



Governance in Brief

Your summary of the latest corporate governance developments

Headlines

- Lord Davies recommends a business-led approach to address gender imbalance on UK boards.
- FRC publishes new guidance on board effectiveness.

Lord Davies recommends a business-led approach to address gender imbalance on UK boards

In Brief: "Board appointments must always be made on merit, with the best qualified person getting the job" says Lord Davies in the foreword to his report yet, he acknowledges, the poor representation of women on boards, relative to their male counterparts, has raised questions about whether UK board recruitment is in practice based on skills, experience and performance. His report for the Department for Business, Innovation and Skills aims to present practical recommendations to address this imbalance.

Lord Davies has found evidence which suggests that companies with a strong female representation at board and top management level perform better than those without. In addition, the importance of improving the gender balance of corporate boards is increasingly recognised across the world. Some countries, including France and Italy, are considering significant action and some, including Norway, Spain and Australia, have made significant steps already. European Commission Vice-President Viviane Reding is expected to publish a Green Paper on boardroom diversity in 2011. She has made it clear that she would prefer companies to take action themselves but, if there was no progress over a certain period of time, then she is prepared to introduce targeted measures to improve the representation of women in senior positions. European Commissioner Michel Barnier is considering introducing legislative proposals in relation to women in financial service during 2011.

Having examined the responses received (just 11% of 2,654 responses recommended the introduction of quotas) and the evidence available Lord Davies has decided, on balance, not to recommend quotas. Instead Lord Davies is recommending that Chairmen and Chief Executives of UK companies take action, supported by others in the corporate world, including investors and executive search firms. His recommendations are as follows:

1. All Chairmen of FTSE 350 companies should set out the percentage of women they aim to have on their boards in 2013 and 2015. FTSE 100 boards should aim for a minimum of 25% female representation by 2015. The board target for all new appointments from March 2011 should be 2/3 male, 1/3 female, effective from the publication of Lord Davies' report. There is acknowledgement that FTSE 250 companies are starting from a lower position than FTSE 100 companies and tend to have smaller boards, so the 25% target needs to be adjusted accordingly when FTSE 250 boards are setting their own challenging targets but these companies should still apply the 2/3 male, 1/3 female rule to all new appointments. All chairmen should announce their aspirational goals within the next six months (by September 2011). Also all Chief Executives should review the percentage of women they aim to have on their Executive Committees in 2013 and 2015.
2. Quoted companies should be required to disclose each year the proportion of women on the board, women in Senior Executive positions and female employees in the whole organisation.
3. The Financial Reporting Council should amend the UK Corporate Governance Code to require listed companies to establish a policy concerning boardroom diversity, including measurable objectives for implementing the policy, and disclose annually a summary of the policy and the progress made in achieving the objectives.

4. Companies should report on the matters in recommendations 1, 2 and 3 in their 2012 Corporate Governance Statement whether or not the underlying regulatory changes are in place. In addition, Chairmen will be encouraged to sign a charter supporting the recommendations.
5. In line with the UK Corporate Governance Code provision B2.4 "A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments". Chairmen should disclose meaningful information about the company's appointment process and how it addresses diversity in the company's annual report including a description of the search and nominations process.
6. Investors play a critical role in engaging with company boards. Therefore investors should pay close attention to recommendations 1-5 when considering company reporting and appointments to the board.
7. Companies are encouraged to advertise non-executive board positions periodically to encourage greater diversity in applications.
8. Executive search firms should draw up a Voluntary Code of Conduct addressing gender diversity and best practice which covers the relevant search criteria and processes relating to FTSE 350 board level appointments.
9. In order to achieve these recommendations, recognition and development of two different populations of women who are well-qualified to be appointed to UK boards needs to be considered:
 - executives from within the corporate sector, for whom there are many different training and mentoring opportunities; and
 - women from outside the corporate mainstream, including entrepreneurs, academics, civil servants and senior women with professional service backgrounds, for whom there are many fewer opportunities to take up corporate board positions.

A combination of entrepreneurs, existing providers and individuals needs to come together to consolidate and improve the provision of training and development for potential board members.

10. Lord Davies and his steering board will meet every six months to consider progress against these measures and will report annually with an assessment of whether sufficient progress is being made.

In response to recommendation 3 on changes required to the UK Corporate Governance Code, the FRC has responded by announcing that it will consult on the proposed change to the Code and noting that the changes made to the Code in June 2010 brought in a new provision which states that, for all UK listed companies, "the search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender."

Deloitte's Chairman and CEO designate are committed to ensuring that Deloitte UK fully complies with the Lord Davies' recommendations. It is intended that Deloitte will publish its aims for the percentage of women on its Board of Partners and Executive Committee in 2013 and 2015 and the approach it will take to new Board and Executive appointments when it publishes its annual report for the financial year, 31 May 2011.

Deloitte is also actively supporting the implementation of Lord Davies' recommendations by providing a programme of seminars on relevant topics, such as remuneration policy, corporate and Board governance, the role of the Audit Committee and its responsibilities, and pensions, to aid the development and knowledge of potential women Board members, both Executive and Non Executive. This programme will be launched in April.

Lord Davies' recommendations provide a clear timetable for implementation. Further, Lord Davies' suggests that the government should reserve the right to introduce more prescriptive alternatives if the recommended business-led approach does not achieve significant change.

Date: 24 February 2011

Source: The Department for Business, Innovation and Skills

Further info: <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/11-745-women-on-boards.pdf>

<http://www.frc.org.uk/press/pub2521.html>

FRC publishes new guidance on board effectiveness

In Brief: Adding to the guidance notes on audit committees and internal control, the FRC has published new guidance on board effectiveness to assist companies in applying the principles of the UK Corporate Governance Code. This replaces the Higgs Guidance which last issued in 2006.

The new guidance is not intended to be prescriptive. Rather it is intended to stimulate boards' thinking on how they can carry out their role most effectively. The FRC makes it clear that ultimately it is for individual boards to decide on the governance arrangements most appropriate to their circumstances, and interpret the Code and guidance accordingly. The guidance is intended to represent a shift in emphasis to roles and behaviours and not just about the structures and processes that are put in place.

The following areas are covered in the guidance:

- the role of the board and directors;
- board support and the role of the company secretary;
- decision making;
- board composition and succession planning;
- evaluating the performance of the board and directors;
- audit, risk and remuneration; and
- relations with shareholders.

Date: 3 March 2011

Source: The Financial Reporting Council

Further info: <http://www.frc.org.uk/press/pub2525.html>

Time to take action

- Consider Lord Davies' recommendations and discuss an appropriate response.
- Take the opportunity to benchmark your board against the new FRC guidance and identify any areas for improvement.

On the horizon

- EC Green Paper on corporate governance of listed companies.

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