

Rio Tinto plc
2 Eastbourne Terrace
London W2 6LG
United Kingdom
T +44 (0) 20 7781 2058
F +44 (0) 20 7781 1835
E ben.mathews@riotinto.com

Ben Mathews
Company secretary

28 July 2011

By email: codereview@frc.org.uk

Christopher Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71 – 91 Aldwych
London WC2B 4HN

Dear Mr Hodge

Financial Reporting Council Consultation Document: Gender Diversity on Boards

We welcome the opportunity to comment on the FRC's consultation on changes to the UK Corporate Governance Code to implement the recommendations of Lord Davies' report *Women on Boards*. Rio Tinto's response to the specific questions raised by the consultation is set out in the attached document.

In compiling this response to the questions raised by the consultation, we would highlight the following points.

- We welcome Government initiatives designed to improve diversity on the boards of listed companies. We appreciate the importance of focussing on the significant considerations of gender diversity. However, for companies such as Rio Tinto, operating in complex and challenging, culturally varied locations around the world, and increasingly in less developed countries, such initiatives must naturally take account of all components of diversity and should not be limited purely to gender diversity. Gender diversity is an absolutely fundamental consideration but to isolate it in the way proposed as a regulatory initiative, without the flexibility afforded to listed companies to take into account the wider diversity initiatives that they should rightly be assessing, would in our view be an inappropriately narrow approach to adopt.
- Companies are best placed to set targets which are appropriate according to their circumstances and for this reason encouraging listed company boards to look broadly at the range of diversity criteria which are most appropriate to them but without the burden of a regulatory overlay is key.

- The requirement for transparency relating to diversity targets and board selection processes will act as a catalyst for change but gender diversity of itself cannot be imposed. Societal and cultural changes will be required to positively encourage a more even representation of women on company boards. Imposing a quota-based reporting system on listed companies is quite simply the wrong answer to the right question.
- We urge the FRC to avoid imposing regulation which could have the unintentional effect of ring-fencing the criteria for board selection processes to such an extent that eminently qualified-candidates are excluded because of their gender. Indeed, we would question whether it is permissible from a sex discrimination perspective for listed companies to restrict search criteria to a single sex.

Rio Tinto, as a group with a dual listed structure, is already subject to the Australian Securities Exchange's Corporate Governance Council's guidelines and recommendations regarding the establishment of a diversity policy. The approach taken by the ASX is flexible in that it focuses on the processes followed and disclosure of the initiatives undertaken to ensure that women are ready to take up board positions. We would welcome a compatible approach.

I would be happy to answer any questions which might arise from our submission.

Yours sincerely



Ben Mathews
Company Secretary

c.c. Stephen Haddrill

Enc

Financial Reporting Council Consultation: Gender Diversity on Boards

- Response by Rio Tinto plc

1. Are further changes to the UK Corporate Governance Code (the “Code”) needed in order to help achieve more diverse and more effective boards?

Most companies will report on how they have complied with the new provisions in their 2011 Annual Reports. We believe that a little time is required to establish these provisions and the FRC should avoid the temptation to introduce further changes in the near future. Companies are already considering how best to meet the challenge of diversity on the board, including gender diversity, following Sir Christopher Hogg’s last review. We respectfully suggest that any further changes to the Code should, following reasonable consultation, be instituted at fixed points in time to enable business to better prepare itself to respond to emerging requirements rather than such changes becoming a repeated distraction for listed companies.

As a general principle, we believe business-led solutions are preferable to any further mandated regulation. Companies are infinitely varied, and their strategies for obtaining the skills needed on their boards will be driven to suit their particular circumstances and seeking to promote the success of the company. Prescriptive requirements in the form proposed may have unintended consequences and fail to take into account the varying needs of the companies bound by them.

In this context, Rio Tinto is mindful of the warning sounded by EU Justice Commissioner Viviane Reding that the Commission will impose targeted measures in the absence of progress on “credible self-regulatory initiatives ... to enhance women’s participation in decision-making” and “if this has not happened, you can count on my regulatory creativity.” We feel it is critical, therefore, to demonstrate the effectiveness of the existing comply or explain regime at both UK member state and Commission level in order to avoid undermining it by further, possibly incompatible regulation. A response to the EU’s Green Paper on corporate governance will also be made to emphasise this point and to encourage greater collaboration in developing future regulatory initiatives.

We agree transparency is key to achieving momentum for change: a requirement to make more specific disclosures is likely to focus companies’ attention on achieving greater diversity in the boardroom. This addressed further in our responses below.

2. Suggested change to Principle B.2.4 of the Code:

“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.”

Rio Tinto is supportive of promoting gender diversity in the boardroom and welcomes the increased disclosure indicated above, subject to the following suggested refinements:

a) “The board’s policy on gender diversity in the boardroom”

Whilst we believe that gender diversity in the boardroom is an important consideration in determining the composition of the board, any description of the board’s policy on diversity should extend to all components of diversity. The mix of backgrounds and perspectives afforded by such diversity will achieve the goals of inserting new ideas, vigorous challenge and broad experience into the boardroom.

This broader perspective on diversity is important to Rio Tinto and stems from our experience of operating in many diverse and challenging countries where it is difficult to achieve diversity objectives owing to the nature of the business and the requirement for very specialised, technically competent professionals.

As a result, we suggest the removal of the word “gender” from the additional proposed text in principle B2.4 of the Code. We endorse a broader consideration of diversity which extends beyond gender and is in line with the existing sense of supporting principle B.2 (i.e. “diversity, including gender”) and Lord Davies’ objective of “accessing the widest talent pool – using the skills of all”.

b) “Measurable objectives”

Rio Tinto is supportive of the proposal to include “measurable objectives” in implementing a policy on diversity in the boardroom, where these are defined broadly.

We consider setting numerical targets for gender diversity on the board to be unhelpful for all the reasons already expounded in arguments made against quotas during the course of Lord Davies’ review. These include the preference for board appointments to be made on the basis of merit and experience; the potential impact on the future supply of suitable non-executive director candidates; the shrinking size of boards; and fewer executive director appointments.

Companies face many different challenges in achieving gender diversity at board level. These might include financial, cultural and geographical constraints. In addition, there are the universal issues of developing women through “the female executive pipeline” (which is particularly complex for multinational businesses); and pressure from shareholders for appointees to have relevant and extensive industry experience.

Stakeholders would benefit more from enhanced disclosure of the mix of skills and diversity which the board is looking to achieve in its membership; how each company tackles its own particular challenges; and how it demonstrates commitment to the development of female talent through mentoring, training, practical support and other measures to support women in reaching their full potential.

Rio Tinto has an established goal of to employ people that represent the diversity of the communities surrounding our businesses. The delivery of this goal includes specific, measurable objectives for women in senior management, in the graduate intake, and the employment of nationals of the countries in which we develop new business. However, we do not believe that such targets are appropriate at a board level as it is the overall blend of skills and experience that is of priority for this purpose.

c) “Progress on achieving those objectives”

The board renewal and succession processes require planning because the appointment of directors is a critical business performance issue. Changes take time, and progress in getting women onto boards will differ from company to company. This needs to be understood and the **efforts** made by companies to reach their aspirational goals recognised as goals in themselves.

Rio Tinto, as a global mining company, faces a number of challenges in sourcing directors. In addition to having the right blend of skills, relevant industry and international experience to drive the delivery of the company’s strategy, there are increasing calls on their time arising from the need for training, travel for overseas board meetings and site visits, and additional challenges arising from the structural complexity of the Group and the need to meet the regulatory compliance obligations of various jurisdictions.

By contrast, domestic businesses find it easier to recruit female directors or to develop senior female executives. Careers in global organisations such as ours are typically developed through

experience gained by transferring from business to business and from one country to another. This is problematic for women because of the way in which most western societies are organised where family commitments may limit mobility. These societal issues cannot be under-estimated and require governments and employers to lead the way through educational processes and by finding means of encouraging and supporting women in these challenging roles.

We recommend that companies set targets which are appropriate to their current position, culture and sector. Emphasis should be placed on describing the activities undertaken in pursuit of those targets, the results achieved, and full explanations provided where these fall short.

- 3. 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, whether this should be done in the Code or elsewhere?**

We believe it would be helpful for companies to set out some key elements to be covered by a diversity policy. To be effective these would need to be generic and broadly applied. Aspirational recommendations, for example, may assist companies to move towards greater diversity as these enable companies to undertake the change process in a way that is most likely to be achievable, and will reflect the different circumstances faced by companies.

Another means of driving change in this area, as recommended by Lord Davies, is to require executive search firms to draw up a voluntary code of conduct covering search criteria and processes relating to FTSE 350 board level appointments. We are yet to see the concrete results of any action taken in response to this recommendation, but consider this would be helpful in ensuring a greater number of female candidates are identified on shortlists, thereby allowing companies to consider a greater breadth of candidates.

- 4. Suggested addition of a new supporting principle to Principle B.6 of the Code:**
“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.”

We agree that encouraging companies to report on the process for evaluating the effectiveness of the board, including its policy on diversity in its widest sense, will serve as a call to action. However we suggest the removal of the word “gender” for the reasons set out above.

- 5. If changes are made to the Code, when these should come into effect i.e. 29 June 2011, 1 October 2011, 1 April 2012, 29 June 2012 or at the FRC’s next formal review of the Code.**

The timing of any changes to the Code would need to take into account the potential implications for achieving compliance within the timeframe and the preparation required for producing Annual reports. For this reason, it would seem any change before 29 June 2012 would create an unnecessary burden. Equally, changes effective after that date would be too remote and are likely to be overtaken by events in the interim.