

Gender Diversity on Boards: UK Corporate Governance Code to be Revised

The Financial Reporting Council¹ ("FRC") has recently published its response to a consultation on gender diversity on UK boards² and concluded that two changes should be made to the UK Corporate Governance Code ("Code") (the key source of corporate governance recommendations for companies with a premium London listing) with effect from 1 October 2012.

Background

The Code came into force in June 2010 and for the first time introduced the principle that the benefits of diversity (including gender) should be considered when searching for board candidates.

Following the introduction of the Code, Lord Davies of Abersoch was tasked with undertaking a review of gender equality on boards. The results of this were published in February this year in a paper entitled 'Women on Boards'³. The paper made a number of recommendations, for example, that quoted companies should disclose annually the proportion of women on the board and that all Chairmen of FTSE 350 companies should set out the percentage of women they aim to have on their boards in 2013 and 2015 (for further information see our previous update⁴).

The Women on Boards paper also made recommendations in relation to amendments to

the Code. The FRC began a consultation in May 2011 as to whether these Code amendments should be implemented and the results of the consultation were published on 11 October 2011.

The FRC Consultation

The key points that the FRC considered were:

- whether boards should be required to report annually on their boardroom diversity policy, including on any measurable objectives they had set;
- whether the Code should set out the most important issues to be addressed as part of the board effectiveness review;
- whether elements of a gender diversity policy should be set out (either in the Code or separately); and
- the timing of any Code changes.

Disclosure of Diversity Policy

The first amendment that will be made to the Code is in relation to annual reporting. Companies will be required to include "a description of the board's policy on diversity, including gender" and "any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives" in the section of their annual report that describes the work of the nomination committee.

This amendment differs from the Lord Davies recommendation in that it refers specifically to gender diversity and to *any* measurable objectives. The FRC concluded that it is appropriate to refer specifically to gender for the reasons set out in the consultation document,

¹ The UK's independent regulatory body responsible for promoting confidence in corporate reporting and governance.

² Consultation Document: [Gender Diversity on Boards](#)

Feedback Statement: [Gender Diversity on Boards](#)

³ [Women on Boards](#)

⁴ *DechertOnPoint*: [Women on Boards](#)

including that low percentages of women on boards may demonstrate a failure to make full use of the talent pool and that lack of gender diversity may weaken the board by encouraging “group think”. The FRC also concluded that whilst specifying minimum targets would not be appropriate as they would always be viewed as quotas, if any reference to measurable objectives were removed it would encourage only generic disclosures.

Board Effectiveness

The second amendment to be made to the Code concerns the evaluation of the board’s effectiveness. Companies will now need to consider the board’s diversity, including gender. This is in addition to the current factors to be considered of balance of skills, experience, independence, knowledge of the company on the board and how the board works together as a unit. Investors in particular were strongly in favour of this amendment and all those that commented on the consultation were in favour.

Further Guidance

The FRC decided that no further guidance should be issued (although this will be kept under review) and that no additional amendments are required in relation to the Code.

Timing

An updated Code will be published in 2012 incorporating the amendments (and following consultation on other areas of the Code) and will apply to financial years beginning on or after 1 October 2012. The FRC emphasises, however, that companies are strongly encouraged to voluntarily

apply and report on the additions to the Code with immediate effect.

Conclusion

The FRC’s feedback is likely to invite conflicting opinion. Some will be pleased that specific quotas have not been introduced whilst others may be disheartened that the Code amendments have not gone far enough. Whilst no further amendments will be made to the Code for now, companies are still free to adopt further measures, such as disclosing whether a board skills matrix is used to identify gaps within the board (as suggested by some consultation respondents). Companies should also be mindful of EU activity in this sphere (as discussed in our previous update) which may result in targeted measures being introduced in the future. Whether the Code amendments will result in meaningful change to the composition of boards or will simply be a recipe for additional bland disclosures remains to be seen. Whatever steps they take or policies they adopt with regard to the diversity of board composition, companies will need to ensure that their approach dovetails and is consistent with their approach to diversity and discrimination issues more generally.



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