

**Response from Eversheds LLP to
the FRC's Consultation Document,
"Gender Diversity on Boards"**

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This is the response of Eversheds LLP to the FRC's Consultation Document on proposals to amend the UK Corporate Governance Code in light of the report published by Lord Davies of Abersoch in February 2011 following his review of gender diversity on the boards of listed companies.

1. Should changes to the Code be made to give effect to the following recommendation by Lord Davies: *'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 progress made in achieving the objectives;'*

We agree that, in light of this recommendation, the Code should be amended.

2. Views on proposed change to Provision B.2.4:

"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. This section should include a description of the board's policy on gender diversity in the boardroom, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director."

We believe that the amendment to Provision B.2.4 proposed by the FRC is appropriate and that no further changes to the Code are warranted.

Requiring listed companies (where appropriate) to make a statement on their website/in their annual report to shareholders regarding their approach to diversity, whether it has a policy and, if so, the detail of that policy would be a positive step forward in terms of trying to ensure better balance.

3. Do you agree that no change to the Code is required to give effect to the following recommendation by Lord Davies: *'in line with provision B.2.4...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?'*

Yes.

4. Would it be helpful to set out some of the key elements to be covered by a gender diversity policy - such as the criteria used when recruiting directors, or the steps taken to develop senior executive talent and, if so, should this be done in the Code or elsewhere?

Should guidance be considered appropriate it is important that such guidance is not prescriptive about what companies should do in terms of their diversity policy.

It should be for each company to decide the approach to diversity to reflect the size and complexity of a company and to take account of the nature of the risks and challenges it faces (which could depend on the sector in which it operates), whether the composition of its board presents any corporate governance issues, and any other initiatives in this area already adopted by the company. A flexible approach will achieve better results than issuing rigid advice/guidance on applicable criteria where there is a danger that this

will be used without adjustment regardless of whether it works in the context of the individual company or not.

It is essential to build the correct mix of skills on the board and with one director retiring by rotation perhaps every year or two being able to identify a women with precisely the right skills and experience at precisely the right time could be difficult taken in isolation. A flexible approach will ensure the desire for diversity does not eclipse the overriding need to appoint the right person to the role.

Aside from being non-prescriptive, any guidance would need to be consistent with, and complementary to, the voluntary code of conduct for executive search firms launched on 22 July 2011 so that boards are not faced with conflicting best practice.

5. Views on adding a new supporting principle to Principle B.6 (on board evaluation) which set out some of the most important elements of any review. For example: "Evaluation of the board should consider the balance of skills, experience, independence and knowledge of the company on the board, the board's policy on gender diversity, how the board works together as a unit, and other factors relevant to its effectiveness."

The important issue here is to make sure that the board is "fit for purpose" in terms of skills, experience and balance in order to address the strategic issues impacting on the company and the markets in which it operates. The board needs to adapt/evolve in line with changes in the market. Therefore, regular reviews and evaluation of (i) the board; (ii) the competencies required to operate; and (iii) the individual performances of the directors is to be encouraged.

We would not be in favour of publishing the outcome of such reviews and evaluation, it being a private matter for the board. It is the chairman's responsibility to ensure that there is a robust process in place.

6. When should any changes to the Code that might be introduced take effect?

We do not have any strong views on this.

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