advise that the above recommendations be implemented by Ireland's leadership now while there is a desire and a willingness to change amongst the affected parties. Any changes made (successful or unsuccessful) can be changed or adapted but the negative impact that failure to act will have on Irelands economy and international image will irreversible. The above recommendations in the researchers opinion would greatly reduce the risk of such failures as described throughout this paper from happening again and put Ireland at the forefront of corporate governance regulation.

5.4 Further areas of research.

While this research is a comprehensive study into the degree to which companies listed on the ISEQ comply with the independence requirements of the Combined Code 2008, the researcher believes that the study would have benefited from knowing:

- The requirements each non executive director had to fulfil in order to be regarded as independent.
- The exact number of both independent and non independent members on the board and committees of each company.
- The actual number of external boards sat on by independent non executive directors and their length of service to each company.

This would have eliminated the need for any generalising and would have enabled more detailed recommendations to be made. This could have being achieved by a combination of a detailed questionnaire and a detailed analysis of each companies published annual report, however the limitations of the research such as time, money and geographical location prevented the researcher from following this methodology.

Also while corporate governance is well documented in the literature, the researcher struggled to source specific literature relating to the Irish experience in this area. Given Irelands' economic boom and bust over the last two decades, a study into the role that corporate governance and the combined code played in developments would be an interesting area of study as it would highlight both the positive and negative roles that corporate governance played in the development of Irelands economy and its recent failure.

Appendices.
Appendix I.
Company List.

List of companies on the Irish Stock exchange as per RTE
(<http://www.rte.ie/business/markets/iseq.html>)

1. Abbey
2. Aer Lingus Group plc
3. AGI Therapeutics
4. Allied Irish Bank
5. Aminex
6. Arysza AG
7. Bank of Ireland
8. Blackrock International Land
9. Boundary Capital Plc
10. C&C Group
11. Conroy Diamonds & Gold
12. CPL Resources
13. CRH
14. Datalex
15. DCC
16. Donegal Creameries
17. Dragon Oil
18. Elan Corporation Plc
19. FBD Holdings
20. First Derivatives Plc
21. Fyffes
22. Galmbia
23. Grafton Group plc
24. Greencore Group
25. ICON
26. IFG group
27. Independent News and Media Plc

28. Irish Continental Group plc
29. Irish Life and Permanent Group Holdings Plc
30. Karelían Diamond
31. Kenmare Resources
32. Kerry Group
33. Kingspan Group
34. McInerney Holdings
35. Merrion Pharmaceuticals
36. Norkom Group
37. Oglesby & Butler Group
38. Origin Enterprises Plc
39. Ormonde Mining
40. Ovoca Gold Plc
41. Paddy Power
42. Petroceltic International Plc
43. Petroneft Resources
44. Prime Active Capital
45. Providence Resources
46. Readymix
47. Real Estate Opportunities Plc
48. Ryanair Holdings
49. Siteserv Plc
50. Smurfit Kappa Group Plc
51. Total Produce
52. Tullow Oil Plc
53. TVC Holdings Plc
54. United Drug
55. UTV Media Plc
56. Worldspreads Group Plc
57. Zamano Plc.

Appendix II.
Corporate Governance Issues.

Anglo Irish Bank.

Seán FitzPatrick has resigned as Chairman of Anglo Irish Bank, following a continuing investigation of directors' loans at the bank. He also resigned from the boards of Smurfit Kappa, Aer Lingus, food group Greencore and Gartmore Irish Growth Fund at the same time.

The garda/ODEC investigation covers the following:

1. The Golden Circle share transaction in which 10 clients of the bank purchased 10% of the bank's shares using loans from the bank. The stake was bought from businessman Sean Quinn. Sean Fitzpatrick was a central figure in this arrangement.
2. Hiding directors' loans from shareholders – including FitzPatrick's – by transferring them for short terms to Irish Nationwide at year-end. FitzPatrick insists that this did not breach banking or legal regulations but admits it was inappropriate and unacceptable from a transparency point of view. Directors' loans at September 30, 2008, amounted to €150 million. €87 million in loans between the bank and Irish Nationwide Building Society over an eight-year period, to avoid amounts appearing in the year-end accounts.
3. The lodgement of €7.45bn in short term deposits by IL&P to the nationalised bank in September 2008.

In January 2009 the government announced plans to nationalise Anglo Irish Bank instead of recapitalising it as unacceptable practices within the bank had caused it serious damage which recapitalisation could not repair.

Anglo Irish Bank were also involved along with the Dublin Docklands Development Authorities'(DDDA) purchase of the glass bottle site in Ringsend, Dublin 4(the site was purchased by the Becbay consortium of which the DDDA was a part). Anglo loaned money to the DDDA to purchase

its equity in the deal. Mr Fitzpatrick and Mr Bradshaw were directors of both Anglo Irish bank and the Dublin Docklands Development Authority at the time of the loans.

The investigation into the above events are still ongoing so the cause of the events are at this point in time are unknown. However corporate governance experts have stated that the board let Mr. Fitzpatrick run AIB as he saw fit and seemed either unwilling or not able to control his actions. If this is true the board and all committees (even though they were in accordance with the combined code) were ineffective in discharging their roles and responsibilities. In relation to the loan deal with the DDDA corporate governance experts claim “that conflicts of interest as blatant as cross directorships of this nature will fall foul of future legislation.” Walsh J 2010.

The failure in corporate governance is also highlighted by the fact that even after all Mr. Fitzpatrick’s wrongdoings were exposed the board still showed him support and accepted his resignation “with regret”, instead of demanding his resignation as it was in the interest of the shareholders whose interests the board is supposed to protect.

DCC.

This corporate governance issues at DCC relate to Mr. Jim Flavins’ dealing in shares of Fyffes. At the time Mr. Flavin was a director of DCC and a non-executive director of Fyffes (a position he held for 19 years). The Fyffes case relates to the intra-group transfer of the Fyffes’ shares by DCC in 1995 and their ultimate disposal in 2000. “The Supreme Court, overturning decision by the High Court, found that two trading reports, which Jim Flavin had in his possession as a director of Fyffes at the time of the sale of 31,169,493 shares in Fyffes in 2000, were price sensitive. Thus Mr.Flavin was guilty of insider trading. As a result of the Supreme Court decision, DCC was obliged to pay to Fyffes a sum that was to be determined by the High Court, relating to the profits on the sale”. DCC annual report 2009.

The corporate governance problems do not related directly to the insider trading but more so with the attitudes of the board of directors with regard to Mr. Flavins ultimate resignation. As with AIB and Mr. Fitzpatrick the board seemed reluctant to see Mr. Flavin resign and wanted him to stay on as director until 2010 at least. This is a man who was guilty of insider trading and in the interest of shareholders the board should of encourages his resignation not tried to prevent it. Mr. Flavin was a founding member of DCC and instrumental in its success but the board is there to protect shareholders and past performance should not board members a right to act as they please.

The case also highlights the risk of cross directorships. Such directorships give directors access to such price information which could be used to make illegal gains on the financial markets.

Quinn Group.

The Quinn group suffered from a problem similar to AIB. Sean Quinn was the mastermind behind Quinn groups' remarkable growth (as Sean Fitzpatrick was the mastermind behind Anglo Irish Banks' growth) and was effectively given a free reign over how the company was run. However after a number of well documented bad decisions (e.g. certain subsidiaries of Quinn Insurance giving guarantees which had the effect of reducing the insurer's assets by around €448m.) the financial regulator put Quinn insurance into administration. After years of operation the Quinn group made sweeping changes to its board "to implement governance structures that resembled those of a publicly listed company. " Quinn S 2008. This case again highlights an inability or an unwillingness of boards to control dominating board members.

This case also highlights issues faced by the regulator when trying to regulate the business within the letter of the law. The regulators decision to place Quinn insurance in administration led to protests outside Quinn HQ and government buildings over fear off job losses and the damaging effect closure would have on the Irish economy. Even though the regulators decision was

correct within the letter of the law, economic factors should always play an important role in any action taken.

Appendix III.

Responsibilities of independent non executive directors.

- Bring a genuine independent perspective to enhance decision making,
- Provide value added input to strategy and strategic development,
- Act in the best interests of the company as a whole rather than any one particular group of shareholders,
- Assist in carrying out the duties of the Board, such as:
 - reviewing, approving and on-going monitoring of the strategic plan,
 - reviewing organisational capability in relation to stated objectives,
 - reviewing financial performance against targets,
 - raising capital,
 - reviewing any major changes in the company, such as financial and organisation structure,
 - providing advice on major investments/divestments to be made,
 - monitoring legal, ethical, risk and environmental compliance where appropriate,
- Act as a catalyst for change and challenge the status quo, when appropriate,
- Monitor and challenge the performance of Executive Directors and the Management Team,
- Take an active role in the appointment and replacement of key senior management and in plans for management development and succession,
- Attend Board Committee meetings, as appropriate (a Non Executive Director may also have special responsibility for audit, nomination and/or remuneration committees),
- Attend Board meetings, ad hoc meetings with the Chairperson, and meetings of Non Executive Directors, as appropriate,
- Satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible,
- Maintain the confidentiality of information received,

- Carry out functions with due skill, care and diligence,
- Devote sufficient time to responsibilities.

Responsibilities of the nomination committee.

- Review the structure, size and composition of the Board and make recommendations to the Board,
- Evaluate the balance of skills, knowledge and experience on the Board,
- Identify and nominate candidates to fill Board vacancies when required.
- The Board will subsequently review and approve the nominations, as appropriate,
- Give full consideration to succession planning for Directors and other senior executives,
- Prepare a description of roles and capabilities for particular appointments,
- Assess the time commitments of the Board posts and ensure that the candidate has sufficient available time to undertake them,
- Ensure that on appointment to the Board, Non Executive Directors receive a formal letter of appointment setting out clearly what is expected of them in their role,
- Assess the leadership needs of the company in terms of the ability of the company to compete in its industry,
- Keep abreast of issues affecting the industry in which the company operates.

Responsibilities of the Remuneration committee.

- Determine and agree with the Board the framework or broad policy for the remuneration of the Managing Director/ Chief Executive, the Chairperson, Executive Directors, the Company Secretary and other members of the Management Team it is required to consider,
- The Remuneration of Non Executive Directors shall be a matter for the Chairperson and the Executive Members of the Board (see B2.3 of the Combined Code (2003)),
- Produce an annual report on the agreed remuneration policy,
- Determine the total individual remuneration package of each Executive Director,
- Review the suitability of performance measurement criteria for members of the Management Team,
- Review the notice periods for Executive Director employment contracts,
- Determine compensation arrangements for early termination of employment contracts,
- Review company organisational changes,
- Administer share option scheme(s) for members of the Management Team and/or Directors.

Responsibilities of the Audit committee.

- Report to the Board on all matters covered by the Terms of Reference,
- Monitor the integrity of the financial statements of the company
- Monitor and review the effectiveness of the company's internal financial controls function and assess key financial risks,
- Monitor the strategic direction of the internal audit function,
- Review major audit issues and accounting policies.
- Where the Audit Committee's monitoring and review activities reveal cause for concern or scope for improvement, it should make

recommendations to the Board on action needed to address the issues or to make improvements,

- Review the effectiveness of IT systems, internal controls, environmental affairs, legal matters and pension investment performance,
- Review company compliance with ethics, regulations, policies and practice reviews,
- Act as the link between the Board and the external auditors,
- Monitor and review the external auditor's independence, objectivity and effectiveness,
- Make recommendations to the Board to be put to the shareholders for their approval in relation to the appointment of the external auditor and to approve their remuneration and terms of engagement,
- Consider external auditor's management letter and management responses,
- Develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance,
- Meet with the external auditors twice a year, once at the planning stage and once post-audit at reporting stage,
- Non Executive Directors of the Audit Committee should meet the external auditors at least annually without the presence of any executive Board members,
- The Chairperson of the Audit Committee should attend the AGM,
- Under the Companies (Auditing and Accounting) Act 2003 (when commenced) the Board Audit Committee will be responsible for reviewing (before its approval by the Board of Directors) the Directors' compliance statement (see Section 3.3) and determining whether the system etc complies with the acts' requirements, is fair and reasonable and is based on due and careful enquiry.
- The Board Audit Committee will be responsible for recommending to the Board whether or not the compliance statement should be approved by them.

Appendix IV.
Draft Questionnaire.

1. Does your company comply with either of the following?

Combined Code	Sarbanes-Oxely	Other

2. How many members are present on your board of directors?

Less than five	Five-Seven	Eight-Ten	Ten-Fifteen	Fifteen +

3. How many members present on your board of directors are independent non executive directors?

Less than five	Five-Seven	Eight-Ten	Ten-Fifteen	Fifteen +

4. Does your company have a senior independent director?

Yes	No

5. Does your firm have and audit committee?

Yes	No

6. How many members are present on your audit committee?

Less than Two	Three-Four	Five-Six	Six Plus

7. How many members present on your audit committee are independent non executive directors?

Less than Two	Three-Four	Five-Six	Six Plus

8. Does your firm have a remuneration committee?

Yes	No

9. How many members are present on your remuneration committee?

Less than Two	Three-Four	Five-Six	Six Plus

10. How many members present on your remuneration are independent non executive directors?

Less than Two	Three-Four	Five-Six	Six Plus

11. Does your firm have a nomination committee?

Yes	No

12. How many members are present on your nomination committee?

Less than Two	Three-Four	Five-Six	Six Plus

13. How many members present on your nomination committee are independent non executive directors?

Less than Two	Three-Four	Five-Six	Six Plus

14. How many external boards may a non-executive director sit on and still be an effective non executive director?

Less than two	Three-four	Five to Six	Six+

15. How many years may a non-executive director serve as such still be regarded as independent?

Less than two	Three-four	Five to Six	Six+

Appendix V.

Question 1	Does your company comply with either of the following?	
	Combined Code	17
	Sarbanes-Oxley Act	3
Question 2	How many persons are present on your board of directors?	
	Less than five	0
	Five-Seven	7
	Eight-Ten	3
	Ten-Fifteen	10
	Fifteen Plus	0
Question 3	How many members present on your board of directors are independent non executive directors?	
	Less than five	8
	Five-Seven	6
	Eight-Ten	2
	Ten-Fifteen	4
	Fifteen Plus	0
Question 4	Does your company have a senior independent director?	
	Yes	13
	No	7
Question 5	Does your firm have and audit committee?	
	Yes	20
	No	0

Question 6	How many persons are present on your audit committee?	
	Less than two	0
	Three-four	18
	Five-six	0
	Six plus	2

	How many members present on your audit committee are independent non executive directors?	
Question 7	Less than two	2
	Three-four	18
	Five-six	0
	Six plus	0

Question 8	Does your firm have a remuneration committee?	
	Yes	20
	No	0

	How many persons are present on your remuneration committee?	
Question 9	Less than two	0
	Three-four	16
	Five-six	3
	Six plus	1

Question 10	How many members present on your remuneration are independent non executive directors?	
	Less than two	3
	Three-four	14
	Five-six	3
	Six plus	0

Question		
11	Does your firm have a nomination committee?	
	Yes	18
	No	2
Question		
12	How many persons are present on your nomination committee?	
	Less than two	0
	Three-four	18
	Five-six	0
	Six plus	0
Question		
13	How many members present on your nomination committee are independent non executive directors?	
	Less than two	5
	Three-four	15
	Five-six	0
	Six plus	0
Question		
14	in your opinion how many external boards may a non-executive director sit on and still be regarded as being an effective NED?	
	Less than two	0
	Three-four	7
	Five-six	10
	Six plus	3
Question		
15	In your opinion how many years may a non-executive director serve as such and still be regarded as independent?	
	Less than two	0
	Three-four	3
	Five-six	0
	Six plus	17

Appendix VI.
Cover letter for questionnaire.

Dear Mr/Mrs/Miss.

I am conducting a questionnaire to determine the level of compliance within Irish listed companies with the independence requirements of the combined code 2008 (sections A.3.2, A.3.3, A.4.1, B.2.1, C.3.1). This is part of the requirements for my Masters of Arts in Accounting degree

The questionnaire should take you less than five minutes to complete. Your participation is voluntary but I hope you will take the time to complete this questionnaire. Your consent to participate in this project is assumed once you have completed the questionnaire. Your responses will not be identified with you personally.

If you have any questions or concerns about completing the questionnaire, you may contact me at L00046245@lyit.ie or my research supervisor Mr Paul McDevitt at Paul.McDevitt@lyit.ie .

If you choose to complete the questionnaire please use the links below to do so.

<http://www.surveymonkey.com/s/X23M7X9>

<http://www.surveymonkey.com/s/X2SPCKF>

Yours Sincerely.
Aaron Dunworth

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