



Independent Directors: The Contrasting Cases of Australia and Bangladesh

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Abstract

The Bangladesh corporate governance regime is framed by legal rules and requirements, in comparison to those prevailing in such jurisdictions as Australia. However, it is arguable that such legal rules have not necessarily led to major modernisation of structures or to such significant changes to the profile of company boards that would maximise their effectiveness. This study involves analysis and comparison of some of the important characteristics of Bangladeshi and Australian company boards, with a particular focus on independent directors. To provide context for this study, the regulatory framework for corporate governance in Bangladesh is compared and contrasted with that of Australia as an example of a developed country, while the study itself explores directors with reference to diversity, age, remuneration, expertise and experience and governance involvement. The results demonstrate that as well as differences, particularly around diversity, there are surprising similarities as well, principally around age and expertise. What is most marked is the lack of an independent skill development or recruitment facility for Bangladeshi directors such as operates in Australia, a lack that potentially limits the extent to which an open, competitive market for director skills can develop.

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1. INTRODUCTION

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Since 2000, the OECD has published Principles of Corporate Governance (2000, 2004 and 2015) with the latest being the G20/OECD Principles (2015). These principles address various issues from a national regulatory level (the framework), through company ownership and reporting (stakeholder and shareholder participation and disclosure to board-level structure and operation) the actual governance function within any given company. The OECD with these principles does not purport to command how or even whether jurisdictions respond and, indeed, a common approach applied within jurisdictions is for the principles needing to be observed by listed companies only and mandated by the relevant stock/securities exchange for companies seeking to list on that exchange. Even given this, different jurisdictions are at different points and stages in terms of their implementation or otherwise of frameworks for corporate governance - some jurisdictions that are not members of the OECD have incorporated at least some of the principles via their Stock Exchange's listing requirements. Additionally, a tendency towards adopting these principles in formulating or structuring the governance policies and procedures by non-listed companies is also on the rise.

Several reasons have been and can be offered for this inconsistent situation. Firstly, there is no "one size fits all" in terms of models of corporate governance so a western agency model does not necessarily work for quite different profiles of companies in non-Western jurisdictions (Aguilera and Jackson, 2003, 2010; Redding, 2005; Uddin and Chowdhury, 2008). Secondly, in accordance with Institutional Theory, there is a tendency to isomorphism, that is, organisations of similar nature tend to move to a degree of similarity in terms of structure, policies, observation of rules, and practices. Hence, the non-listed companies are likely to move to consistency with listed companies in terms of their policy and practice - an argument that could also be applied to non-OECD-member exchanges. Thirdly, similar approaches may arise out of and in response to the influence of such external forces as institutional investors, lenders, customers, and other stakeholders or as a defence to the practices of competitors in the capital, skills, and product markets. This may also be applied at a national level where a jurisdiction is reliant on external relationships.

The focus of this paper is the characteristics of boards of directors (the main driving force shaping corporation-level governance policies and practices) of companies in Bangladesh. Further, and in order to provide a basis of comparison, the Australian situation is discussed. Given their disparate national characteristics (in terms of such fundamentals as legal and policy institutions, maturity of financial markets, economic development and levels of education and information), any comparisons must be made cautiously. However, questions remain as to what aspects of that national context matter and how.

The purpose of this comparison is to explore three aspects: the nature and impact of the respective national frameworks, the effect of the disparity in the types and distribution of large, listed companies, and the implications of the role, characteristics, and experience of one specific group of directors: independents. As grounding and to provide insights into the implications of the respective situations, discussion will refer to previous country-specific and cross-country comparisons (e.g. Wells et al., 2019).

2. METHODS

For Bangladesh, both primary and secondary sources were accessed to extract information. The most important secondary source is a report (the Report) by the International Finance Corporation (IFC) released in March 2020 and entitled "Portrait of Bangladesh's Independent Directors". This report profiled boards of the companies, including the presence and

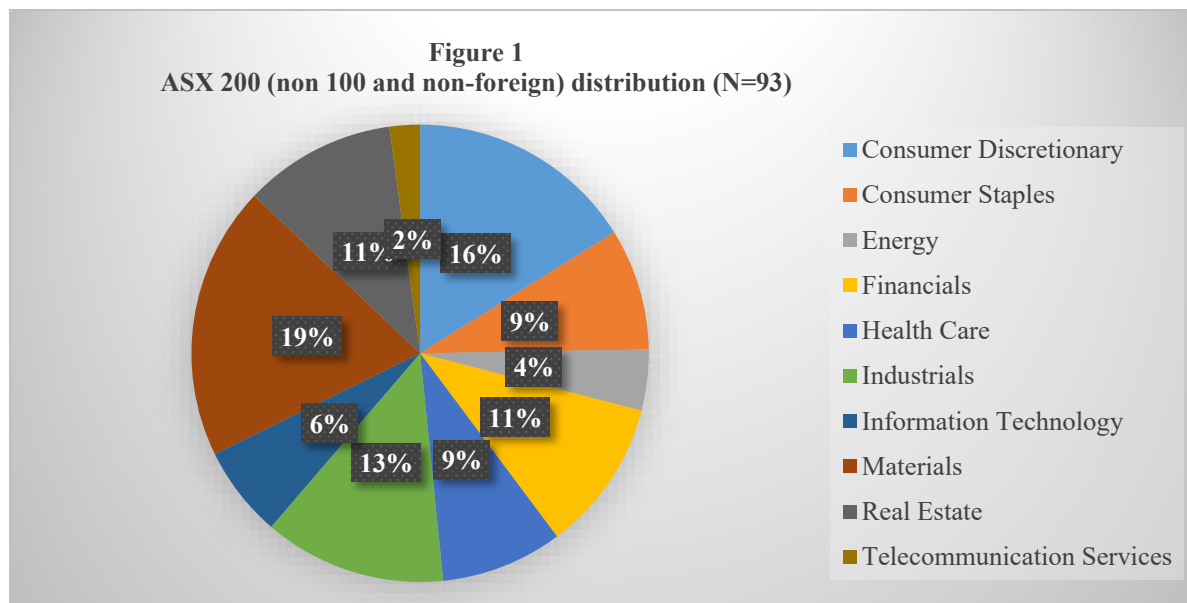
characteristics of independent directors, listed on the Dhaka Stock Exchange (DSE) as at the end of June 2018. The other secondary sources (media reports and financial or business columns) are referenced where informative of developments or issues not addressed in the Report. Primary sources include annual reports and other publicly accessible information on those companies. The main purpose of tapping those sources was to obtain further detail on the summary information provided in the Report, fill gaps in that information, and in some cases check its veracity. The second primary source was individuals who were serving independent directors on DSE companies. A total of 18 independent directors either agreed to open ended discussions or completed surveys through *Survey Monkey*. The same themes were canvassed in both the discussions and survey. These themes included individual experience (recruitment, motivation, and involvement of the interviewees on their board/s) and general matters (role and value of independent directors and the policy framework).

It should be noted that the Report identified above analyses independent director data from many of the companies listed on the DSE (592 in total compared with around 2185 on the ASX) so the quantitative findings are not directly comparable to those from the 50 companies in the Australian sample. It should also be noted that some aspects of the summary findings in this Report do not include the entire population of independent directors, in a few cases not all companies on the DSE and, in at least one case, does not include the data for an entire sector (that is, banking in relation to maximum and average tenure of independent directors, this being despite the fact banking is one of the largest sectors on the DSE), and is unreliable for at least one other (jute, one of the smallest sectors). Furthermore, the survey and interviews do not draw on a statistical sample of independent directors in Bangladesh.

The Australian primary data were extracted from a large sample of those on the ASX 200 (50 companies in total or 50% of those not also on the ASX 100 (so the second tier of companies in terms of size and market capitalisation). Further limits were applied to determine the final sample and the basis for comparison and analysis. For example, foreign companies were excluded. This left a total population of 93 companies across 10 sectors (for distribution, see figure 2). In recognition that the membership on boards does not remain static, and the companies included on the index can change, the data were collected from June 2019, disregarding any subsequent changes. In each case, publicly available information (including the ASX, Reuters, corporate annual reports and other company-driven disclosures) was accessed to highlight the characteristics of the independent directors of the sample companies. Characteristics deemed relevant included age, tenure (duration) on boards, income from membership, gender, distribution of such directors per industry sector, relevant membership/qualification, experience, and involvement in board committees. In some instances, certain information under these heads was not available, in which cases those specific directors/companies were excluded from that aspect of the analysis. Secondary data are available for ASX100 companies (albeit less recent), the findings from which are referred to in discussion where and if relevant to provide further clarification or detail.

This paper is not intended to be quantitative but rather to identify and highlight the extent to which the current Bangladesh experience varies from that of Australia. It does reveal marked and at times startling similarities and differences in the profile and participation of independent directors in the two populations. This point will be clarified through the analysis.

Further details of the basis, grounds, scope and focus of the analysis are as follows. In the case of Australia, Figure 1 portrays the sector-level distribution of companies satisfying these criteria.



The final sample of 50 companies were selected using the following criteria. The selection was random but included at least one company from each letter of the alphabet represented on the index and involved companies from the full range of sectors (subject to some population-level restrictions). For one of those sectors (Utilities) there are no companies on the ASX200 once both ASX100 companies and/or foreign entities are removed and for another (Telecommunication Services), there are only two companies. Figure 2 illustrates the distribution of companies included in the sample. It should be noted that post June 2019, the “Telecommunications” sector has been replaced by “Communication Services”, with some minor reallocation of companies to this sector. However, this change has not been applied to this analysis.

Bangladesh is a little more complicated. The DSE does not use the Standard and Poors classifications that are applied to the ASX. Instead, there are 22 different sectors (although companies in 18 sectors only were covered in the IFC’s Report - see figure 3). To provide a degree of comparability for size of sectors and for some other reasons (e.g. distribution of independent directors), companies in non-comparable sectors have been categorised (where possible, given the level of analytical detail) to those equivalent to the S&P/ASX categories, and by reference to the range of operations grouped under that index. Specifically, banks, insurance and financial institutions have been categorised as financial; fuel and power as energy; ceramics and cement as industrial; textiles, tanneries, jute and travel and leisure as consumer discretionary; engineering and paper and printing as industrials; and pharmaceuticals as health care. Ten of the companies in the “miscellaneous” sector were recategorized as materials (5), industrials (2) and consumer discretionary (3). There is no accessible information for the last company in this category, so it was excluded.

Figure 2
Sample distribution by Sector ASX (N=50)

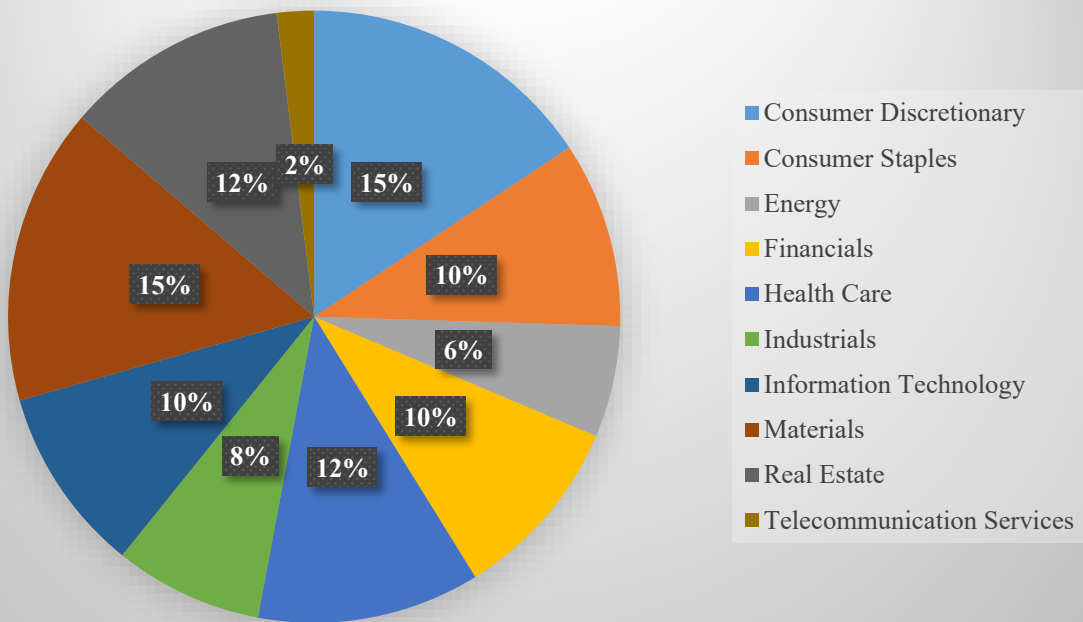


Figure 3
Distribution by Sector DSE (Report, N=592)

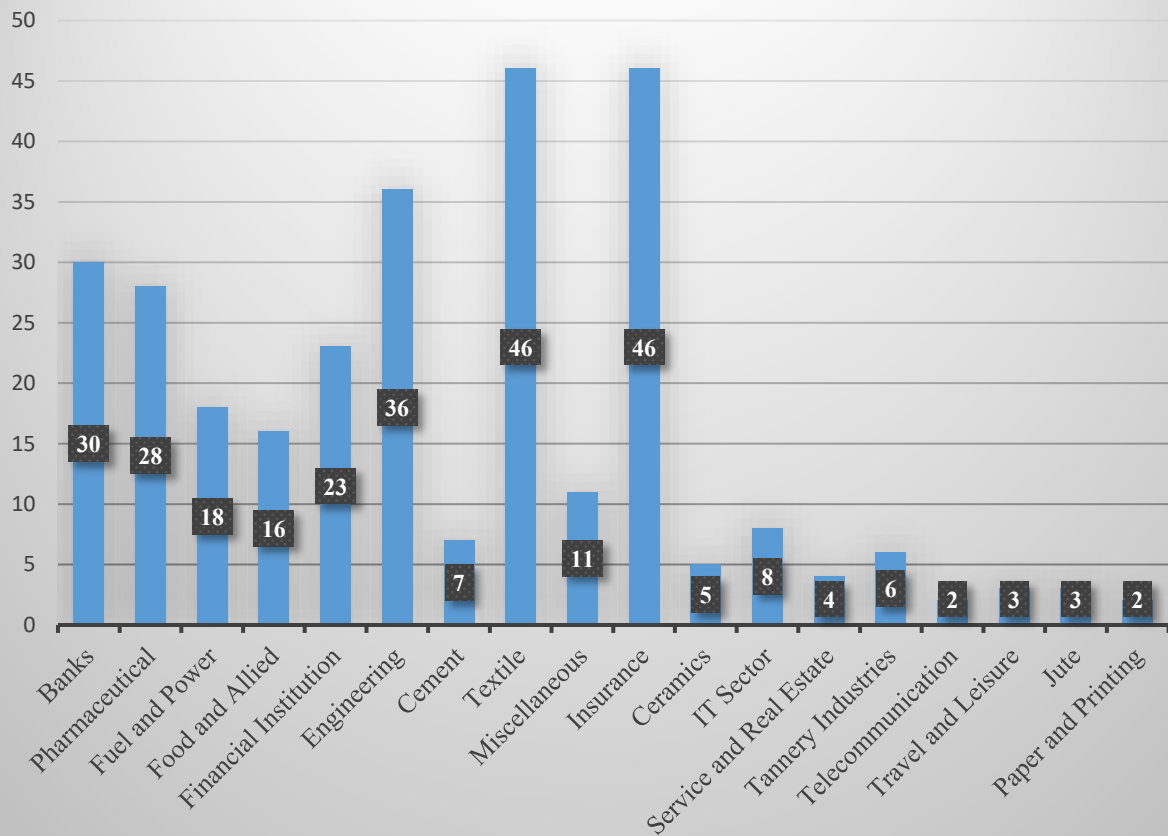
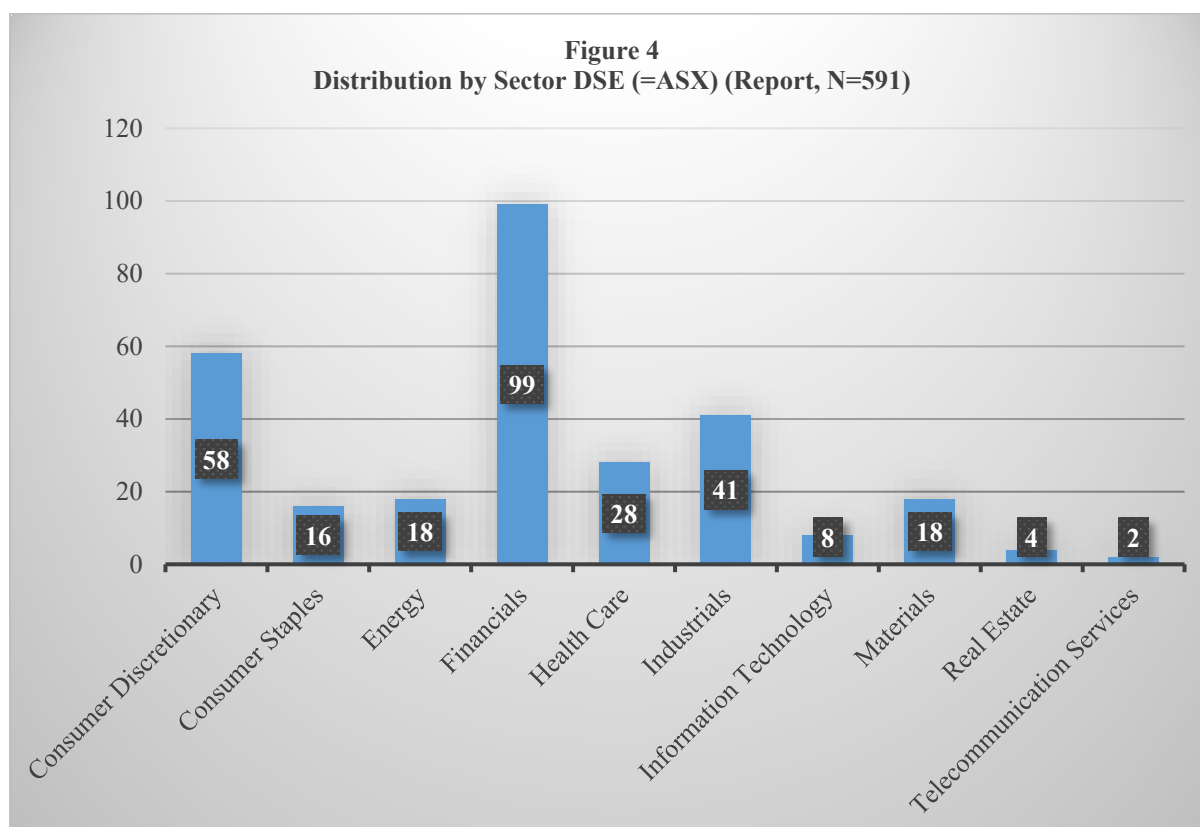


Figure 4 portrays the distribution of DSE companies based on this recategorization. The clear differences between the sector-level distributions of companies reflect the nature, resource focus and stages of the respective economies. Notably, the materials sector is the largest on the ASX and ASX200 but one of the smallest on the DSE, while the financial sector is by far the largest for the DSE (with 99 listed companies) or 34% compared to 14% for the ASX (even with a total 280 in this sector). As will be made clear, this variation is of some relevance when it comes to numbers, distribution, background, and participation of independent directors.



3. PRINCIPLES OF CORPORATE GOVERNANCE AND THE BOARD

This section provides context to the discussion with an introduction to the G20/2015 Principles of Corporate Governance (Principles) with particular emphasis on their relevance to the structure and workings of the company board. These Principles are the latest of three issued under the auspices of the OECD. Heavily influenced by the reports of the various committees into issues around governance dating back to the 1980s and 90s [(including the report from the Cadbury Committee (1992) and the Higgs Report (2003)], they are framed to respond to the importance of context, as stated in the preface: “it is essential that corporate governance rules and regulations are adapted to the reality in which they will be implemented” (G20/OECD, 2015, 7). As also made clear, the principles are not a single set of rules or directives but reflect objectives that may be effected through a range of strategies and policies. They are presented in 6 chapters with specific foci, these being, jurisdictional framework (laws, regulations, and rules), treatment of shareholders (rights, equality and remedies), markets and intermediaries (stock exchanges, institutional investors and the like), stakeholders (role and influence), disclosure (reporting and transparency) and boards of directors (membership, role and duties). It is this last issue that provides the focus for the discussion.

In the preamble (starting on p. 45) it is articulated that the board has 3 main functions: strategic guidance, monitoring of management and accountability to shareholders and the company. However, it also refers to a broader responsibility to stakeholders, this term including employees, creditors, customers, suppliers, and local communities. The relevant subprinciples are as follows:

The first refers to the duties, well established at common law, of directors, including due diligence, good faith, and the expectation they must act in the best interests of the company. The laws of many jurisdictions provide specifically or generally for such duties although the level, scope and application are not so uniformly recognised, understood, or applied. The second subprinciple charges boards to treat different shareholder groups “fairly”, while the third refers to the importance of ethics in board decisions and the consideration of stakeholder interests other than those of shareholders. The fourth is more detailed and covers a range of expected foci for boards, including strategic planning, performance objectives, director and senior management recruitment, financial management and disclosure; legal compliance, monitoring of governance policies and practices, supervision of the management function, and remuneration policies. The final subprinciple emphasises the importance of a board exercising independent judgment.

Some general and specific expectations that are increasingly the norm in many economies in terms of the characteristics of boards (and therefore the individual directors), can be drawn from the scope and tenor of these subprinciples. The first of these is that boards (and directors) must not allow their personal or other interests to conflict with their responsibilities to the company or make decisions or pursue policies for the wrong reasons. Indications of the importance of these imperatives can be found in the common formulation, either through statute or precedent, of directors’ duties. Arguably, directors need the expertise and experience to understand what these duties entail: understanding that comes from education and skill development.

Secondly, the exercise of “diligence” presupposes the board members devote an appropriate amount of time and attention to the company’s affairs. This is based on a premise that directors should not have such time and effort consumed by other activities, including those stemming from inordinate numbers of other board positions.

Thirdly, directors, including those sitting as nominees of shareholder blocs or single shareholder interests, must be mindful of the potential for their allegiance to those sectional interests to impact their responsibility to treat shareholders fairly, rather than to prefer one group over another. This in turn requires comprehension as to how their decisions may have such an unbalanced effect and to address that issue prior to the decision being made.

Fourthly, directors are charged with applying ethical considerations in their decisions. This is potentially fraught as ethics are shaped and influenced not only by the individual beliefs of directors but also by investor and stakeholder views and judgments. Even where the board ascribes to shareholder primacy, investment and engagement decisions of others may be affected (for example, Apple with Steve Jobs). Hence boards must be conscious of the broader context when formulating strategy for the company.

Fifthly, shareholders as a major source of capital are identified as having the right to expect accountability and value for money from the board. Hence, compensation packages for senior management and director fees are increasingly becoming issues that must be considered and

justified by the board. Sixthly, the traditionally somewhat “soft” treatment of directors by the courts for breach of duty has been replaced by an expectation that those occupying such roles should have the background, skills, and drive to maximise the chances of the company being successful and thus maximise shareholder value. Finally, and most importantly in the current discussion, is the matter of independence. Although this does not necessarily require the appointment of directors specifically identified as independent, there is a clear preference for that approach in “that [usually] a sufficient number of board members will need to be independent of management” (G20/OECD, 2015, p50).

4. AUSTRALIAN AND BANGLADESHI CONTEXTS

Given these principles, this section explores the governance regimes in place in the two jurisdictions of Australia and Bangladesh. This in turn provides the context for analysis and comparison of how these regimes shape or influence the governance structures for companies, most particularly in relation to independent directors.

The Australian corporate governance regime is framed by legislation applicable to all companies, regardless of size and status, and rules applicable to listed companies only. The Corporations Act 2001 (Cth) *inter alia*, charges directors (and in some instances other officers) with observing a range of general and specific duties (ss180-195), although it should be noted that the codification of general duties in the Act does not negate the common law on which those statutory duties are based. The Australian Securities and Investment Commission Act 2001 (Cth) creates and charges the Australian Securities and Investment Commission (ASIC) as subordinate legislator and investigator/enforcement body for the legislative provisions affecting the capital market (including licensing intermediaries such as ASX) and corporates more generally.

Of direct application to listed entities only, the ASX Corporate Governance Principles and Recommendations 2019 (CGP) [(ASX Corporate Governance Council (ASXCGC)] reflect the G20/OECD (2015) entity-level governance foci with its 8 principles, these covering such aspects as management/oversight, organisational culture, periodic and continuous disclosure, board remuneration and management of risk. It is important to note that entities on the ASX are not required to comply with these principles. However, if they do not, they are required to disclose why not (a so-called “comply or explain” approach). The intention here is that participants in the capital market (and indirectly other markets) can then make judgments as to the extent they consider appropriate governance policies are in place. It is also important that the CGC is a creation of the ASX itself and comprises various shareholder, business, and stakeholder groups including the Australian Institute of Company Directors (AICD), CPA Australia, Business Council of Australia and some 15 others.

The Bangladesh regime is also a mixture of legislation and rules, although somewhat closer to the legislative end of the spectrum. First, the Companies Act 1994 makes no reference to directors’ general duties (which remain shaped by the common law tradition) although Part 1V does reference specific ones that arise in specific circumstances. Secondly, like ASIC, the Bangladesh Securities and Exchange Commission (BSEC) is a statutory body with commissioners appointed by the Government (pursuant to the Securities and Exchange Commission Act 1993) and with subordinate legislative powers (via the issuance of notifications), including the licensing of the exchanges and enforcement of its directives on companies listed on those exchanges. However, there are important points of difference between the two regimes. Unlike the CGP, the Bangladesh Corporate Governance Code (CGC) (2018, BSEC) is created and administered by the BSEC, not the DSE and/or CSE. Further, the

Code is prescriptive in that it lays down a mandatory set of conditions for listed companies. Like the (discretionary) ASX principles, these cover management/oversight, disclosure, remuneration and management of risk but not corporate culture. Every affected company is required to report compliance (or not) in its Annual Report against all provisions with complete compliance required by the end of 2018 (6 months from the publishing of the Code).

In both the Australian CGP and the Bangladesh CGC, there are certain principles of particular and direct relevance to the board, its makeup, functions, and effectiveness. In the CGP, those include 1 (laying solid foundations for management and oversight) and 2 (structuring the board to be effective and add value). In 1, the most pertinent for individual appointees is 1.2: that prior to appointment/reappointment the “entity” (including a company) should undertake appropriate checks on all directors up for election or re-election and disclose that information to security holders (normally shareholders). These checks should cover such individuals’ experience, background character, any relationships that may affect their capacity to act as a director in this case, whether they are deemed independent and why, and other commitments that might impact their time and attention. In the case of the board as an entity, the most relevant is 1.5 with its focus on the achievement of entity-wide diversity and, in the case of those on the ASX300 (that by definition includes all those on the ASX200), at least 30% gender-mix. The CGC by comparison, dictates an overarching expectation for all directors: that he or she “shall be a knowledgeable individual with integrity who is able to ensure compliance with financial laws, regulatory requirements and corporate laws and can make meaningful contribution to the business”. Those categories of individual deemed capable of fulfilling this expectation are those with experience, either current or past, of at least 10 years as one or more of the following: business leader or founder of a large unlisted company, corporate leader in a listed or large unlisted company, a high government or other public sector official, a university teacher with relevant qualifications or a practising professional in a relevant business field.

In both countries, companies in particular sectors (principally financial or analogous industries) face more prescription and/or supervision of their governance. In Australia, this comes via the Australian Prudential Regulation Authority (APRA) established under the Australian Prudential Authority Act 1998 (Cth) with up to 5 members appointed by the Governor General (as vice-regal representative). APRA has subordinate legislative, investigative/supervisory and enforcement powers in relation to the financial sector, a broad list including banks, insurance and/or finance companies and investment bodies. The crucial piece of subordinate legislation promulgated by APRA in terms of board membership of affected entities is the Banking, Insurance, Life Insurance and Health Insurance (Prudential Standard) Determination No 2 (2018) that requires that such institutions “maintain a Fit and Proper Policy that meets the requirements of this Prudential Standard” (CPS 520).

Similarly, for Bangladeshi banks (although not for insurers or other non-bank financial institutions), the legal requirements are considerably more onerous and even more prescriptive than for other industry sectors. Under s45 of the Banking Company Act 1991 (as amended), the Bangladesh Bank (the central bank) has the power to direct one or all banking companies as to the size and functioning of the board or any other matters to ensure proper management. Further, pursuant to an amendment to s15 in 2013, banks cannot have more than 20 directors (with no minimum specified) and must have 2 independent directors if the total board has fewer than 20, or 3 if 20 in total. Also pursuant to its director-approval and other governance powers under s1, the Bangladesh Bank requires that any potential appointee to the board satisfies a “fit and proper” test (Annex V) in addition to complying with the specifications in the Code

(Bangladesh Bank, n.d.). Evidence to be provided in support of any nominee's application includes a letter of approval for that individual issued by the BSEC.

Although these legislative prescriptions are applicable only to banks, the BSEC in April 2020 indicated its intention to control those able to be appointed as independent directors for all listed companies via a requirement that such must be approved for inclusion on a list compiled by the Commission (Mufazzal, 2020). A database has subsequently been created for companies to enter details of their current independent directors that are then reviewed by the BSEC (BSEC, n.d.).

The CGP 2 is specific to the structure and operation of the board. It addresses issues of size, (that a board should be large enough to address the needs of the business but not be unwieldy) renewal (to ensure effective strategy in changing times), skills and expertise (to ensure appropriate representation of those required as well as ensuring training and induction of new directors) and makeup (that a majority should be independent to ensure clear division between management and leadership and appropriate accountability). However, the discretion remains with the board to make decisions as to how it can best deliver on these indicators, including identifying and mapping skills needed to maximise its own effectiveness. Some guidance is provided on the specific matter of independence – where red (or at least pink) flags include previous employment by the entity, current incentive-based remuneration from it, a recent or current business relationship, employment or involvement in a substantial holder in the entity, close ties with any of the above or board tenure of such duration as to compromise independence (box 2.3). However, again it is up to the entity to decide whether a director is categorised as independent with these factors merely guidance on what are relevant factors in that decision. There are also no specific indicators or requirements to limit tenure for independents or any other directors or as to maximum numbers of concurrent directorships for any individual. However, the commentary to Recommendation 2.1 refers to a director who has been offered a material role in another organisation with significant time commitment and suggests that such a director “should” inform the Chairs of the Board and Nomination Committee prior to accepting that other role.

The Bangladesh Code is far more prescriptive than is the Australian equivalent. First, it states that a board “shall” be between 5 and 20 [s1(1)], with at least 1/5 (20%) being independent [s1(2)(a)]. Secondly, it sets a limit to tenure for any one director as two consecutive terms of 3 years, 6 in total [s(2)(e)]. It also stipulates criteria to be applied in determining whether a candidate can be considered independent or not, these being level of shareholdings, business and personal relationships with sponsor shareholders, recent previous or current employment, business or financial arrangements with the company, membership etc of a stock exchange, good character and membership as an independent on no more than 5 boards concurrently [s2(b)(i-x)]. It also specifies the qualifications independents are to have (s3).

Finally, there is the matter of board committees. The ASX principles recommend that the nomination and audit committees have at least 3 members, a majority and the chair being independent. Again, this is far less prescriptive than is the case in Bangladesh where the CGC requires that the Audit and Nomination and Remuneration Committees “shall” be chaired by an independent director [(ss5(3) and 6(2)]. Further, banks are required to have two independent directors on the Audit committee [Bank Company Act 1991, s5(2)] and all members, including the independent chair, must be “financially literate”, a qualification also defined in the Bangladesh Corporate Governance Code [5(2)(c)]. It is assumed that a person with accounting or finance qualifications and 10 years' experience in one of those fields will be so. In light of

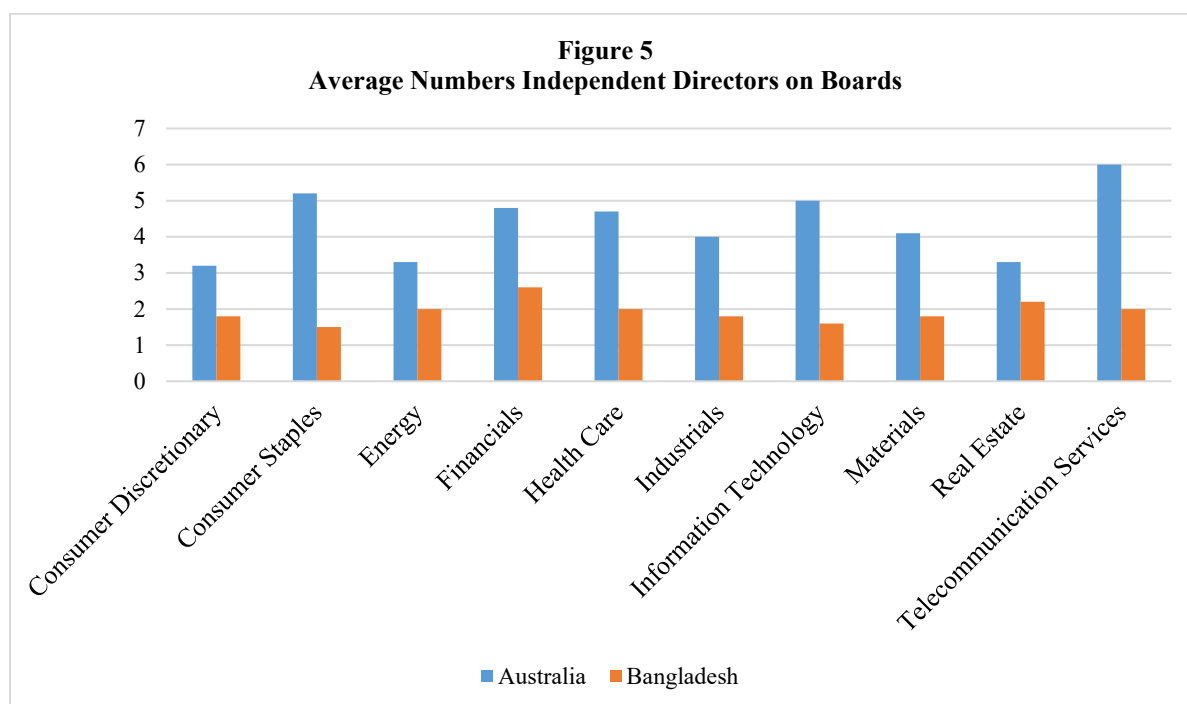
the above and using it to frame the discussion, the focus now turns to the analysis of ID on boards of listees on the ASX200 and DSE.

5. RESULTS

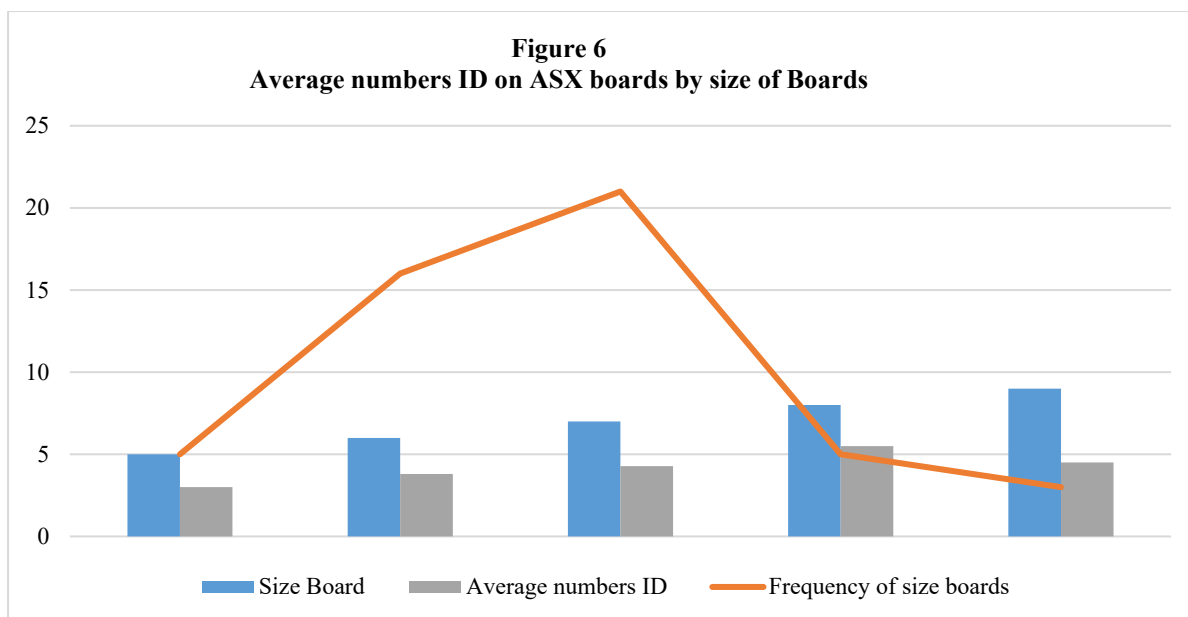
As identified above, this analysis is largely around the role, characteristics, and experience of independent directors. Consequently, the focus in this section is the proportions of ID on boards of listed companies in the two countries and on certain aspects of that membership – remuneration, proportions, gender mix, length of tenure, age and audit committee involvement.

5.1. Numbers of Independent Directors

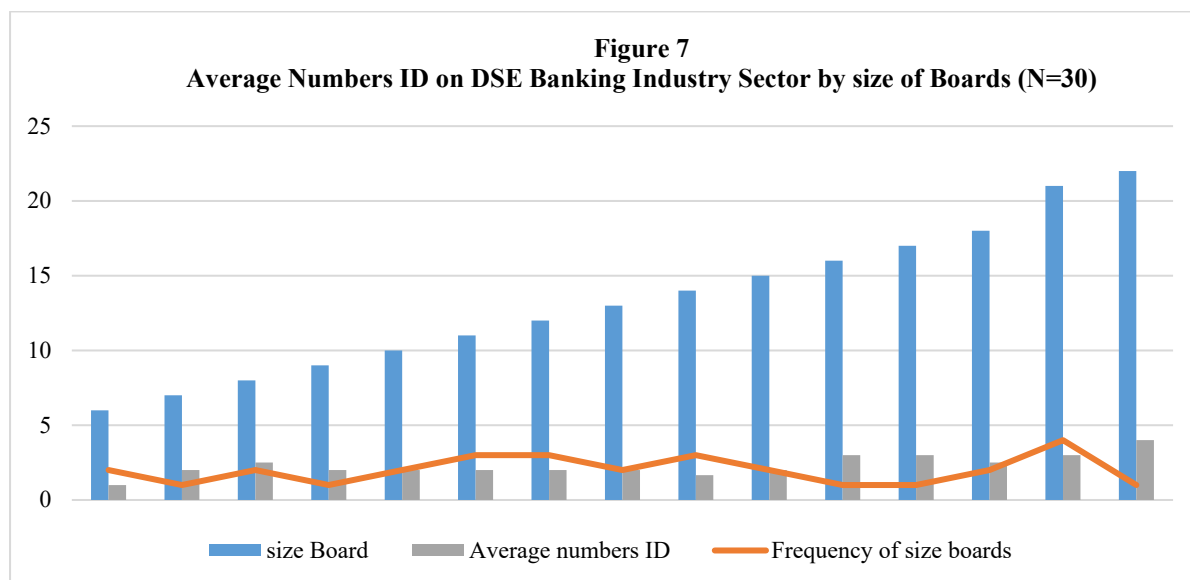
Average numbers of ID on boards/sector are provided in figure 5. It should be noted that to make such a comparison clearer, and as explained above, companies on the DSE have been allocated to sectors represented on the ASX. For every sector, ASX boards have much higher proportions of ID on, generally speaking, much smaller boards (most being 6-7 members) (see figure 6). This remains the case even for the banking sector and despite the fact the Bangladesh legislation (Bank Company Act 1991) is the most prescriptive (see figure 7 for distribution). For the companies on the DSE, the size of boards in every sector varies widely, with the average blurring somewhat the extent of that variation and consequently of little value. For example, in the banking sector, although the average board has 13.2 members, the numbers of directors (excluding the CEO and Company Secretary that in some cases are listed in the Annual Report or information on the company website as directors) range from 6 (with 2/30 companies of this size) up to 22 (with one company falling into this category).

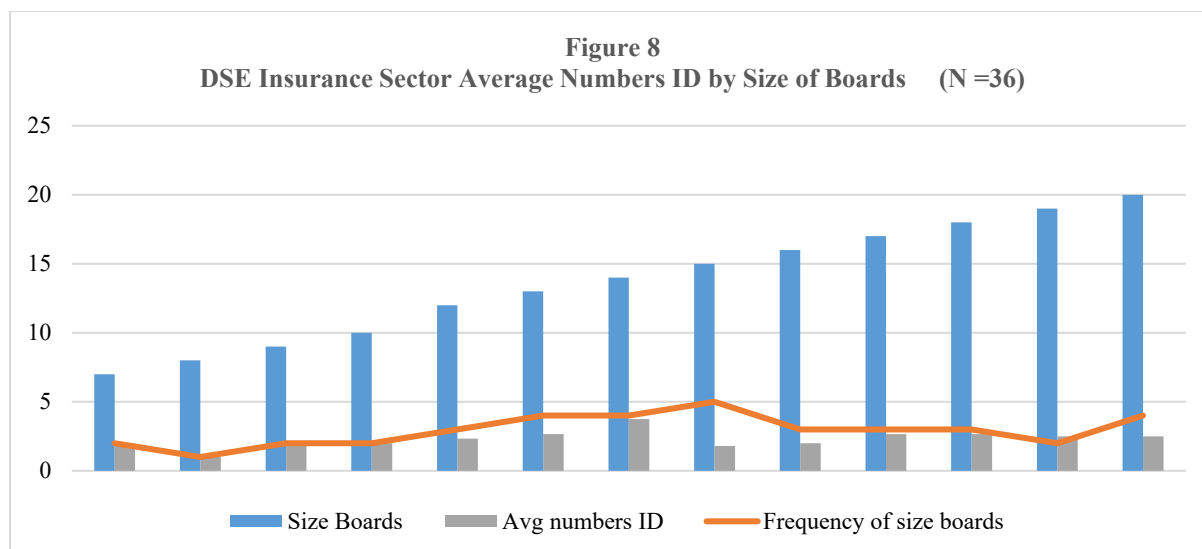


In a large majority of those in this sector, the number of ID as of June 2020 fall below the minimum 20% prescribed by the CGC, with only those companies having 10 or fewer on the board (8 companies in total) satisfying the requirement. This is despite the deadline of December 2018 for full compliance with the Code and its minimum proportions being well past.



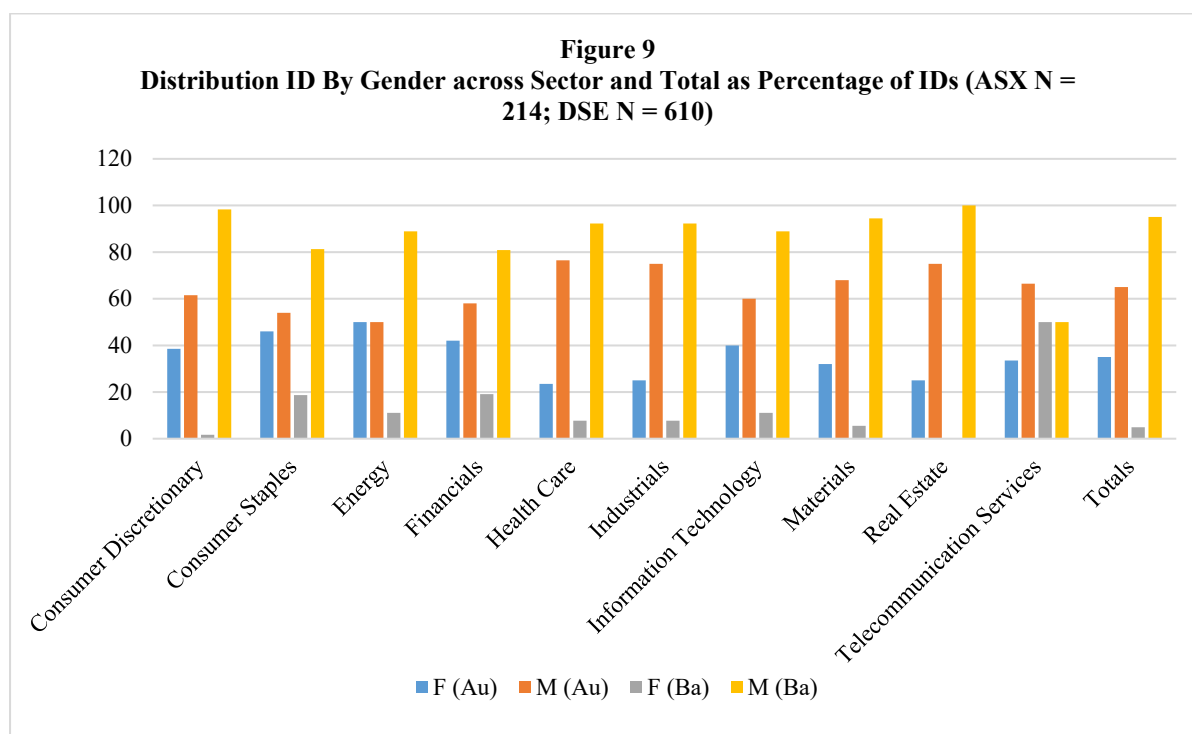
The overall percentage in banking alone of directors who are identified as independent is 17.5% and accords generally with the findings of the Report that banking is one of the three sectors (along with insurance and telecommunications) with the lowest proportions. In the case of the insurance industry, the average percentage of ID on boards is about 15%. As a check, figure 8 portrays the June 2020 information on the distribution and numbers of ID on insurance company boards (for the 36 listees where the information is available). It is of note that the sizes of board where 20% or more are independent are mostly but not always the smaller ones - ones with 7, 9, or 10 members.





5.2. Gender

One of the issues that often comes up in discussion and statistics are the numbers (and proportions) of women directors, including independents. Figure 9 portrays the overall mix and sector-level distribution of independent directors by gender for companies on the two exchanges. Both overall and across sectors most independent directors are male. According to the Report, there are only 30 women ID in companies on the DSE (out of a total of 610), compared to those in the Australian ASX sample companies (214 ID of whom 75 are women). However, only for two sectors on the ASX is there an even mix, and in both cases the number of companies in the sample are limited so it is likely that the distribution is not significant. Apart from those (energy and telecommunications) the narrowest gaps in the case of the ASX200 are in the Consumer Staples and Financials sectors and the widest Health Care, Industrials and Materials. This is also generally the case for Bangladesh with one exception. There is no women ID on the boards of real estate companies.



5.3. Age

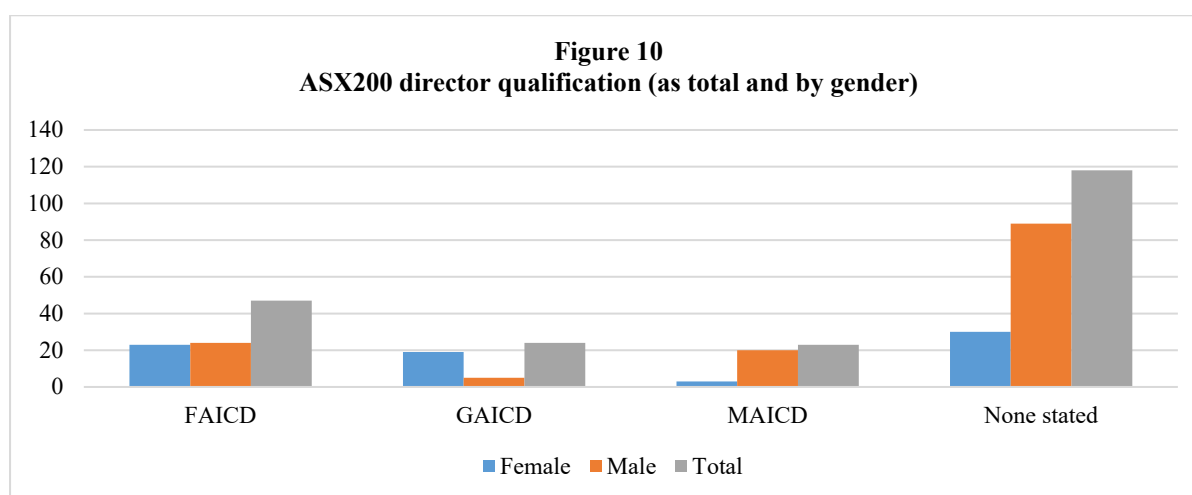
The Report identifies 96% (of the 266 independent directors of companies listed on the DSE for whom the data is available) as being 40 or over with 54% between 45-65 and 42% above 65, with the average being 64. The equivalent for the ASX sample (out of the 36 directors for whom the information is available) is 61. Even with such incomplete data, there is little difference between the two countries in terms of the average age of those occupying these positions. This high average age suggests that often those accepting positions as independents in Bangladesh companies are doing so because they are looking for an occupation, to maintain networks or for status. This tentative conclusion is supported by other findings (as discussed elsewhere in this paper) and informed discussion. In Australia, similar arguments could be made despite a somewhat more open system of recruitment. However, age is not the only factor of importance in terms of the profile of ID. The next section focuses on qualifications and expertise. There is some cross-over, but the term expertise can be seen as embracing aspects other than qualifications, including experience. Hence it is discussed separately.

5.4. Qualifications and Expertise of Independent Directors

Education

In Australia, as well as the recommendation (2.1) attached to principle 2, that one of the responsibilities of the nomination committee should be to ensure appropriate induction and continuing professional development for directors, broader education is offered through the Australian Institute of Company Directors (AICD). It is interesting to note that while there is no requirement for such, and although not all are identified in company information (or on personal LinkedIn accounts where available) as having this, nearly 50% of independents on boards of the sample companies hold qualifications from or membership of the AICD (see figure 10). It is likely that the programs offered by the AICD will be a useful proxy for company-specific training at least in relation to governance skills and the function/responsibilities of directors.

There is no comparable organisation in Bangladesh. Instead, the education and training offered to directors appears more likely to come via academic qualifications or in some cases, courses and programmes offered by various organisations. The Bangladesh Enterprise Institute (BEI) is one that offers such courses. In light of this, it is interesting that only 15% of the 610 ID of companies on the DSE (so a total of 91) are identified in the Report as having professional accounting qualifications with an additional 1% Chartered Secretaries.



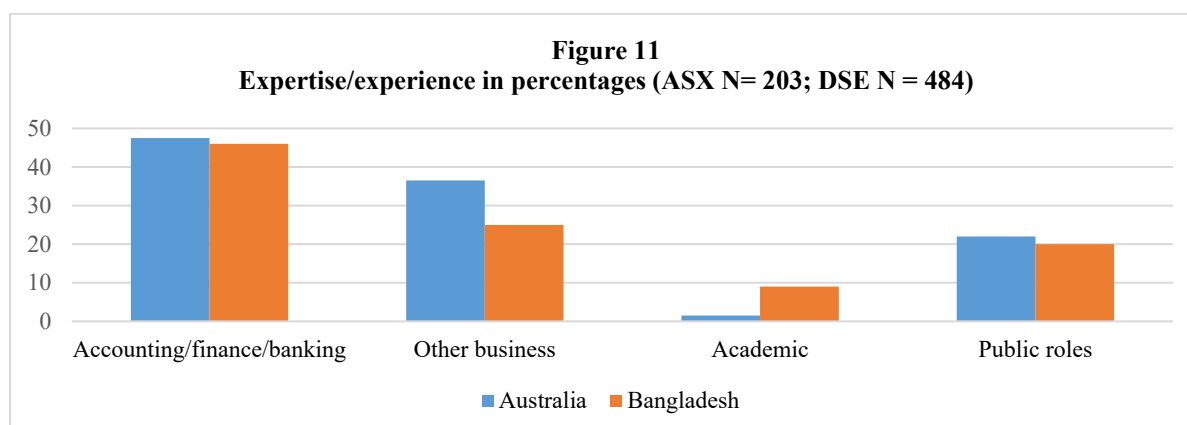
More generally, scrutiny of the available biographies of independent directors of companies on the DSE (with the exclusion of those serving on the boards of foreign companies and those for whom the information was incomplete or inaccessible (leaving a total of 220), reveals that most (190) are university graduates (with 62 having qualifications in commerce/accounting, 27 economics or finance and 47 other business-related degrees including LLB or MBA. Anecdotal and incomplete evidence indicates that some of these graduates have undertaken management-related training at universities and training institutions in other countries (such as Cranbourne in the UK). However, the information provided in these profiles tends to be too general to draw any specific conclusions as to the frequency this happens, and whether it is for preparation for directorship roles or for some other reason.

This raises the question of what expertise/experience is sought by the companies of the two countries and whether there is there a marked difference between them.

Expertise

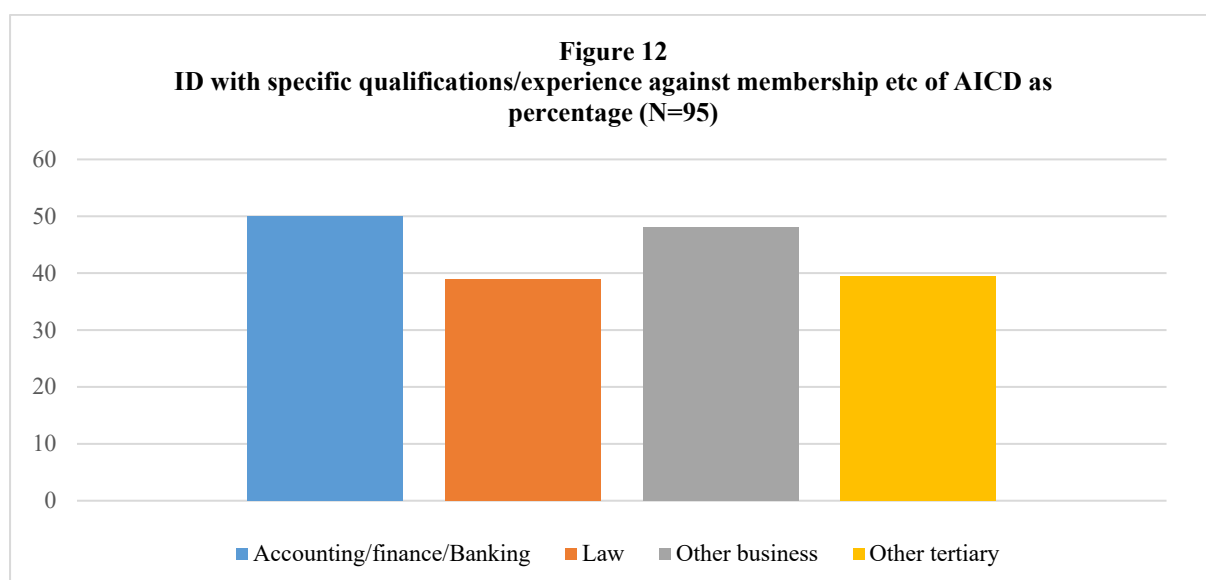
It is reported (the Report) that for the companies on the DSE, 46% of IDs have experience in accounting, banking and insurance, 25% other industry experience, 20% in the public sector and 9% academic. Although these percentages vary somewhat across sectors (most notably in pharmaceutical, ceramics, and travel and leisure) IDs are most likely to have the first. This is most understandable in the cases of banking, financial institutions, and insurance (where the percentages are 47%, 50% and 57% respectively), a function not only of the alignment of such experience with the focus of these companies, but also probably because banking is the sector where the BSEC has long had the statutory authority and responsibility to approve potential applicants for such positions. The CGC further stipulates that an ID “should be a Business Leader/Corporate Leader/Bureaucrat/University Teacher with Economics or Business Studies or Law Background/Professionals like Chartered Accountants, Cost and Management Accountants, Chartered Secretaries”. On one hand this stipulation could be seen as a logical reaction to concerns over the low level of financial literacy in Bangladesh (with individuals satisfying these requirements as more likely to have a level of such literacy); on the other that some aspects are of limited value when it comes to complexity of governance.

The Australian experience is somewhat different. There are not the mandatory requirements around business experience, either by law or in the CGP, although it is of interest in this context to note that Brooks et al. (2009) reported that out of their sample of 78, nearly 94% considered their business/industry background was the best preparation for their role as independent directors. Overall, and despite this relatively low level of prescription, the percentages of those with relevant expertise/experience are high (and compared with the position in DSE companies, see figure 11).



The only category where the percentage is markedly lower for Australia is in the case of academics: only 1.5% of Independents on the sample company boards are identified as having such a background, compared to 9% in Bangladesh, while the category most equivalent is accounting/finance.

It seems reasonably self-explanatory (and reflected in the CGC cl 3 on qualifications) that financial literacy would be a must-have for companies, so why these differences? First is the availability of a comprehensive database of those with the in-demand qualifications and/or experience. In the ASX sample, 50% (or 48) of those with a professional accounting/finance and/or banking background also have graduated from, are members of, or are fellows of the AICD (see figure 12). Companies looking to identify and recruit independent directors may access that database, thereby reducing search costs and with some assurance that those on that database have some understanding of expectations, thereby reducing training costs and risk. There are relatively lower membership or other links reported for those with purely legal backgrounds or other tertiary qualifications, interesting given the increasing legal compliance and risk management obligations affecting directors.



In Bangladesh however, as mentioned previously, there is no equivalent to the AICD. Consequently, companies must often look to proxy sources of information to identify and recruit. While personal contacts are clearly valued (with over 50% of the respondents stating that they had been recruited to the board by a person they knew), they may not be the most efficient means of identifying the best recruit. Potential IDs may be valued for their insights and to provide expertise currently lacking (as identified by one ID respondent) but without personal contacts or relationships between them and the chair, such individuals may be hard to locate. Thus, University Business Schools are likely seen as a convenient, low search cost and low risk source of potential recruits. This assumption is supported by respondents surveyed for this paper.

For example, one non-academic ID explained that *‘university academics are quite visible through their involvement in various development and government programs, and their personal networks with the government and corporates. Therefore, many companies, particularly where the government has some form of influence, nominate university academics as independent directors. Some family dominated companies also nominate university*

academics (preferably from their family members or close contacts) because they are perceived to have high moral standards, and hence, they are respected members of Bangladeshi society. Moreover, the BSEC is inclined to entrust governance to university academics.'

Another difference lies in the different career paths of independent directors. Biographies of individual ID indicate that many of those on boards of the Australian sample companies who have accounting or similar qualifications and experience followed one of two paths – either as a chartered accountant in one of the big firms (such as PwC) gathering extensive experience in this role, then moving into governance of companies (often as a professional independent director), or as a company accountant, moving up the corporate tree and thence into governance. More generally, some indication of how ID see their career progression as equipping them with the necessary skills and experience to contribute to the board, Brooks et al. (2009) report that most of their respondents considered that as well as their industry experience (discussed earlier), either their experience as an executive (61%) and/or their experience on other boards (91%) as most important.

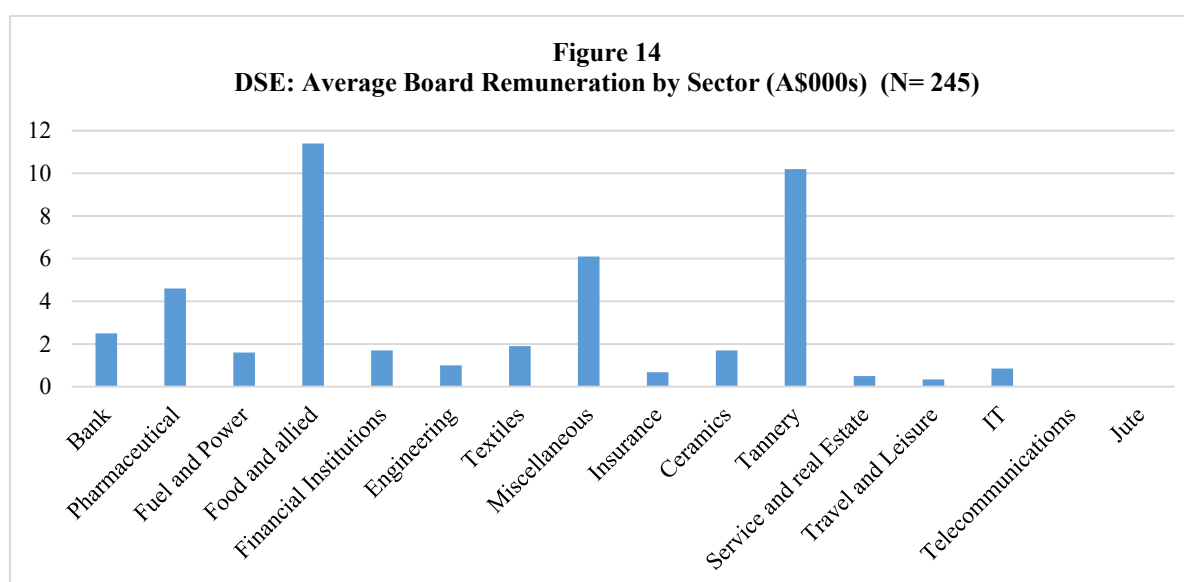
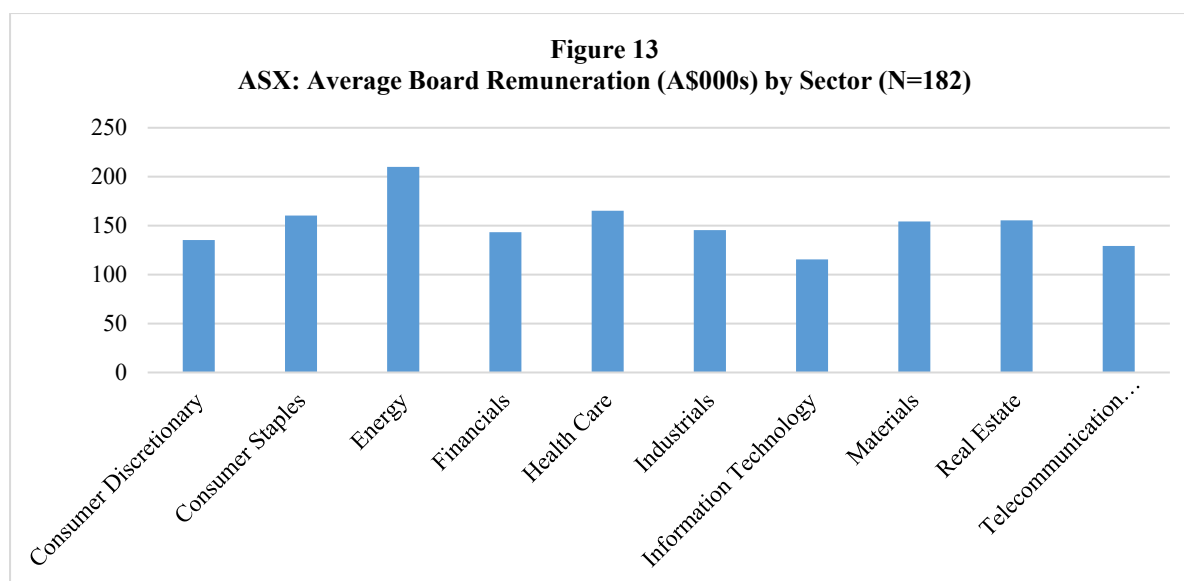
In Bangladesh, the high proportion of family-owned/established and individual shareholder-dominated companies (Khan and Siddiqua, 2015) may impact the selection and career-paths of independent directors. A characteristic of family and individual controlled companies tends to be a reluctance to admit outside influence. Therefore, it is likely that companies will look for candidates who are in some way connected with the controller(s), whether it be business associates, friends, or relatives.

Remuneration Levels

Discussion of this was considered important as appropriate levels of payment may be considered indicators of value and prestige as well as providing motivation for ID to both accept that role and be diligent in carrying it out (Treadwell, 2006). Indicatively, the CGP principle 8 states that 'a listed entity should pay director remuneration sufficient to attract and retain high quality directors' (ASX (2019, 29).

In Bangladesh, honoraria for directors are stated in the Report, as averaging US\$1759/a (from data on 245 directors) (approximately A\$2584.00/a). *Prima facie*, this compares poorly to the average A\$148,770 earned by the Australian independent directors with the sample companies. However, in Bangladesh, the average annual income for 2019 was US\$1940 (or A\$2771) (WorldData.Info, n.d.) (so the remuneration for independent directors is 1.07 times annual average earnings compared to Australia where the rate is 1.72.

Analysis per sector provides more detail of variation in remuneration levels. Unfortunately, as director/company level data for Bangladeshi companies is not available, it is not possible to provide a direct comparison with those from the ASX200 sample. Nevertheless, some useful preliminary comparisons can be drawn through a scrutiny of average earnings/sector (see figures 13 and 14). It should be noted that the figures for Bangladesh range from June 2016-June 2018 (depending on the year of its Annual Report), whereas the Australian figures are taken from Annual Reports between June 2018 to June 2019.



Not only are the levels for every sector lower in Bangladesh but the sectors where the average is lowest are somewhat surprising. Three stand out, these being banking, financial institutions and insurance. Given that banking is the sector where the BSEC has long had responsibility to approve appointments, and financial and insurance sectors have similar characteristics to banking, it would be reasonable to think that levels of financial expertise/experience would be an important factor in determining not only appointment but also remuneration. Further, given the education profile of the independents appointed to the boards in this sector, the remuneration profile is increasingly questionable. For the 419 independent directors for whom qualification data is reported and analysed in the Report, the percentages of those with Bachelors, Masters and PhD in banking are 31%, 58% and 11% respectively, for the financial sector 22% and 78% (with no PhDs) and for insurance, 34, 51 and 15, respectively. There is no breakdown of sectors by numbers or percentages of independent directors with/without tertiary qualifications, so it is not possible to draw any conclusions on a sector level as to the differences (if any) in remuneration levels based on qualifications.

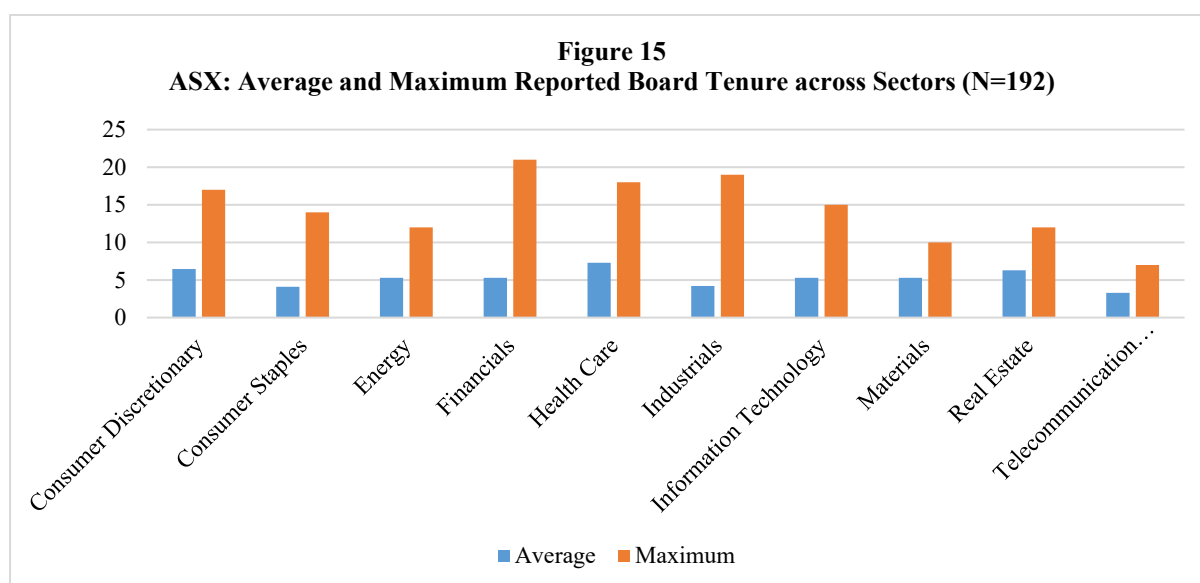
Another aspect of the profile of ID is tenure, the length of time served on the board of the relevant company. This is the focus of the next section.

Tenure

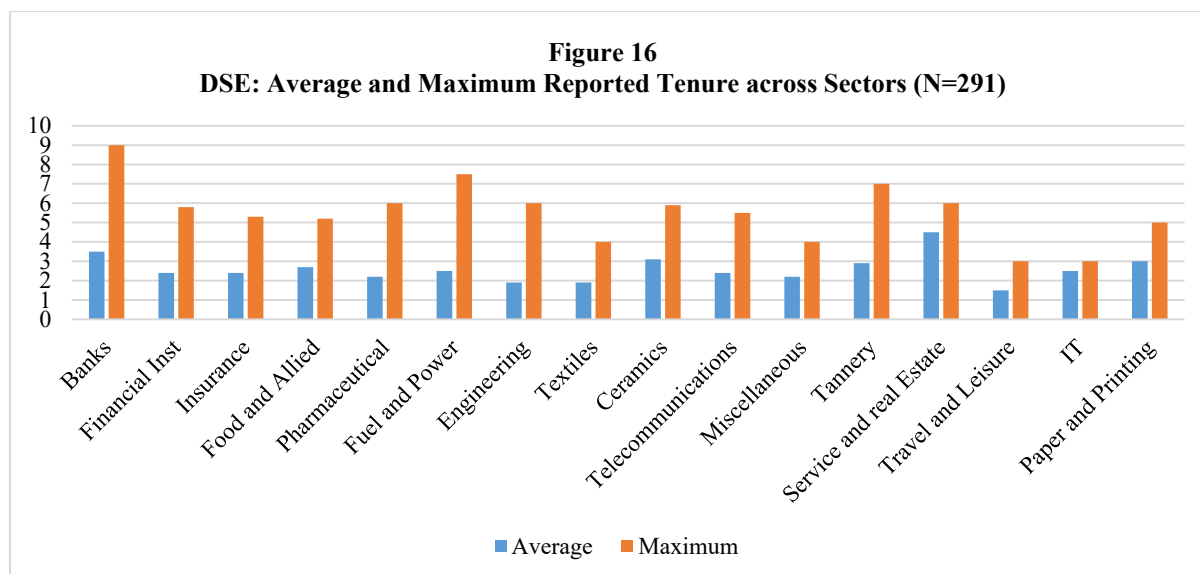
Research (for example, Sharma and Iselin, 2012; Nili, 2016) suggests that too long a tenure has the potential to compromise independence too short and the director does not develop the necessary familiarity with the company and its strategic needs. This also raises the *danger of capture* – where the independent relies on management advice and “guidance”, as well as that of fellow directors, rather than thinking independently.

For DSE listees, it is stated in the Report that the average tenure is 2.4 years with a maximum in the banking sector of 9 years. This exceeds the maximum set by the Code (which is 6 years). Curiously, the banking sector was excluded from the data analysed in the Report, requiring the accessing of publicly available data for each bank (30 in total) to identify when each ID on the respective boards in 2018 was originally appointed. The sector for which the maximum is closest to the average is IT (at 2.5 and 3 years respectively).

In the ASX200 sample companies, the average tenure for the 192 directors for whom this information is available, is 5.5 years with a maximum of 21 years - this being one director of one company in the financial sector. Sector-level breakdowns are provided in figures 15 and 16.

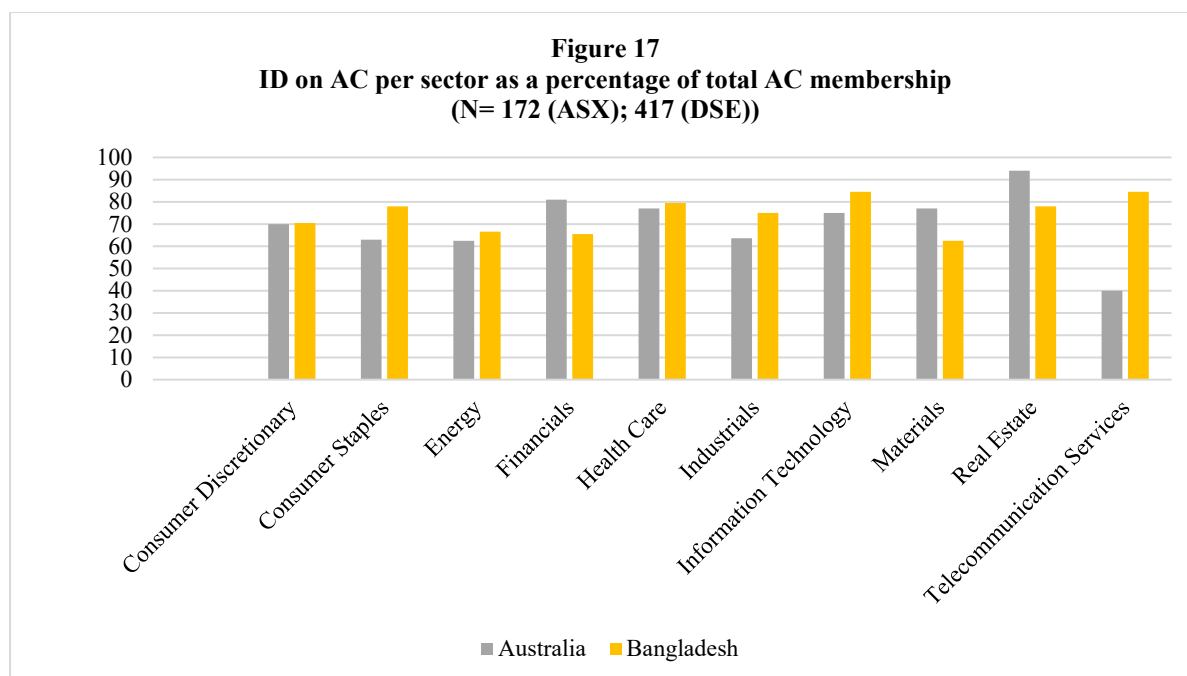


It is perhaps of interest that the longest tenure in both countries tends to be for directors in the financial and related sectors. This suggests that there is an alignment between experience (in Bangladesh often in that same sector) and/or financial literacy (as reflected in accounting or related qualifications), and skills sought from appointees. Further indication of the demand for financial expertise and/or experience can be gained from the membership of ID of the audit committee, discussed below in the final section of the analysis.



5.5. Independent Directors and the Audit Committee

According to the CGP Recommendation 4.1, a majority membership plus chair should be independent, with the CGC 5(2)(b) stating that “at least one” of a minimum three-person Audit Committee “shall” be independent. This committee has responsibility to monitor financial recording and reporting, financial risk management and ensure compliance with relevant accounting standards. As indicated in figure 17, the average percentage of ID on Audit committees is well over the minimum 33% for companies in all sectors and over 80% in two, these being financial and real estate. In the case of the DSE, it is stated in the Report that 417 ID serve on the Audit Committees of 280 companies with at least one on every such committee.



As sector-level numbers were provided, it was possible to align the details with those of sample companies on the ASX200 (as shown in figure 16). It is interesting to note that the percentages

of such directors on DSE listed company Audit Committees tends to be higher than for ASX200 companies in all but three sectors (financial, materials and real estate).

6. DISCUSSION AND CONCLUSIONS

The information and findings as reported and discussed above reveal some important issues for Bangladesh companies, particular in comparison to those in Australia. Generally, the average age of ID in both countries tends to be high, perhaps due to age being seen as a proxy indicator of experience but arguably encouraging traditional thinking and reluctance to take risks. Further is the persistence of male-dominated boards, most notably in Bangladesh but also in some industrial sectors of the ASX200, and this latter despite on-going calls for, and ASX policy around, listees appointing women to boards (this being a target of 30% in 2018 [(Sprague and Mather, 2018), increasing to 40% in 2020 (ASX, 2020)]. Indicative of the limited success of even the lower of these targets, the results of a survey of companies on the ASX200 (Butler, 2019), released in October 2019, showed a fall in the proportion of women board members from 29.7% to 29.5%, with seven listees having none. The far lower numbers and proportions of women on Bangladesh boards clearly demonstrates that there is a long way to go to gender equality in this context.

In both national contexts, business qualifications, acumen and experience are sought-after characteristics. Some evidence of this comes from membership of ID on audit committees, often well in excess of legal or listing rules or requirements. Such appointments suggest that ID may often be seen as the source of financial expertise, filling gaps left by the lack of such skills on the part of other directors on the Committee. If this is true for Australia, a first-world country with high levels of education, and ranking 9th in the world for financial literacy (Klapper, et al., 2015), it is even more likely the case for Bangladesh, where only 4% of the 87 million workforce undertake tertiary or post-secondary education (World Bank, 2016), and where low levels of financial literacy spurred the BSEC to establish, a ‘financial literacy programme’ (Rahman, 2017) with a view to achieving a ‘stable, transparent and accountable capital market’. However, membership does not necessarily mean that expertise is valued by the Audit committee or board. One independent director shared his experience of being removed from the Audit Committee of a bank after he identified false reporting of the company affairs.

More generally, while qualifications are relatively easy to identify, acumen and experience accumulates with tenure on one or more boards and/or from business and/or industry experience at various levels and in a range of roles. In the case of Bangladesh, it is arguable that a tradition of family companies, reliance on familial and business networks has served to limit the extent to which an open market in ID has been able to develop, such as has been possible in Australia with various organisations offering their services in this regard, including Spencer Stuart (n.d.), Directors Australia (2021) and Blue Steps (n.d.), as well as the AICD (2020). Although that does not necessarily mean that all ID are recruited via such an open market.

Even in the case of an oft-accessed market for Bangladeshi companies (Academia), the value of ID may be unclear. Feedback from respondents as to likely motivations for academics to accept these roles indicates that although some may do so due to their belief they can contribute positively, others, particularly younger academics, may do so for reasons of prestige, remuneration or to develop and expand contacts and networks. This may result in limited effectiveness of their participation in governance of the company.

Remuneration levels may also play a part in attracting and retaining well-qualified and experienced people. While other factors such as relationships, networks and prestige also play a part, the work and commitment must also be recognised and rewarded. Australian directors are on average well remunerated in absolute and relative terms: Bangladeshi ones, not so much. With the relatively small proportion of university qualified individuals, it is at least arguable that for Bangladesh governance to develop and improve, remuneration levels must increase to recognise contribution and the scarcity of talent.

Most important perhaps is the question of whether definition-based independence translates to independence of thought and decision-making. The ASX CGC guidelines, embraces, at least *prima facie*, two aspects of the concept: the position, relationship or association (status-based independence), and the exercise of independent judgment (substantive independence). Specifically, a person would be deemed independent if they are ‘free of any interest, position, association or relationship that might influence...in a material respect his or her capacity to bring an independent judgment to bear...and to act in the best interests of the entity and its security holders generally’ (ASX CGC, 2019, 35). Recommendation 2.3 (principle 2) identifies factors that can be used to determine whether or not a director should be considered independent (although not necessarily leading to automatic disqualification where he or she fails to satisfy all or any). These criteria are, specifically, recent (the last 3 years) or present employment by the company or any subsidiary; recent or present partner, director or senior employee of professional services provider; a present or recent material business arrangement with the company or subsidiary; a contractual arrangement with the company other than as a director; or close family ties with any class of person identified above. In addition, service on that particular board for a period exceeding nine years, or a shareholding in the company exceeding 5% of voting stock, would be indicative of a lack of such independence (ASX CGC, 2019, p14). However, the second aspect is assumed rather than encapsulated and, as such, is arguably unsatisfactorily addressed in the guidelines given that there is little to no indication as to how any exercise of independent judgment can be assessed or even scrutinised (Le Mire and Gilligan, 2013).

For Bangladesh, independence is determined by status and, as Uddin and Choudhury (2008) record, a manager from an investment company maintained that local companies appoint people as independent directors ‘who are either a friend or someone who will always act as per the directive of the sponsors. They are independent in name only’ (2008,1035). Such a situation was confirmed by several respondents, raising the concern that acceptance by individuals of the role as ID for reasons of existing or past relationships may impact on their ability or willingness to act independently. Limited exercises of independence are variously attributed to a desire to maintain connections, ignorance of the industry or the company’s affairs or a reluctance to challenge the wishes or objectives of their supporter(s).

IDs may struggle to act independently and perform their expected roles when chosen from the personal contacts of Chairman/sponsor directors, because ‘*they are expected to listen to sponsor/owner directors and serve their interest, rather than the interest of general shareholders*’, (one respondent). This practice is commonly observed in government-owned companies (banking and petroleum companies) where the government bureaucrats serve as sponsor directors. Their silence certainly encourages unethical practices by sponsor directors, often leading to weaker performance/failure of companies. One independent director in a largely government-owned banking company went further in saying ‘*whilst we often feel handicapped or puzzled by observing actions of the board that are immoral or risky, we stay*

silent but do not intend to leave the company as our affiliation to the company enhances our image and prestige in the society’.

Concern with this state of affairs was the theme of an address by the current BSEC chairman (in a webinar, (beg 2hrs.09 – all in Bangla), entitled ‘Towards a Sustainable Capital Market: The Drivers of Growth’, where he quoted the evidence from weak and loss-making companies and argued that independent directors on those boards *‘did nothing but take fees. They did not even inform the BSEC about their lack of good governance and consistent loss-making performance’.* (The Business Standard, 12 September 2020)

It appears the corporate cultures and structures of advanced countries, remain largely absent even after the family-owned companies have transformed into corporate entities. The founders believe that *‘it is not the right of other people who didn’t form the business originally (such as a small shareholder or someone representing them) to have a say in company’s affairs’* – one respondent explained. Independent directors may be considered interlopers, with no role to play and no right to participate in governance of an entity that belongs to the majority shareholders (a view expressed by several interviewees).

A former regulator and an independent director of several companies elaborated on this issue: *‘although the first-generation entrepreneurs are being generally replaced at a faster rate by highly educated (most often from advanced countries) directors and managers, however, the adoption of advance country’s style of management, corporate culture and corporate governance principles is taking place very slowly’.* This slow adaptation of Western-type model may imply that Bangladeshi corporations, or for that matter companies in any developing country, would require a longer time span to implement advanced country style CG principles in general, and particularly the protection of minority shareholders through incorporating a well-functioning body of independent directors. Interestingly, there seems to be a negative attitude among the founders and family directors about the CGC. They feel that the provision of independent directors on the board is an ‘imposition’ by the regulatory body. One independent director narrated the sponsor-directors’ feeling about the CGC as follows: *‘BSEC (Bangladesh Securities and Exchange Commission) has imported a ‘bad thing’ (CGC) from the Western World’.* It is due to such prevailing attitudes that companies view CGC only as a ‘compliance’ issue. It has thus failed to produce the intended outcome.

On-going concern over the appointment of unqualified ID, their limited contribution, and perhaps more generally the limited numbers of ID on listed company boards even post the 2018 deadline for compliance with the CGC, may have spurred the BSEC to establish a database of independent directors able to be appointed to the boards of listed companies, in any sector. Since introducing this new rule, the BSEC has proactively moved to appoint new independents to the boards of several listed companies (including Agni Systems (2) (Financial Express, 2021), United Airways (BD) Ltd (6) (Bangladesh Monitor, 2021), Ring Shine Textiles (7) (Mahmud, 2021), and Wonderland Toys (5) (Business Insider Bangladesh, 2021). This initiative to expand its ID approval from banks to all listed companies can be seen as a major shift in approach and one that has the long-term potential of reducing the importance of those traditions.

Finally, the findings here and what has been reported elsewhere, demonstrate a clear determination on the part of Bangladesh to echo the governance approaches and policies of its trading partners and competitors. It has a long way to go and adopting some of the approaches of other countries, while also recognising the characteristics of its own economy may be of

value. In particular, having easily accessible training programs for directors, with independent organisations representing their interests and promoting skill development as well as acting as a lobbying group and recruitment agency for ID directors may assist in increasing standards of recruits and the standard of governance.

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