DechertOnPoint

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A legal update from Dechert's Corporate and Securities and Employment Law Groups

Women on Boards

This *DechertOnPoint* focuses on the recent Government commissioned report on representation of women on corporate boards.

Introduction

On 24 February 2011, Lord Davies of Abersoch published his report (commissioned last year by the new coalition government) into the representation of women on corporate boards, entitled "Women on Boards." The report sets out practical recommendations aimed at addressing the gender imbalance on corporate boards—only 12.5% of the members of the corporate boards of FTSE 100 companies in 2010 were women.

Two particular comments in the report encapsulate the political and commercial impetus to address boardroom inequality—the report notes that "corporate boards perform better when they include the best people who come from a range of perspectives and backgrounds," and that under-representation of women on corporate boards means that "companies are missing out, as they are unable to draw from the widest possible range of talent."

The most publicised aspect of Lord Davies' report is the view that the use of quotas to force change on this issue should not be endorsed because "we believe that board appointments should be made on the basis of business needs, skill and ability." However, the door to state intervention has been left ajar by the statement that "Government must reserve the right to introduce more prescriptive alternatives" should the approach adopted by the report fail.

Recommendations

The report makes the following recommendations:

- All chairmen of FTSE 350 companies should set out the percentage of women which 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 and the report states that a higher figure is expected in many cases.
- Each year, quoted companies should be required to disclose the number of women on the board, women in senior executive positions and female employees in the whole organisation.
- The UK Corporate Governance Code should be amended 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.
- Companies should report on the matters listed above in their 2012 corporate governance statement (and Chairmen will be encouraged to sign a charter supporting the recommendations).
- In line with the UK Corporate Governance Code provision B2.4, companies should explain how they address diversity in a separate section of their annual reports and disclose meaningful information about their appointment processes.
- Investors are asked to pay close attention to recommendations 1-5 when considering company reporting and appointments to the board.
- Whilst not requiring the advertising of all opportunities, the report encourages companies periodically to advertise non-executive board positions to encourage greater diversity in applications.
- Recruitment firms should draw up a voluntary code of conduct addressing gender diversity and best practice covering FTSE 350 board level appointments.

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- The report indicates that two different populations of women need to be considered: executives from within the corporate sector; and women from outside the corporate mainstream (including entrepreneurs, academics, civil servants and senior women with professional service backgrounds).

- A steering board will meet every six months to consider progress made and will report annually on whether sufficient progress is being made towards the achievement of the report's recommendations.

The Business Rationale

The report makes clear that establishing a gender balance on corporate boards is as much a business focussed ideal as it is one of gender equality. The case for a board of varied interest, upbringing and gender is made by reference to research-based evidence of stock market growth being stronger where a higher proportion of women are in senior management teams. The decision making capacity of a varied board is seen to be linked to the "richness" of the board, allowing issues to be considered in a more "rounded, holistic way." The business case for gender diversity on boards is seen as resting on four limbs:

- **Improving performance.** More diverse boards make better decisions, avoiding the pitfalls of conformity and 'group think' that uniformity can breed, stifling efficient debate.

- **Accessing the widest talent pool.** Setting out the case for embracing the, "under utilised pool of female talent at board level," in order to preserve British corporate competitiveness.

- **Being more responsive to the market** with a board-level capacity to understand the company's consumers.

- **Achieving better corporate governance.** UK FTSE 100 companies with greater numbers of women on their boards adopted the Higgs Review corporate governance recommendations earlier than those without.

What is Happening Abroad?

At the EU level, a green paper on boardroom diversity is expected in 2011. EU Vice-President Viviane Reding has made it clear that whilst she would prefer companies to take action themselves, if no progress is made then she is prepared to introduce targeted measures to improve the representation of women in senior positions (and the EU is considering introducing legislative proposals in relation to women in financial services in 2011).

Some countries impose quotas. Norway has achieved one of the most significant increases in female representation on boards, with 44.2% of directors being women now compared with 6.8% in 2002. The imposition of the Norwegian quota (the target level is 40%) drew heavy criticism domestically—it was described as a gesture of tokenism and promoting the imposition of poorer quality women candidates. The Davies report notes that the progress made in Norway should be set in the broader context of a country with significant state support for childcare, progressive welfare provisions and extensive maternity/paternity rights. In 2007, Spain also passed into law a requirement that a minimum of 40% of each gender be represented on the boards of public companies by 2015. As of early 2011, women make up 11.2% of boards in Spain. Iceland and Finland have also passed quota legislation. France and the Netherlands are considering such a measure.

Conclusion

The approach adopted in Lord Davies' report has attracted praise and criticism. Supporters suggest that it seeks to engineer an achievable and sustainable framework of meritocracy and genuine equal opportunities for women on boards. Critics point to the absence of a quota which was the driver of change in public opinion in Norway. What is clear is that this issue must be addressed by boards in terms of their corporate governance going forward.

Practice group contacts

For more information, please contact one of the lawyers listed, or the Dechert lawyer with whom you regularly work. Visit us at www.dechert.com/securities and www.dechert.com/employment.

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