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Special supplement
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with Clifford Chance

# Business Risks
## Boardroom perspectives on risk


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This report explores perceptions of business risk amongst board members of the largest companies operating in Poland. It was prepared by the editorial team of the daily newspaper Rzeczpospolita in co-operation with global law firm Clifford Chance, and is based on a survey carried out in November and December 2020. This Polish survey revisits the key themes researched in a global survey produced by Clifford Chance and The Economist Intelligence Unit (EIU) in 2019 on attitudes to risk in the global business community.

# COVID-19 has increased the importance of financial risk

DAVID DIBARI
Co-Head of Global Risk Team, Clifford Chance

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The global events of the last year have underscored the essential importance of risk management. A comparison of the trends of Rzeczpospolita's survey with the pre-pandemic global survey highlights the complex environment businesses are operating in.. For example, whilst we have learnt that globally the importance of financial risk in the daily operation of their companies is high on the agenda, Polish boards place more emphasis on legal risks – perhaps unsurprising during the COVID-19 pandemic, which brought in sweeping regulatory changes. In addition, the appreciation of cyber risk in Poland is still somewhat lower than in the international community, whilst the role of ESG (Environmental, Social and Governance) factors is increasingly important. Pro-active and considered risk management, despite the current economic challenges, is an important issue for Polish boards, and further investment in it will translate into greater security, business efficiency and competitive advantage.

**KATARZYNA KUCHARCZYK**

The risk mentioned most frequently by the Polish board members we surveyed was the pandemic, which hit – with varying degrees of force – all businesses. Economic turmoil has affected all aspects of businesses, from production capacity and the provision of services to relationships with suppliers and customers. So, it is not surprising that 82.1% of those surveyed said that they were devoting most attention to the risks associated with COVID-19.

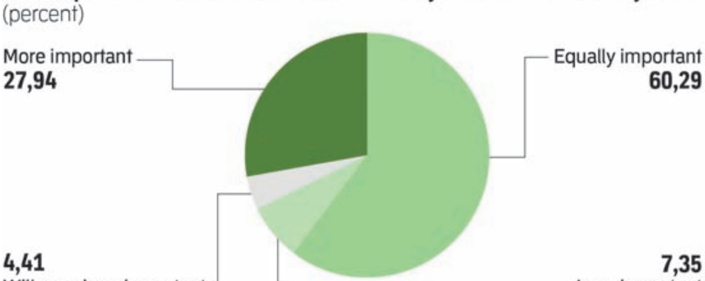
Businesses say that the pandemic has required significant changes, including dealing with the challenges of remote working. Risk management underscores everything, from the safety of employees and customers to the continuity of production and services.

The experience of the restaurant and food services sector has been particularly painful because of the scale of changes, the uncertainty concerning basic rules of operation and their long duration – beginning with the introduction of, in practice, an immediate ban on Sunday trading and ending with the impact of the pandemic. I am convinced that after the pandemic, awareness of risk management will improve amongst a larger number of businesses. However, I'm not certain that it will translate into more effective risk management," said Sylwester Cacek, President of the Board of Sfinks Polska.

Those surveyed often highlighted problems with business continuity and suspended investments. Financial risk was the second most frequent issue mentioned by respondents – with almost 48% devoting the most attention to it. Interestingly, when looking at the Clifford Chance global risk survey with the EIU,, prepared before the pandemic, more than half of the board members surveyed highlighted the key importance of financial risk for their businesses. Our recent survey with in Poland with Rzeczpospolita indicates that more than 60% of companies believe that financial risk will be as important for them over the next two years as it is now, while almost 28% expect it to be more important.

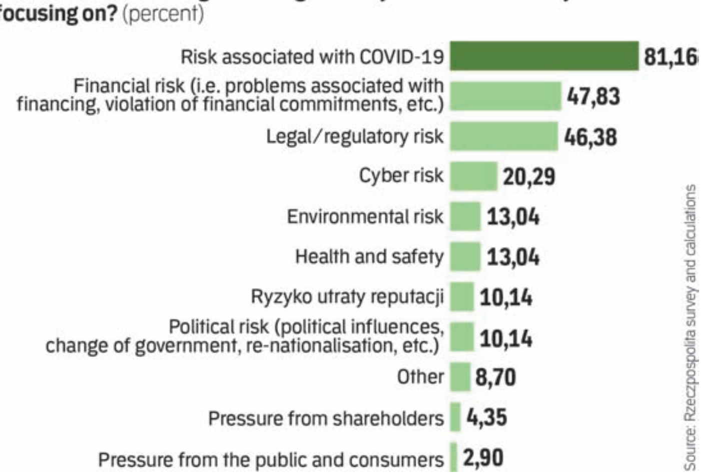
There is a high level of financial risk awareness amongst our bank's customers. During the pandemic, financial risk has materialised for some customers, resulting in a temporary suspension or limitation of their business. Financial risk management is an inherent element of doing business and involves the appropriate formation of sources of financing – the level of equity and credit. Use of credit enables rapid growth and an increased scale of operation, but it is equity that acts as the security buffer in situations of unexpected changes causing falls in revenue or limited liquidity," explained Krzysztof Drewniak, Director of Regional Credit Risk at ING Bank Śląski.

**How important will financial risk become for you over the next two years?** (percent)




Source: Rzeczpospolita survey and calculations

**Which of the following risk categories is your board currently focusing on?** (percent)




Source: Rzeczpospolita survey and calculations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# Organisational changes in businesses are driven by regulations

The survey confirms the importance of the role played by regulations in the development of a business's risk management strategy. More than 46% of those surveyed mentioned legal and regulatory risk as the main threat to their organisation This is a higher percentage than we have seen in other similar studies globally. Of firms operating in Poland,47% believe that this risk will increase over the next two years.

Assessing legal risks and the effect of legislative changes on the operations of firms, especially large ones, has for years been one of the main tasks of boards. Increased awareness in this regard has been forced on them by the pandemic. As a result, boards expect their legal departments to provide not only effective regulatory advice but also effective systems to monitor legislative changes, combined with an analysis of their impact on the day-to-day operations of the organisation," says Małgorzata Wojnowska, Director of the Legal and Compliance Department at Żabka Polska.

Our analysis shows that legal risk is of greatest importance to businesses in the oil & gas, mining, IT and financial sectors. This is not surprising, given that these are the most heavily regulated sectors. Changes to the complicated regulatory framework related to concessions and licences, conditions of contracts being performed, the provision of financial services, tax law, or the risk of economic sanctions, are examples of the problematical areas highlighted by the companies surveyed. More than half those surveyed also noted the risk associated with the costs businesses incur in connection with penalties imposed by the regulatory authorities and any liability for damages.

We asked respondents whether the fear of the legal risks had led to any major changes in their organisation in the past five years. The clear majority said yes, pointing out, in particular, the necessity of implementing data privacy policies. This is related to the increasing importance of data in the functioning of a business, and on the entry into force of the General Data Protection Regulation in May →

**Industries that fear regulatory risk the most**


**How important will legal/regulatory risk become for you over the next two years?** (percent)


Source: Rzeczpospolita survey and calculations

→MIŁOSZ GOŁĄB
PARTNER, CLIFFORD CHANCE


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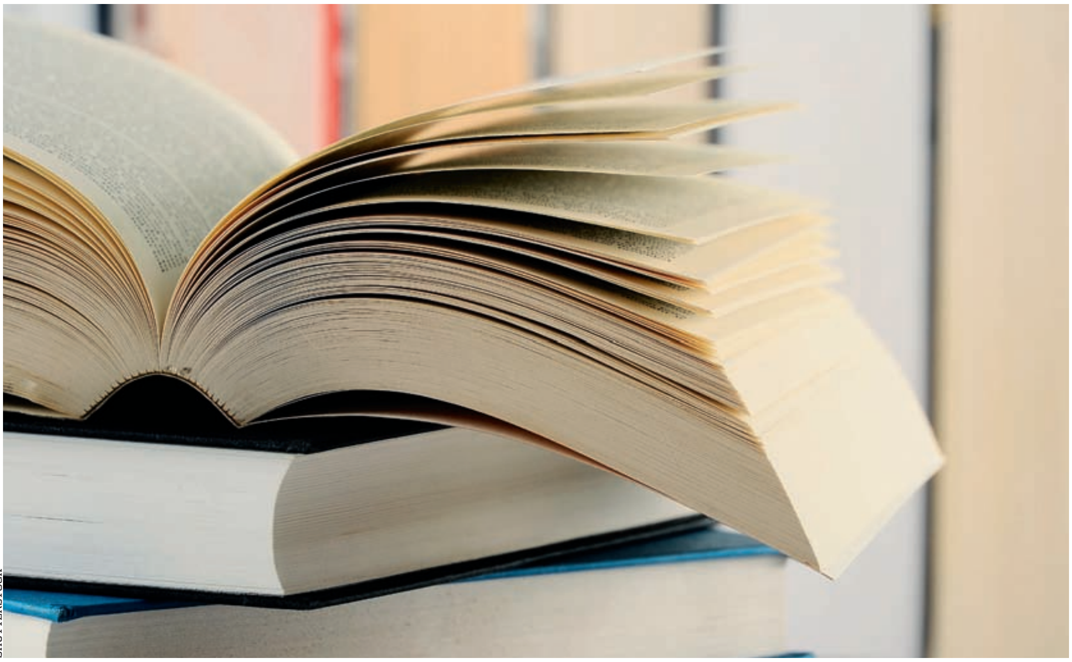
The adverse financial consequences of the restrictions introduced to combat the effects of COVID-19 have affected almost all businesses. Firstly, there was the risk of loss of financial liquidity, which the State is attempting to minimise through various types of financial aid programmes for businesses. Financial creditors play an important role as they offer their clients credit holidays, temporarily suspend examination of financial indicators and conclude temporary stand-still agreements covering future payments. Current and forecast financial liquidity, understood primarily as payment capacity, is currently the number one topic on the agenda at board meetings of many businesses. Operating under COVID-19 conditions – including action aimed at minimising the risk of losing financial liquidity – has demonstrated to many businesses, to a lesser or greater extent, the cost-related problems of their business operations, which directly translate into financial risk. It was not unusual for those problems to exist before, but as a result of the pandemic they have become more apparent. Liquidity support from the State and various concessions on the part of creditors have given businesses the opportunity and the time to deal with these problems. However, businesses that do not manage to do this and that are affected by liquidity problems need to promptly begin talks with their key stakeholders concerning new conditions of capital and debt financing to avoid the domino effect of actions by creditors. In this regard, the "Recommendation of the Polish Bank Association on Good Practices for Business Restructuring Processes" may prove helpful. The aim of the Good Practices is to ensure the effectiveness of talks with key stakeholders by improving their efficiency, predictability and reach.



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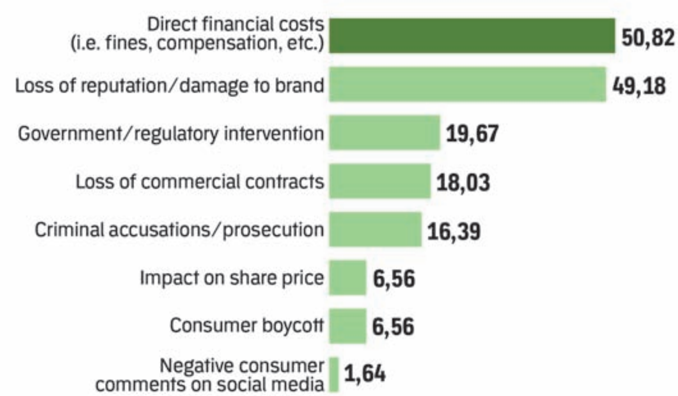
2018. Another difficulty is the case law on the new data protection rules, which is not yet well-established.

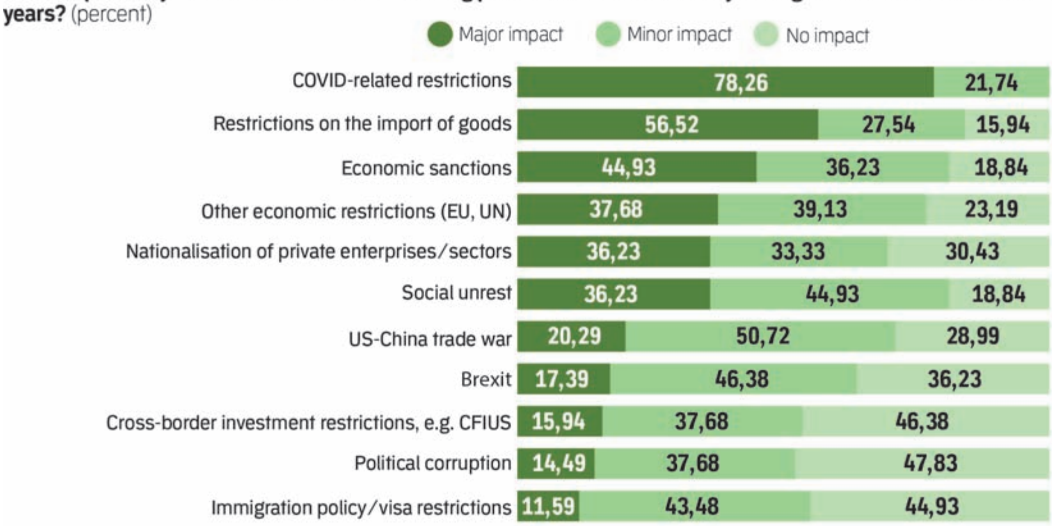
Regulatory risk is closely related to political risk, which was seen as the biggest risk by 10% of those surveyed. Political factors include further turmoil related to COVID-19, including restrictions on trading and problems related to other areas of the economy. More than 80% of those surveyed predict an increased risk of sanctions and economic restrictions. Brexit is also a cause for concern. However, a relatively small number of firms in Poland mentioned fears related to political corruption as a material risk.

**Which of the following consequences would your organisation fear most in the event of a major incident?* (percent)**




*Respondents could have select no more than two answers.

**What impact do you foresee each of the following political risks will have on your organisation over the next two years?** (percent)




Source: Rzeczpospolita survey and calculations

**Dr Marcin Ciemiński**
Partner, Clifford Chance

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Entities in all sectors of the economy face challenges related to regulatory risk. Legal regulations introduced in Poland have, for years, been numerous, extensive and complicated. Before the COVID-19 pandemic, more than 20,000 pages of new legislation had come into force annually and businesses were not always able to keep up with the changes.

Although the pandemic has slowed the pace, it has affected the rate at which amendments are introduced, which requires businesses to be flexible and capable of rapidly adjusting to the new reality. The pandemic is itself an unprecedented challenge for businesses that forces them to approach the planning of their further activity accordingly, including in the context of the continuing uncertainty of the legal environment

Regulatory risk is heightened by the increased activity of regulatory authorities , such as the Polish Financial Supervision Authority and the Office of Competition and Consumer Protection. The penalties being imposed on businesses by the regulatory authorities are higher than they have ever been. We are also seeing more proceedings against board members in connection with allegations of acting to the detriment of companies and other offences, so-called white-collar crimes, and the increased creativity of the enforcement authorities in assessing the criminal nature of economic activity. This leads to the conclusion that businesses should comprehensively manage regulatory risk, which will become more and more challenging for businesses in Poland.

# Digitisation of business processes as a source of increasing risk

Cyber risk was given as the main category of risk by a fifth of companies surveyed – 93% of firms admitted that they fear cybersecurity incidents. The greatest exposure to this risk is experienced by respondents in the IT, transport, energy and financial services sectors. This is part of a trend also identified in our previous report with the EIU, where the perception of cybersecurity as a material risk for global boards increased 32% in a five-year period.

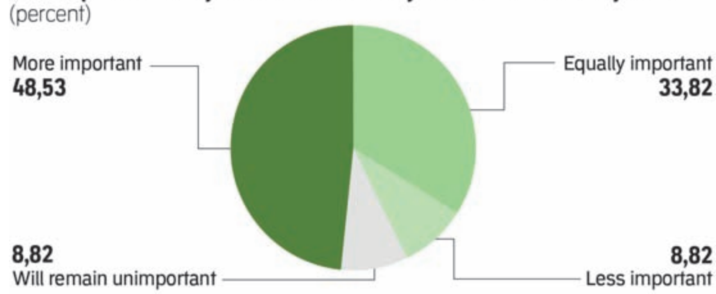
The Polish companies we surveyed expressed fears that remote working would lead to a higher number of cyber-attacks. Accelerated digital transformation and reduced budgets due to the pandemic have additionally increased organisations' vulnerability to digital threats. Cyber-attacks have the potential for financial losses related to stoppages of production or loss of data, severe financial penalties from regulators and loss of reputation.

Tomasz Bochenek, Managing Director of Oracle Polska, said: "Cybersecurity risk is without doubt one of the most important threats to IT systems and many organisations struggle to cope with this problem. The majority of successful cyber-attacks take advantage of the fact that corrections and updates regularly made to databases are not installed in time by administrators – whether through carelessness or lack of time."

Speaking about his company's involvement in governmental programmes aimed at combating cybercrime, he said "in July 2020, Oracle Polska joined the Cybersecurity Cooperation Programme being implemented by the Ministry of Digital Affairs, the aim of which is to continually improve the cybersecurity of entities using ICT systems – both commercial firms and public institutions."

Technology poses a growing challenge for boards. Analysis of the responses to our survey gives cause for optimism: 84% of those surveyed consider that their board fully understands the legal, regulatory and ethical consequences of their use of data and advanced technologies, including AI. However, some respondents said that whilst they try to protect themselves, there is much unknown about what new risks and methods used by hackers lie ahead.

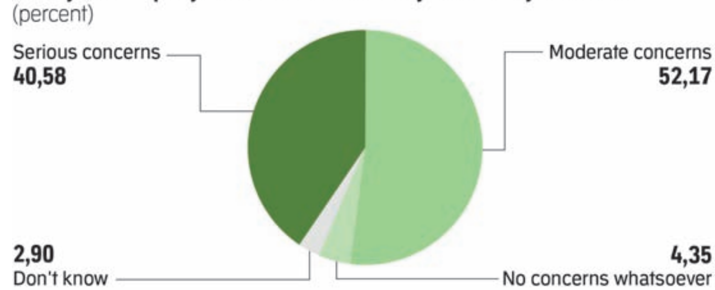
**How important will cyber risk become for you over the next two years?**
(percent)



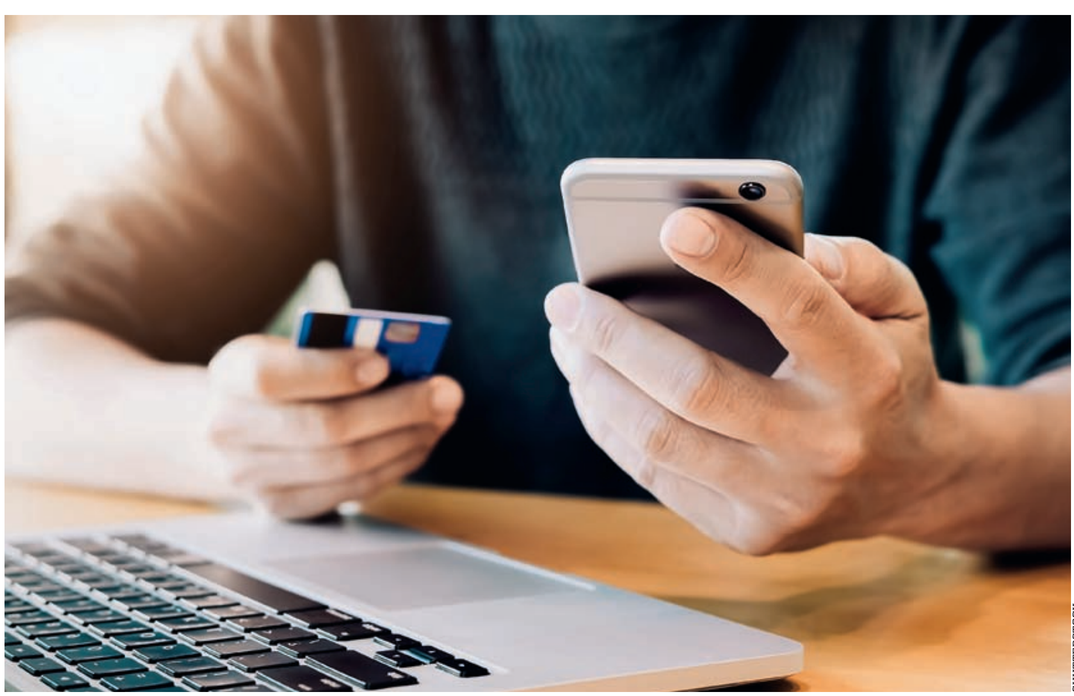

Source: Rzeczpospolita survey and calculations

**Industries that fear cyber risk the most**


**Does your company have concerns about cybersecurity incidents?**
(percent)




Source: Rzeczpospolita survey and calculations



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Dessislava Savova
Partner, Clifford Chance

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Our clients attach increasing importance to cyber risks as one of the main threats to doing business. It is the result of technological progress and the challenges related to remote working. Reports by organisations such as Europol and Interpol show that since the outbreak of COVID-19 there has been a significant rise in cybercrime and hacking. Interestingly, cybercriminals rely on human error. This shows that cybersecurity consists not only of investments in IT systems but also action at many levels.

Hackers identify weaknesses of remote working on a continual basis, therefore in future we should expect increasingly creative attacks. It is vital that organisations invest not only in the appropriate IT infrastructure, but also have contingency plans in case of an attack. They should also ensure appropriate training for their employees and that they are alert to the risks. Cyber-attacks tend to be of a cross-border nature, so combating them does not end at the local level, but frequently requires action to be taken internationally.

# Environmental protection at the centre of attention

Environmental risk, including climate change was perceived as a main risk category by over 13% of respondents. And more than 30% of respondents said that this risk will be of even greater importance for boards over the next two years.

Incidents related to climate issues are feared by almost 83% of companies in the automot-

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ive, oil & gas and mining sectors, but also by those in energy and utilities, IT, FMCG and financial institutions. More than 26% of board members surveyed claim that they fully understand the impact their organisations have on climate change, and that companies should take responsibility for this impact.

Companies said that they are increasingly focusing on environmental issues. This is driven mainly by increasing regulatory requirements in the EU. A relatively large number of firms, when asked about the greatest impact on their business in connection with environmental factors, said tax incentives. Companies are also responding to increased consumer interest in environmental issues and the impact that has on their purchasing decisions. The risk of loss of reputation and fear of disruption are incentives for businesses to focus on their environmental policies. Of the respondents, 40% said that fear of damage to their brand's reputation has led them to choose supply chain partners based on environmental factors.

Przemysław Lutkiewicz, Vice President of the Board of LPP, stated that "although the ecological characteristics of products for customers are still added value and not the main target, there is a continually increasing number of customers interested in the actions of firms, the values of a brand and the origin of its products. Those elements take on greater importance amongst a firm's stakeholders, but also in investor relations. Those interdependencies show that the appropriate approach of brands in the long term gives a competitive advantage."

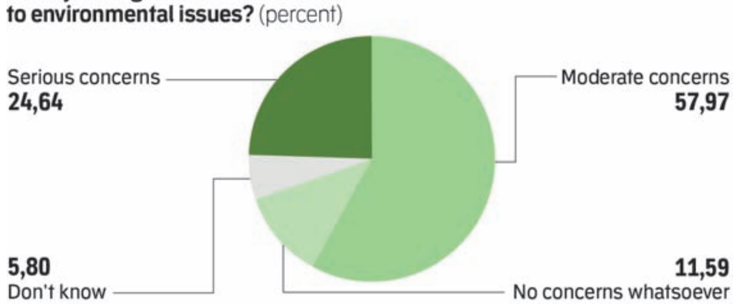
The results of our Polish survey reflect a growing global focus on building a business's value based on non-financial ESG factors. In the survey conducted in 2019 with the EIU, environmental risk was mentioned as the most important risk by 30% of the global board members surveyed.

Piotr Dmuchowski, Head of Global Markets and Treasurer at HSBC Continental Europe, said: "HSBC sees similar trends globally. Our Navigator 2020 survey, of more than 10,000 companies shows that 86% of participants are expecting an increase in sales due to the growing role of a sustainable approach to business. When asked about the main problem they face, 20% pointed to the fact that their suppliers do not meet sustainable business standards, and 36% stated that selecting their suppliers based on sustainable objective criteria will be their main priority in 2021. We have observed similar results amongst Polish companies and see an increase in their activity, an example of which is the first green guarantee line which we entered into with a Polish customer from the transport sector at the beginning of this year."

**How important will environmental risk become for you over the next two years?** (percent)

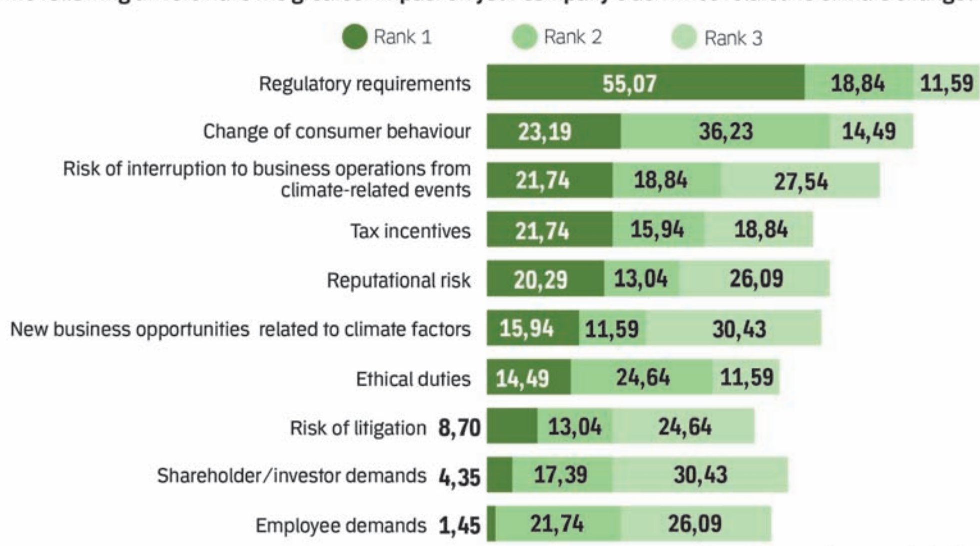

Source: Rzeczpospolita survey and calculations

**Does your organisation have concerns about incidents related to environmental issues?** (percent)




Source: Rzeczpospolita survey and calculations

**Which of the following drivers have the greatest impact on your company's activities related to climate change?** (percent)




Source: Rzeczpospolita survey and calculations

**Marcin Bartnicki**
Partner, Clifford Chance

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The significance of ESG issues for Polish businesses should be expected to increase. This applies not only to firms supplying products and services to consumers, who have noted the ethical conduct of businesses for some time. We expect to see ethical declarations and actions from companies demonstrating that they support equal rights, human rights and the combating of climate change. More and more international investors, corporations and financial institutions are requiring that their business partners and suppliers provide clear evidence that they are operating in accordance with expected ESG standards. Those issues increasingly determine where young people choose to take up employment. Companies that disregard these issues or pay only lip-service to them can expose their companies to the loss of sources of finance, lucrative contracts and sales markets and, equally importantly, access to talent.

# Greater personal liability of boards

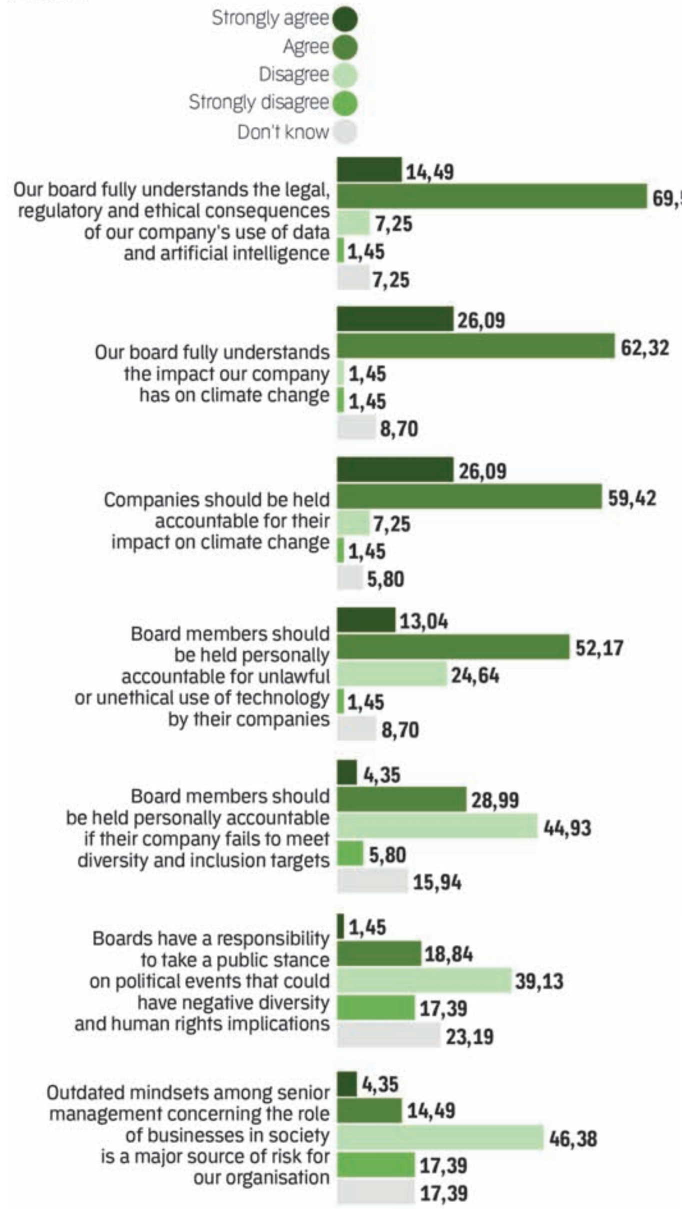
Respondents to our survey said that they devote an increasing amount of time to risk management. This aligns with a trend reflected in our global study with the EIU where 98% of respondents felt that when compared with the situation five years ago, their company's management team is far better prepared to handle the main risks that are a threat to the sector in which they operate. For more than 88% of Polish respondents, the priority for their firm is to be perceived as an organisation that has a positive impact on society.

However, as seen in the report conducted with the EIU, investment in risk management is currently lower than five years ago, although companies are still developing risk management systems. Amongst the activities planned for the next few years, those most often mentioned by our respondents is the creation of a transparent process of identifying new risks and regular training for the members of the board on identifying and addressing specific areas of risk.

An analysis of the responses concerning the link between the desire to fulfil the duties of a board member and personal liability provides interesting conclusions. Despite numerous examples of proceedings against members of management boards and supervisory boards in connection with allegations of harmful action, 71% of Polish respondents said that the risk of liability is not a factor that discourages membership of management authorities.

However, the respondents identified new areas that involve an increased risk of liability – 85% believe that companies should bear liability for their impact on climate change. Almost two-thirds of respondents agree that board members should bear personal liability for the unlawful and unethical use of technology by their companies. However, only one-third of respondents agree that the members of management boards should be personally liable for their company's failure to achieve its goals with regard to equality and diversity. By comparison, 84% of those surveyed in our similar report of global boards with the EIU believed that the board should bear such liability. In our survey, less than 20% of respondents believed that boards should be responsible for taking a public stand in connection with political events that could have adverse effects for equality and human rights, compared with almost half of respondents in the global survey.

**To what extent do you agree or disagree with the following statements?**
(percent)




Source: Rzeczpospolita survey and calculations

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→ Agnieszka Janicka
Partner, Clifford Chance

There is no doubt that in recent years risk management has become increasingly important. Boards of companies operating in Poland are becoming increasingly aware of internal risks and those that result from the environment their organisation operates in and – importantly – are better able to manage them. In most Polish firms, strategies, policies and procedures are developed to improve the security of the business carried out and effectively prevent any crises. This is a positive trend demonstrating that Polish business is becoming more mature. Increased awareness also brings with it a feeling of personal responsibility for decisions made by the company. Interestingly, board members willingly take responsibility for the impact their businesses have on the climate and ethical issues related to technology, yet they are unwilling to assess their achievements where equal rights are concerned. This could be because the application of measurements other than strictly financial ones is still a relatively new phenomenon in Polish companies. The development of anti-discriminatory procedures and fostering a corporate culture that supports diversity is a long term commitment. I think that, with time, Polish boards will see the positive impact equal treatment of employees of different genders, religions, sexual orientations and ethnicities has on the development of their firms, and they will draw the appropriate conclusions. The development of strategies that after implementation can be used to bring decision-makers to account in companies is the expected next step in the development of the self-awareness of board members in Poland.