



OVERSIGHT BOARDS OF CENTRAL BANKS: KEY LEGAL ASPECTS

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The views expressed herein are those of the authors and should not be attributed to the IMF, its Executive Board, or its Management.

OVERVIEW

- Purpose of Presentation
- Governance, decision-making structures, and oversight
- Oversight Boards
 - What? – Oversight Responsibilities
 - Who? – Boards of Directors or Supervisory Boards
 - How? – Oversight Procedures

PURPOSE OF PRESENTATION

- As sophisticated organizations with a sovereign policy making mandate and a complex balance sheet...
- ...central banks require robust governance arrangements, including a high degree of autonomy.
- Oversight Boards play a critical role in that regard, but their legal design features are often neglected.
- This presentation will give an overview of current practices among the entire IMF membership and compare them with the Latin American, USA, Canada, and Caribbean Region...
- ...focusing on some important legal design variables and summarizing IMF staff's advisory practices.

GOVERNANCE
DECISION-MAKING STRUCTURES
OVERSIGHT

Governance

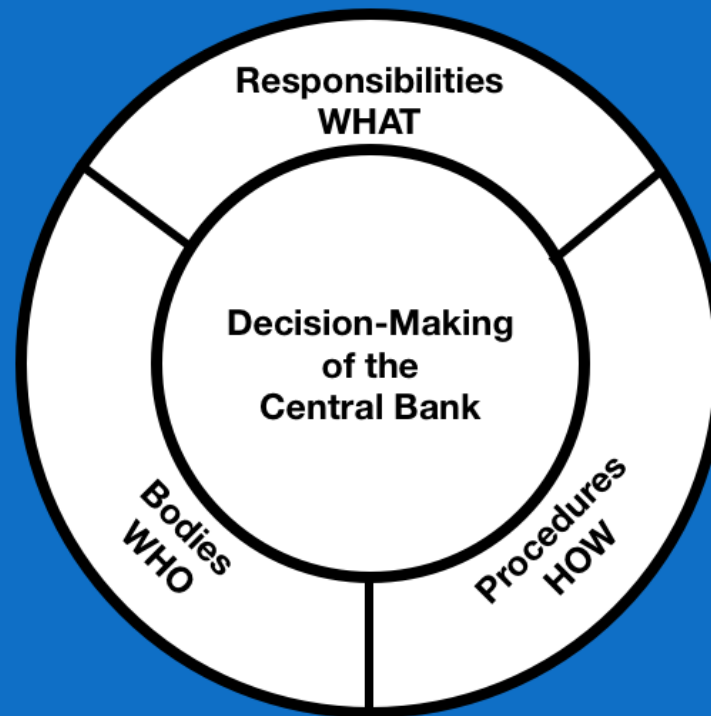
Decision-Making
Structures

Oversight

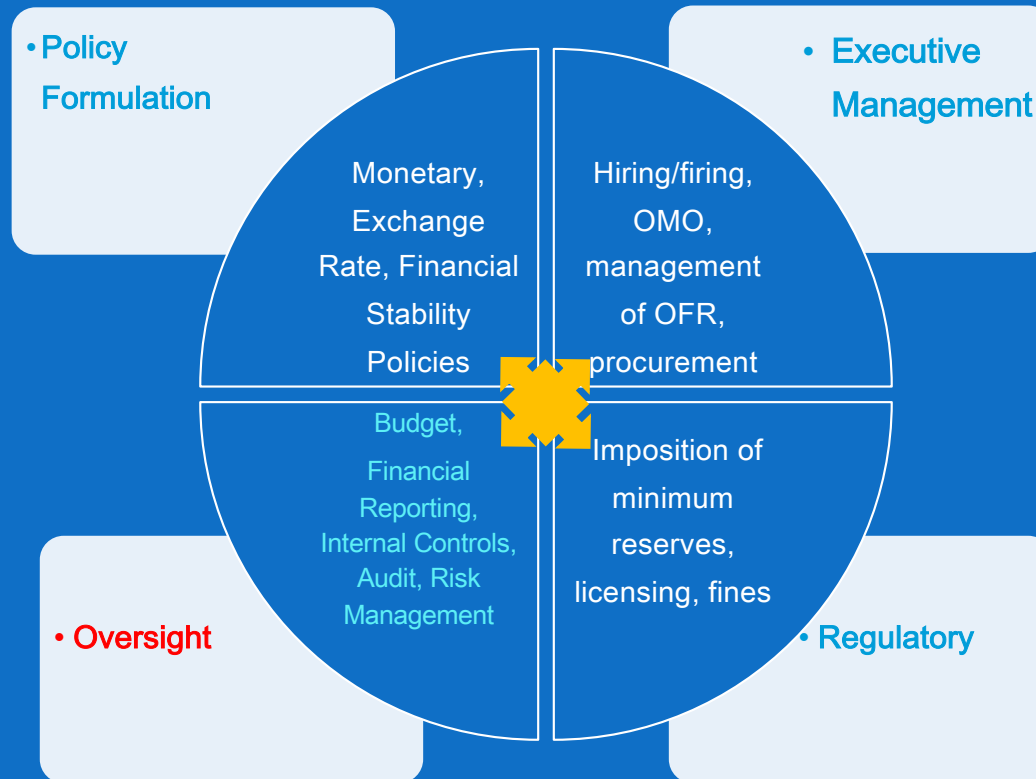
GOVERNANCE



DECISION-MAKING STRUCTURES



DECISION-MAKING RESPONSIBILITIES



OVERSIGHT BOARDS: CONCEPT

An Oversight Board is:

An *internal* decision-making body of the central bank....

...charged with overseeing the central bank's executive management.

OVERSIGHT BOARDS: WHAT, WHO, HOW?

What is the role of Oversight Boards?

Who is in charge of the oversight responsibility?

How do Oversight Boards operate?

How can legal frameworks contribute to strong Oversight Boards?

OVERSIGHT AS A DECISION- MAKING RESPONSIBILITY (“WHAT?”)

Oversight is the combination of activities through which the competent body oversees EM

Purpose: Ensure that EM exercises its decision-making powers within its legal boundaries and the institution’s general strategy and policies.

- This entails **decision-making powers** in the oversight body itself.
- Without decision-making powers, it would be **mere monitoring** and not oversight.

OVERSIGHT AS A DECISION- MAKING RESPONSIBILITY ("WHAT?")

The capability of OBs to oversee EM depends on how oversight responsibilities are legally established and defined in the CB Law.

Typical problems:

- CB Law only has a general statement that Board “will administer the CB” or that Board is responsible for setting the “strategic planning” of the CB.
- List of decision-making powers is too narrow and limited to a small number of topics
- Other body (not the OB) may have some oversight-related decision-making powers.

OVERSIGHT AS A DECISION- MAKING RESPONSIBILITY ("WHAT?")

Staff's Advisory Practice: CB Law should include:

- ❑ General statement that OB is responsible for overseeing EM
 - At minimum drafted from the perspective of the OB itself
 - i.e. listing oversight over EM as an explicit responsibility of the OB. on the provision of information to the OB.
- ❑ EM to report regularly to the OB on delivery of its executive tasks
 - EM to report on occurrences that have a significant effect on the administration or operations of the CB
 - Provide OB with all information which the OB deems necessary for proper exercise of its duties
- ❑ Comprehensive listing of relevant oversight-related decision-making powers of the OB, covering:
 - General powers to formulate the internal organizational policies
 - Specific oversight decisions that will allow the OB to operate as an effective check on EM

OVERSIGHT AS A DECISION -MAKING RESPONSIBILITY ("WHAT?")

General: Approval of Internal Policies	Specific: Oversight Decisions
Budget Execution Framework	Approval of Annual Budget
	Approval of Basic Organizational Structure
Financial Reporting Framework	Approval of Annual Financial Statements
Audit Framework	Appointment of External Auditor(s) Appointment of Chief Internal Auditor
Risk Management Framework	
Official Foreign Reserves Management Framework	
Human Resources Framework	
Procurement Framework	Approval of Major Agreements and Contracts ?
IT Security Framework	

OVERSIGHT BOARDS ("WHO?") –

Key idea: All CBs should have an internal decision-making body with oversight responsibilities

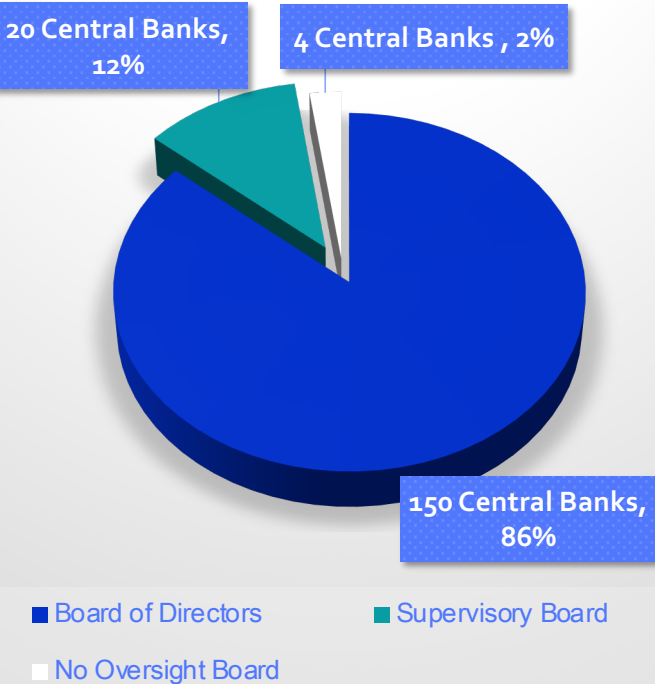
Country practice can be categorized as follows:

Board of Directors	Supervisory Boards
Executive and non-executive members	Only non-executive members
Can be chaired by executive or non-executive	Chaired by non-executive
Can be charged with policy formulation and/or regulatory powers	Only charged with oversight

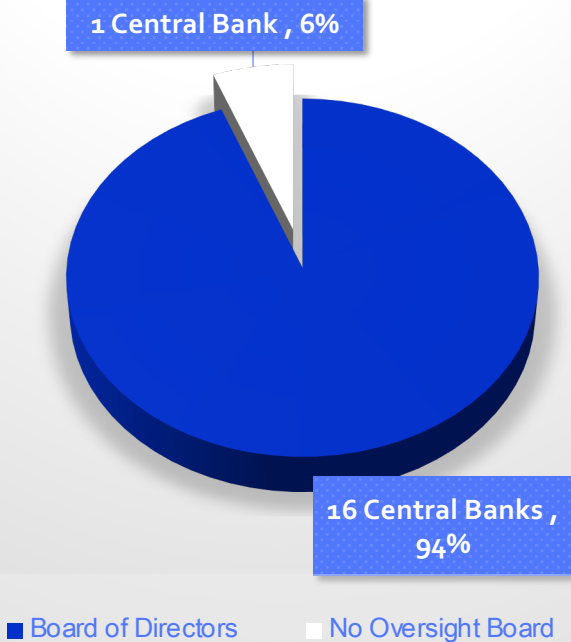
OVERSIGHT BOARDS ("WHO?") –

DO ALL CENTRAL BANKS HAVE AN OVERSIGHT BOARD?

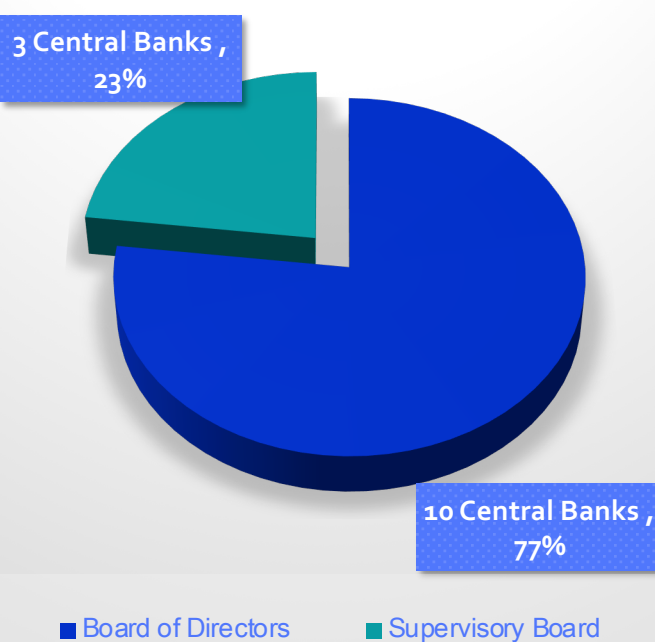
World



Latin America



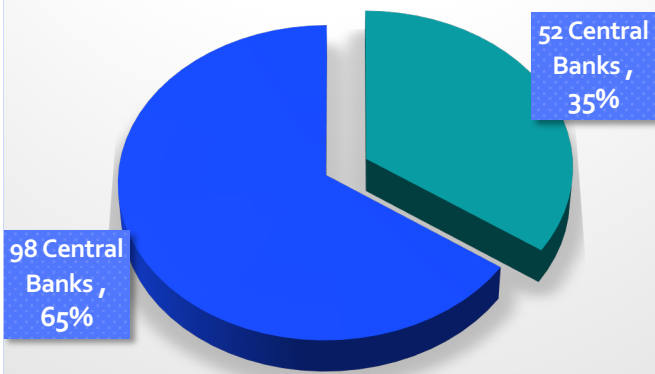
Caribbean + US + Canada



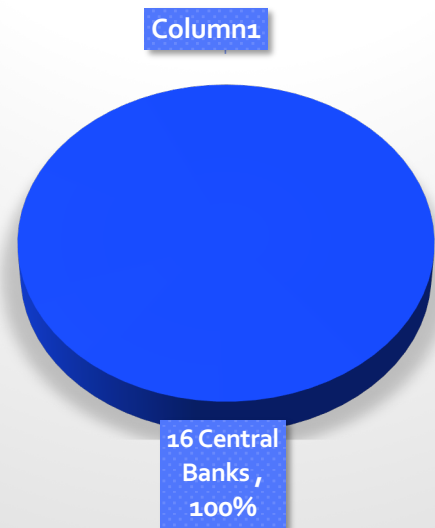
OVERSIGHT BOARDS (“WHO?”) – AND MONETARY POLICY FORMULATION

Boards of Directors with monetary policy formulation powers

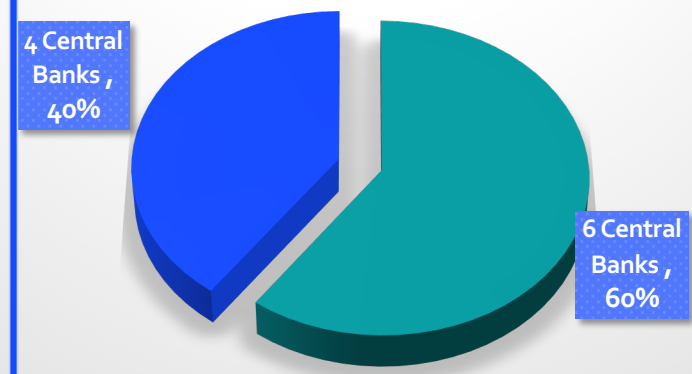
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Latin America



Caribbean + USA + Canada



■ Without Monetary Policy Formulation Powers
■ With Monetary Policy Formulation Powers

■ Without Monetary Policy Formulation Powers
■ With Monetary Policy Formulation Powers

■ Without Monetary Policy Formulation Powers
■ With Monetary Policy Formulation Powers

OVERSIGHT BOARDS ("WHO?")

Four legal design variables:

- Majority of Non-Executives
- Executive or Non-Executive Chair
- Government Officials?
- Eligibility Criteria

OVERSIGHT BOARDS (“WHO?”) - MAJORITY OF NON-EXECUTIVES

Given that the *purpose* of the Oversight Board is...

...to *oversee* the executive management function...

...it is imperative that executives do not control the Board

Achieved by a legal requirement that BoD be composed of majority of non-executives

A legal policy strongly supported by Fund

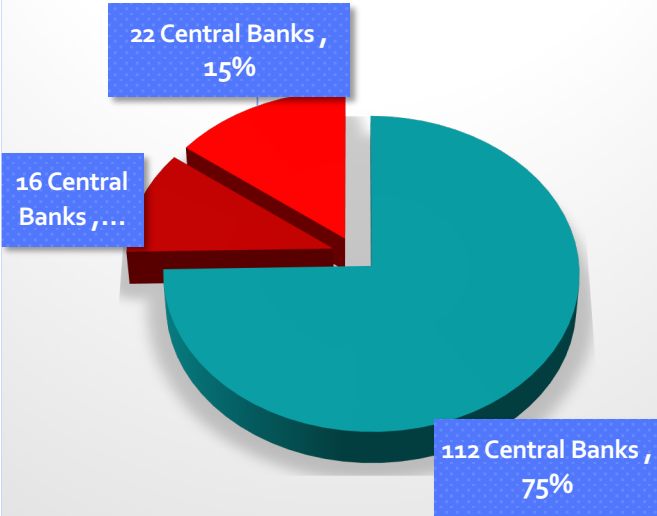


Is not a problem with pure *Supervisory Boards!*

OVERSIGHT BOARDS (“WHO?”) - MAJORITY OF NON-EXECUTIVES

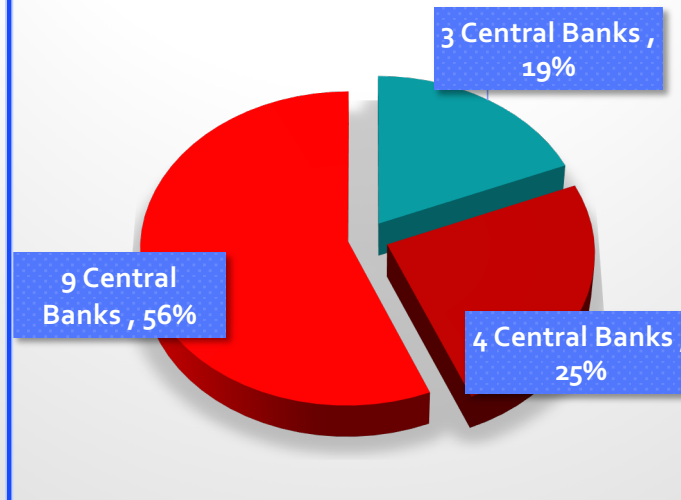
Boards of Directors: majority vs minority of non-executives

World



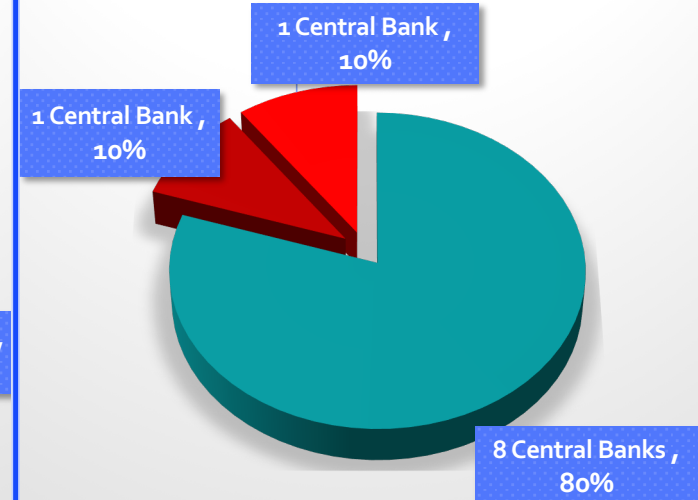
- Majority of non-executives
- Minority of non-executives
- Entirely composed of executives

Latin America



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- Entirely composed of executives

Caribbean + US + Canada



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OVERSIGHT BOARDS (“WHO?”) - MAJORITY OF NON-EXECUTIVES

Three problems

- ❑ BoD with Executive Majority
- ❑ Entirely Executive BoD
- ❑ Legal Uncertainty on Executive/Non-Executive Status of Directors

OVERSIGHT BOARDS (“WHO?”) - MAJORITY OF NON-EXECUTIVES

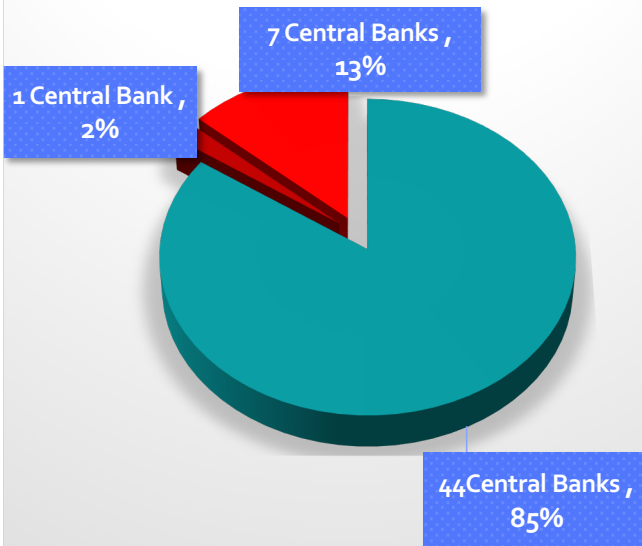
IMF Staff’s Advisory Practice: advocates for a majority of non-executive members

- ❑ Optimal size of majority depends on decision-making responsibilities of the OB
 - Only oversight:
 - ✓ large executive majority
 - Oversight, and, policy formulation and/or regulatory decision making:
 - ✓ more balanced representation between executives and non-executives

OVERSIGHT BOARDS (“WHO?”) - MAJORITY OF NON-EXECUTIVES

Boards of Directors (with no MONPOL): executive/non-executive majority

World

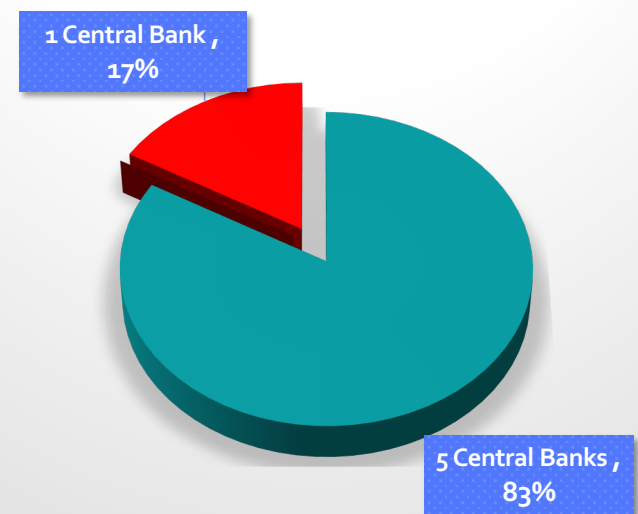


- Majority of non-executives
- Minority of non-executives
- Entirely composed of executives

Latin America

All Boards have MonPol

Caribbean + US + Canada

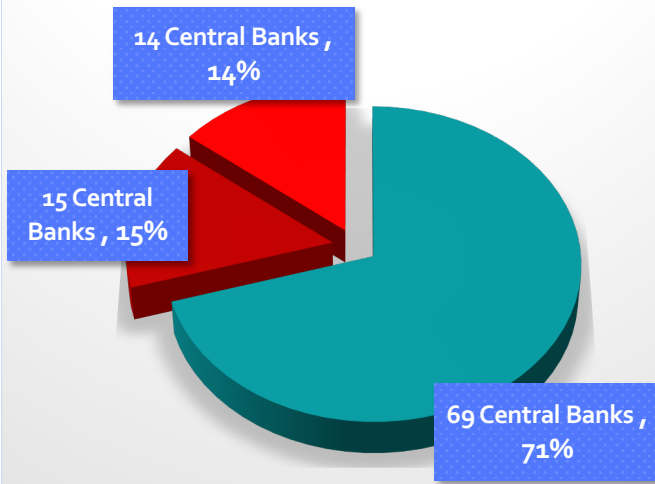


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OVERSIGHT BOARDS (“WHO?”) - MAJORITY OF NON-EXECUTIVES

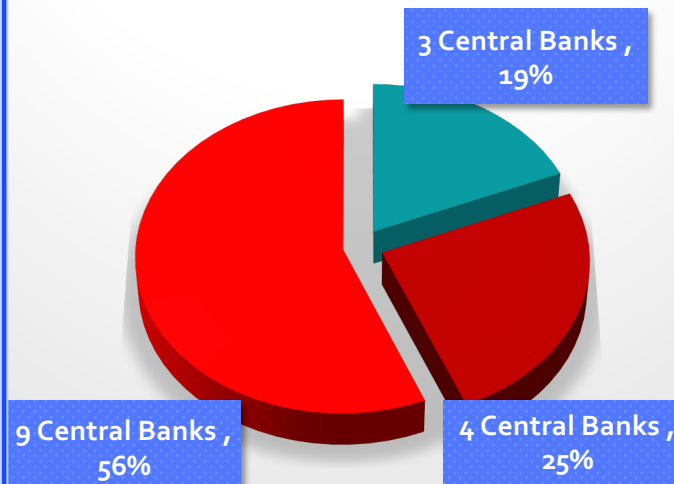
Boards of Directors (with MONPOL): executive/non-executive majority

World



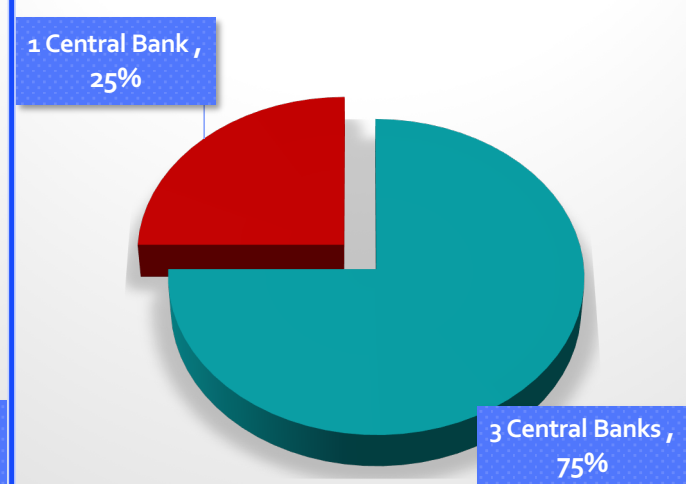
- Majority of non-executives
- Minority of non-executives
- Entirely composed of executives

Latin America



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Caribbean + US + Canada



- Majority of non-executives
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OVERSIGHT BOARDS (“WHO?”)

- EXEC. V. NON-EXECUTIVE CHAIR

- Historically, central bank *Boards of Directors* were chaired by the Governor
- Is logical when BoD is also formulating monetary policy...
- ...as Governor is “face” of monetary policy
- But could this lead to dominant influence over Board...
- ... and be an obstacle to effective oversight?

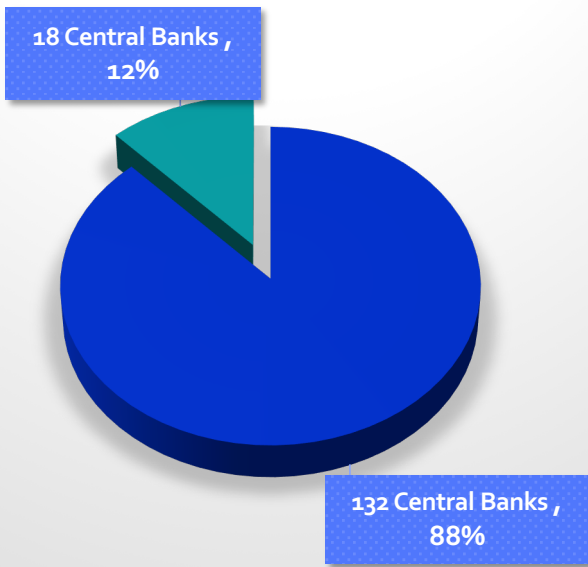


Is not a problem with pure *Supervisory Boards*!!

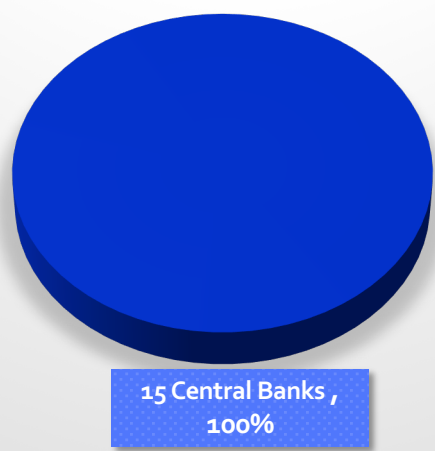
OVERSIGHT BOARDS (“WHO?”) - EXEC. V. NON-EXECUTIVE CHAIR

Board of Directors: Executive v. Non executive Chair

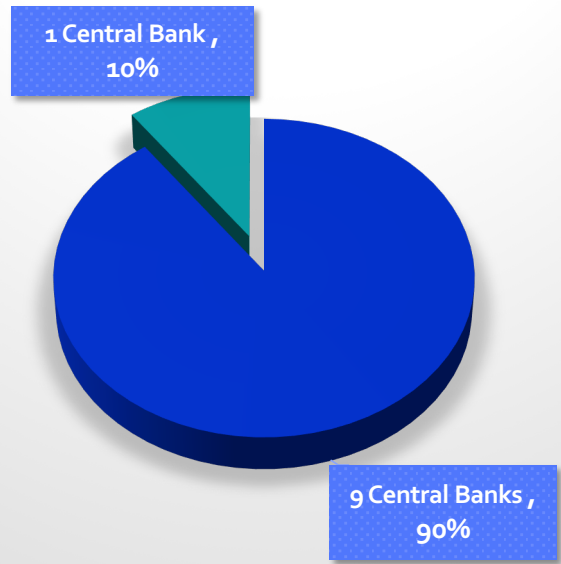
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Latin America



Caribbean + USA+ Canada



■ Executive Chair ■ Non-Executive Chair

■ Executive Chair ■ Non-Executive Chair

■ Executive Chair ■ Non-Executive Chair

OVERSIGHT BOARDS (“WHO?”) - EXEC. V. NON-EXECUTIVE CHAIR

IMF Staff’s Advisory Practice: Nuanced approach vis-à-vis this issue.

❑ BoD entrusted only with oversight:

- Non-executive chair has advantages from oversight quality perspective by strengthened independence from EM
- Risk of nominally non-executive chair that’s too involved in EM competing with Governor as head of EM and the institution
- Legal framework will need to clarify who represents the central bank in which cases

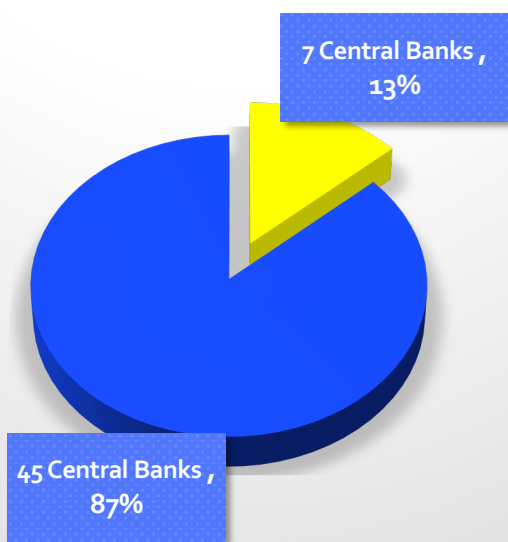
❑ BoD entrusted also with monetary policy formulation:

- Executive chair is acceptable
- Risk of excessive executive dominance over the Board
- Remedies like requirement that BoD meets once per year under a non-executive chair to discuss EM’s performance

OVERSIGHT BOARDS (“WHO?”) - EXEC. V. NON-EXECUTIVE CHAIR

Board of Directors (No Mon. Pol): Executive v. Non executive Chair

World

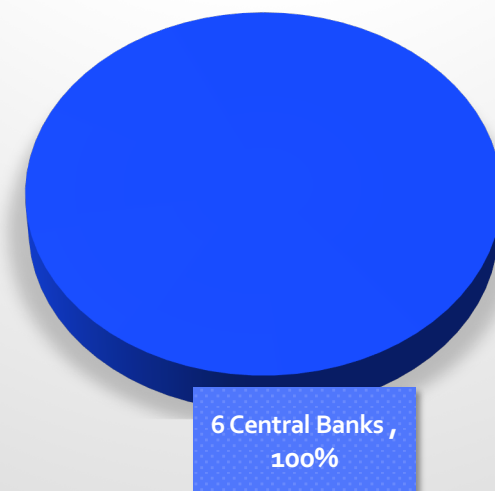


■ Non-executive chair ■ Executive chair

Latin America

All Boards of Directors have
MonPol

Caribbean + USA + Canada

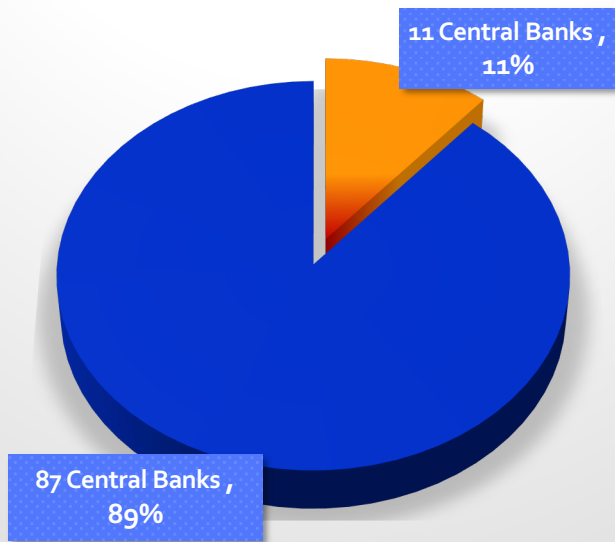


■ Non-executive chair ■ Executive chair

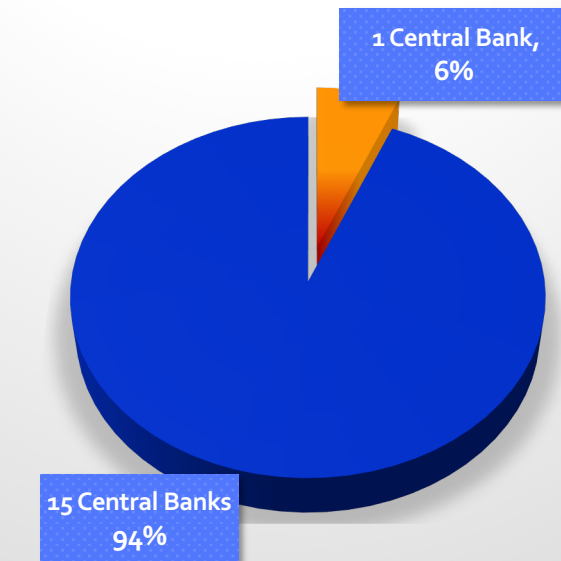
OVERSIGHT BOARDS (“WHO?”) - EXEC. V. NON-EXECUTIVE CHAIR

Boards of Directors (with MONPOL) chair v non-executive chair

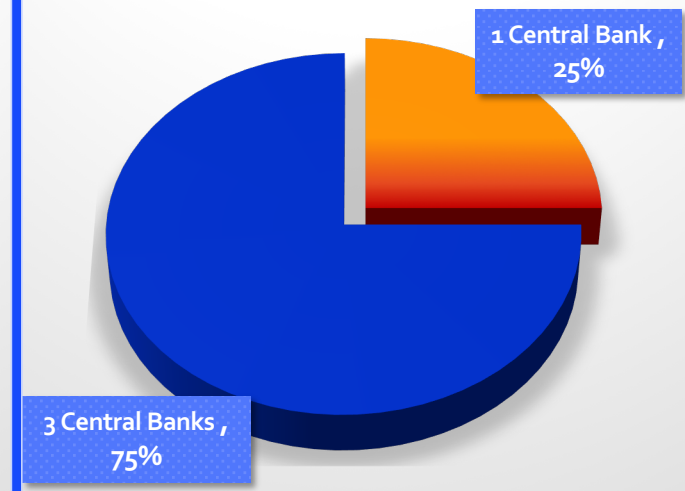
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Latin America



Caribbean + USA + Canada



■ Non-executive chair ■ Executive chair

■ Non-executive chair ■ Executive chair

■ Non-executive chair ■ Executive chair

OVERSIGHT BOARDS (“WHO?”) GOVERNMENT REPRESENTATIVES

Historically, many central banks had senior civil servants on Board

Now, some CB laws allow the Minister of Finance to attend Board meetings, sometimes with, sometimes without vote

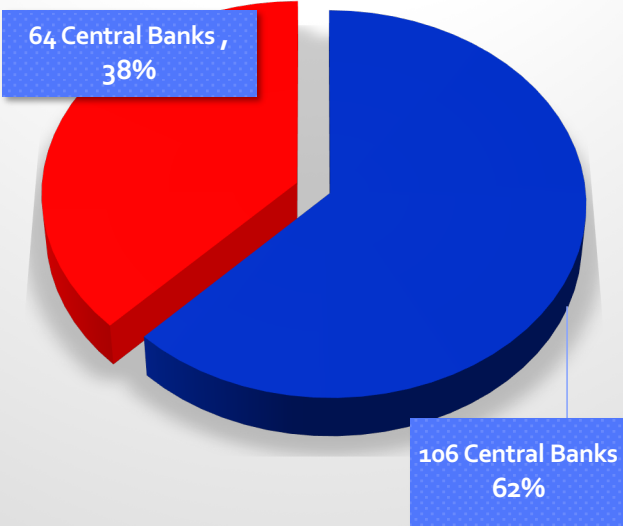
And some CB laws have “Commissioners” with veto rights

This can lead to “chilling effect” on central bank decision-making

OVERSIGHT BOARDS (“WHO?”) GOVERNMENT REPRESENTATIVES

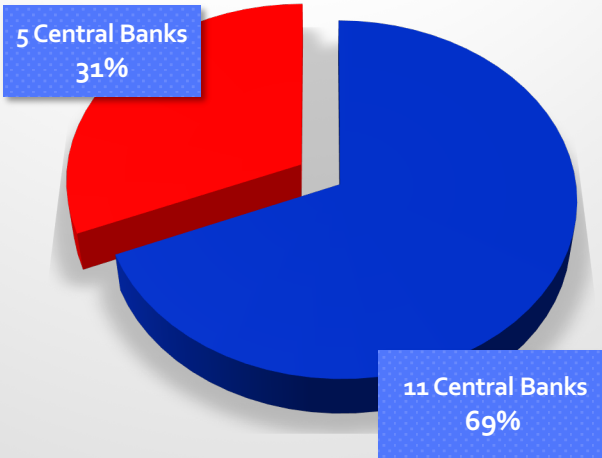
Boards of Directors + Supervisory Boards: Government Representatives v. none

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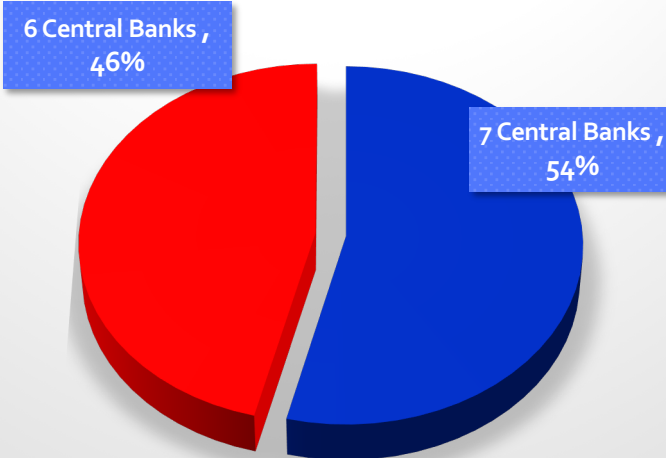
■ No Government Representative
■ With Government Representatives

Latin America



■ No Government Representative
■ With Government Representatives

Caribbean + USA + Canada



■ No Government Representative
■ With Government Representatives

OVERSIGHT BOARDS (“WHO?”) GOVERNMENT REPRESENTATIVES

IMF Staff’s Advisory Practice: Nuanced depending on decision-making responsibilities of body in question:

❑ BoD charged with Monetary Policy Formulation

- IMF staff strongly opposed to presence of government representatives
- Stronger opposition to a presence with voting rights than to a presence with voice but without voting rights

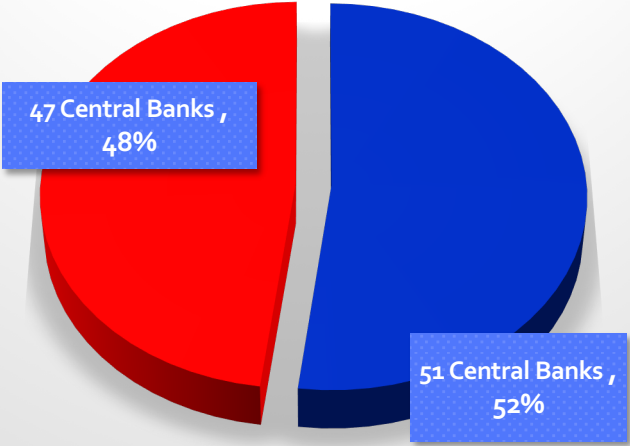
❑ Pure Oversight Boards

- IMF staff advocates for a highly skilled and as autonomous as possible set of Board members
- Minor presence is less damaging to overall autonomy of CBs
- Even if some forms of abuse cannot be excluded (e.g. profit reservation versus distribution decisions)

OVERSIGHT BOARDS (“WHO?”) GOVERNMENT REPRESENTATIVES

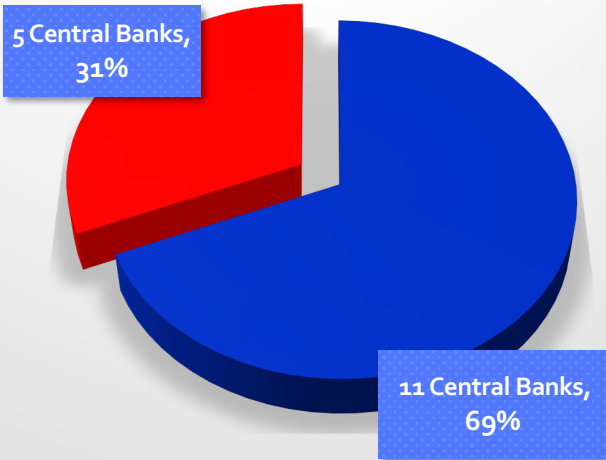
Boards of Directors (with MONPOL) : Government Representatives v. none

World



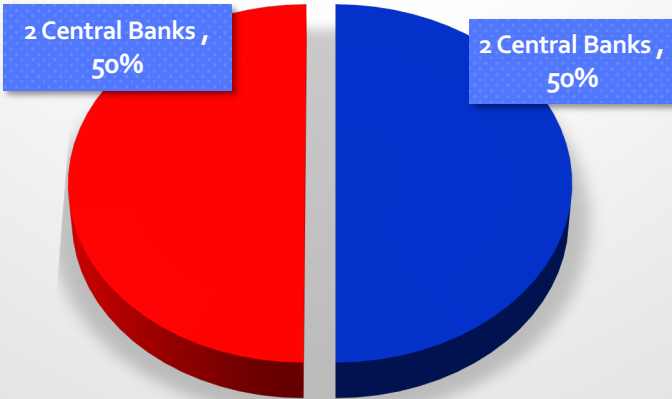
■ No Government Representative
■ With Government Representatives

Latin America



■ No Government Representative
■ With Government Representatives

Caribbean + USA + Canada

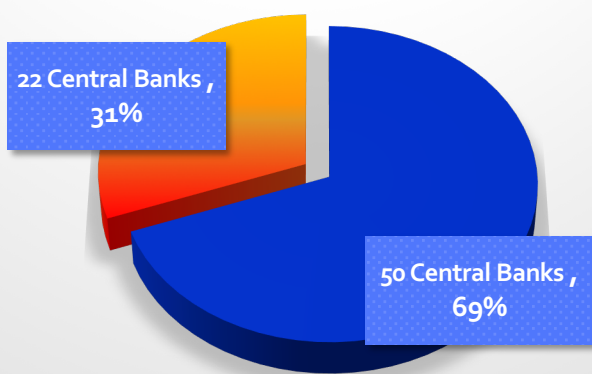


■ No Government Representative
■ With Government Representatives

OVERSIGHT BOARDS (“WHO?”) GOVERNMENT REPRESENTATIVES

Boards of Directors + Supervisory Boards (No Mon. Pol) = Gov. rep v. no Gov. rep

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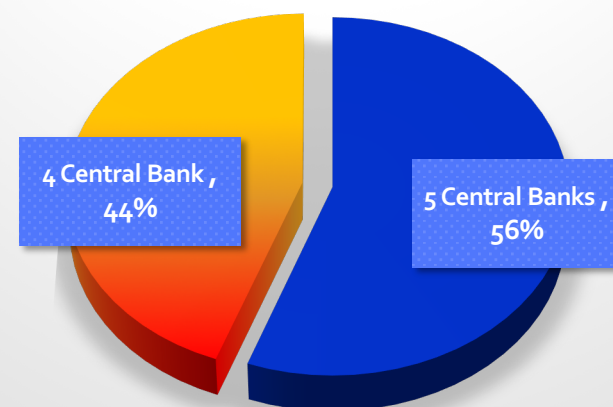
■ No Government Representative
■ With Government Representatives

Latin America

All Boards of Directors have
MonPol

■ No Government Representative
■ With Government Representatives

Caribbean + USA + Canada



■ No Government Representative
■ With Government Representatives

OVERSIGHT BOARDS (“WHO?”) ELIGIBILITY CRITERIA FOR NON-EXECUTIVES

- Role of strong eligibility criteria for executives is well recognized
- Increasingly, attention is being paid to eligibility criteria for non-executives

Typical problems:

- Requirement for professional experience loosely drafted in CB law
 - ✓ depth of experience (e.g. “professionally capable”; “shown capacity”; “well-known capacity”)
 - ✓ areas of expertise (e.g. “experience in business, professional or academic matters” or “selected from various occupations”)
- Minimum education criterion but no professional experience
- Irrelevant requirements (“good manners” or with “patriotism”)

OVERSIGHT BOARDS (“WHO?”) ELIGIBILITY CRITERIA

IMF Staff’s Advisory Practice: Depends on type of Board

❑ Purely oversight:

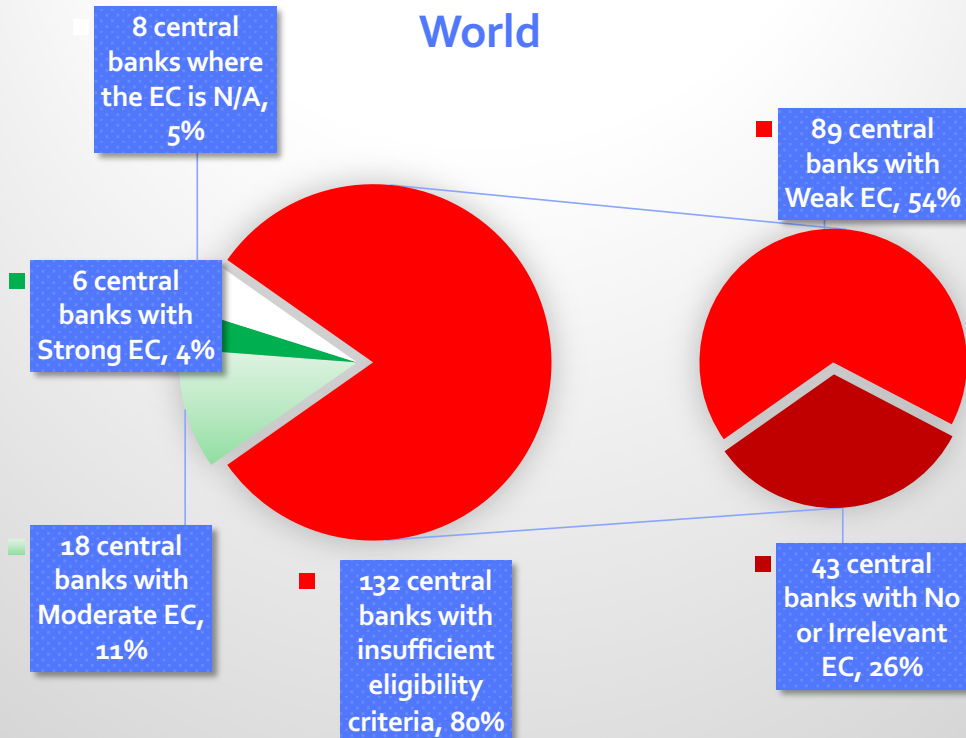
- An advanced university degree in economics, finance, law, engineering, IT
- A minimum number of years of professional experience
- A minimum number of years of experience in senior position

❑ Oversight + other responsibilities:

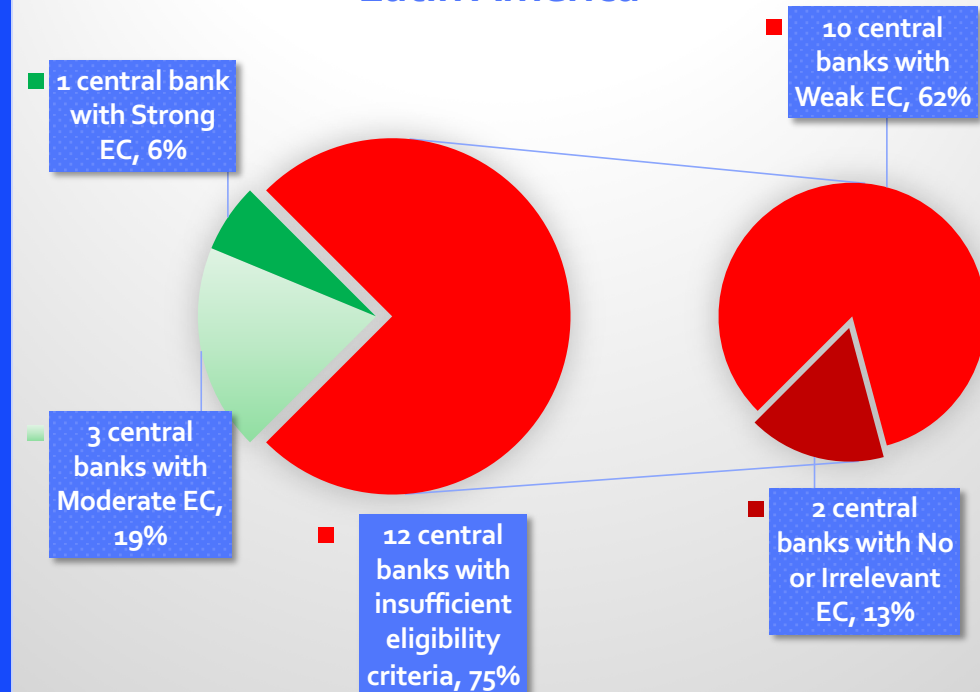
- An advanced university degree in economics, finance, law, engineering, IT
- Background in macro-economics, monetary economics, banking and finance, and possibly even banking law.
- A minimum number of years of professional experience
- A minimum number of years of experience in senior position

OVERSIGHT BOARDS (“WHO?”) ELIGIBILITY CRITERIA FOR NON-EXECUTIVES

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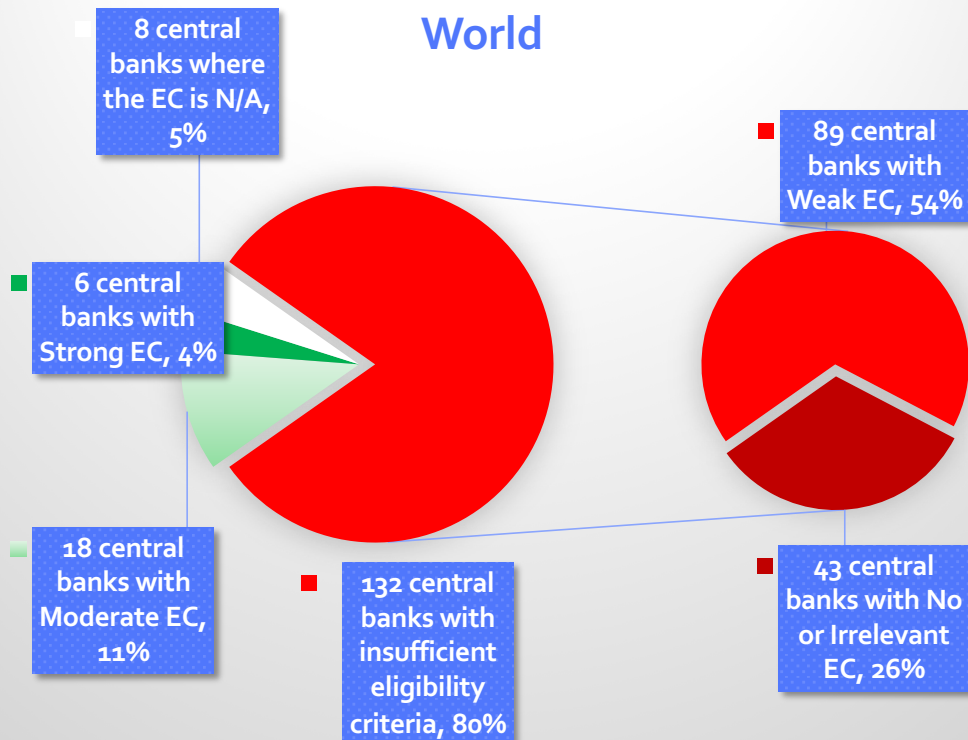


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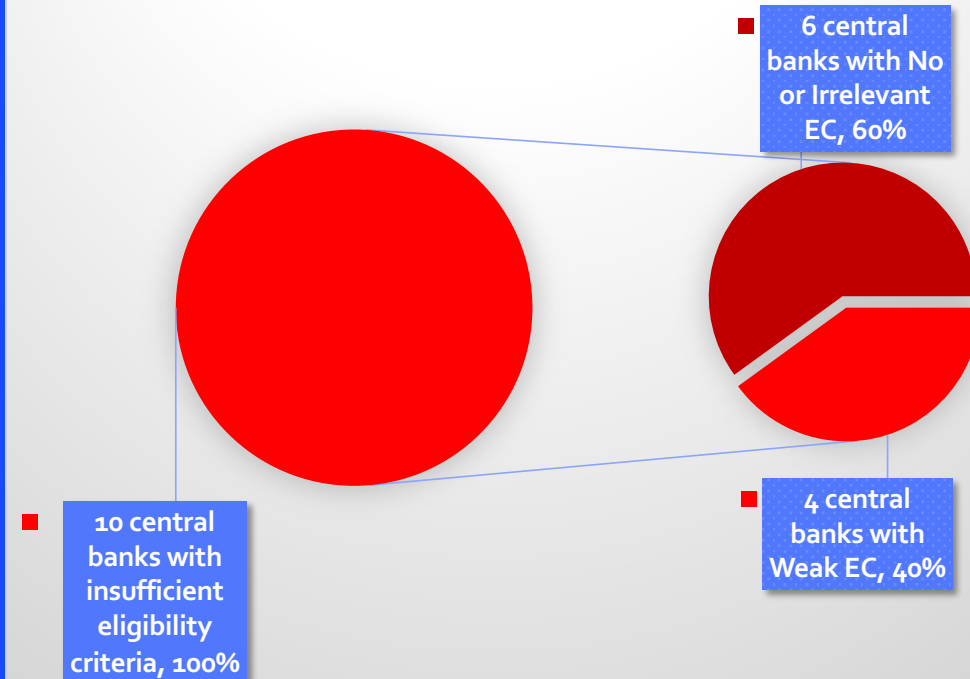


OVERSIGHT BOARDS (“WHO?”) ELIGIBILITY CRITERIA FOR NON-EXECUTIVES

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Caribbean + USA + Canada



OVERSIGHT PROCEDURES ("HOW?")

As with all decision-making responsibilities...

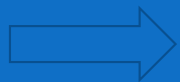
...Oversight is exercised by Oversight Board through a set of procedures

The legal framework should establish with clarity those procedures

OVERSIGHT PROCEDURES ("HOW?")

IMF Staff's Advisory Practice:

- ❑ CB Laws and other legal instruments should cover the following procedural aspects:
 - Number *per annum* and periodicity of Oversight Board meetings
 - Quorum, including minimum presence of Non-Executives
 - Decision-making and voting procedures, including majorities, and tie breaking vote
 - Right of initiative (not only Governor, but also other directors)
 - Attendance of advisors and technical staff
 - Recording of decisions



This provides how oversight effectively happens!!

CONCLUSIONS

- ❑ Well written CB Laws are critical to ensure a robust oversight function within CBs
 - What? CB laws should confer a strong oversight mandate to an internal OB!
 - Who? OB can take many forms and shapes, but good practices apply!
 - How? Procedural aspects should not be ignored, as they contribute to high quality decision-making!
- ❑ Clarity and granularity in central bank laws is of utmost importance

PD!

- The IMF Central Bank Law team will publish a working paper on this topic.
- We will distribute it, once available
- Thanks!!!