BOARD DIVERSITY OR GENDER DIVERSITY
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Corporate Governance Specialists

Leveraging Governance value in the Boardroom and beyond!
Article Acknowledgement

“Board Diversity: Perspectives from Europe, Australia and South Africa”

Du Plessis, Saenger & Foster
Deakin Law Review (Australia) Vol.17 Number 2 2012

Quest to link board diversity to the bottom line – “the business case”?

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Europe

• Quota legislation
  – Norway
    • 40%
    • Consequences if not achieved
      – Board registration could be refused
      – Dissolution / deregistration of company
      – The “golden skirts”
  – France
    • Initially “comply or explain”
    • Now quota legislation – 40%
    • Consequences if not achieved
      – Appointment of males in contravention will be void
      – Attendance fee of board members will not be paid
European Union

• Other EU countries with quota legislation
  – Belgium
  – Italy
  – Spain
  – The Netherlands

• Other non-EU states/countries with quota legislation
  • Quebec (Canada)
  • Israel
  • Kenya
The German two-tier board: The Basics – Codetermination from ‘negativity’ to ‘positivity’!
2010 Amendments to the GCGC

GCGC requires SBs to specify concrete objectives regarding the composition of the SB, taking into account four specific criteria, namely

1. the particular needs of the enterprise;
2. international activities of the enterprise;
3. potential conflicts of interest; and
4. the age limit (they must specify it) for supervisory board members.
Germany

• Gender diversity?
  – GCGC expects objectives to be developed to determine “an appropriate proportion of female representatives on SBs”
  – GCGC also suggests more appointments of women in:
    • Senior managerial positions
    • On management boards – “SB’s must give proper consideration to the appointment of more women on MBs”
Germany- “under representation of women on boards”

– Germany (Official data from FidAR: 30 June 2011 – analysed 160 largest DAX/MDAX/SDAX/TecDAX companies):

  • 7.73% of all board seats (SB and MB) held by women:
    – 11.84% on SBs;
    – 3.63 % on MBs
    – In 60 of these companies no women on SB or MB
    – 7.4% of seats reserved for shareholder representatives on SBs were held by women;
    – 19% seats reserved for employee representatives on SBs were held by women.

  • November 2011 Deloitte study:
    – 8.2% of all board seats held by women for 600 listed companies sampled (Deloitte study, Nov 2011);
    – 11.2% of all supervisory board seats held by women for listed companies sampled (Deloitte study, Nov 2011).
Germany- recent developments

• Germany- 18 November 2013 Angela Merkel’s Christian Democratic Union and German Social Democratic Party agreed to drafting of legislation 30% of SBs must be (at least 30% male and 30 percent female) by 2016.
  
  (Netherlands in 2013 introduced a 30% quota rule **but** on a **comply** or **explain** basis.)
United Kingdom
(Bring on the Girls!!)

• Davies Report – 2011
• Companies should aim for 25% Board representation by 2015 with one in three new appointments being women
• Listing Requirements (2013) require disclosure in Strategic Report, no. of Directors Senior managers and employees of each gender
• Steering Committee meets every six months to review progress monitored by Government
Australia – “under-representation of women on boards”

• Some statistics:
  – Australia:
    • May 2011:
      – 79 of ASX200 boards without any females
    • August 2011 (higher than UK, Canada and NZ!):
      – 17.6% of ASX50 board seats occupied by women;
      – 16.1% of ASC100 board seats occupied by women;
      – 12.7% of ASX200 board seats occupied by women.
    • August 2012:
      – Women made up 14.50% of board members for ASX200 companies;
      – It was reported that 56 ASX200 boards still do not have any women;
      – In line with 2011 figures, up to August 2012, 28% of all 2012 board appointments for ASX200 companies were women.
ASX CG Council: 2010 Amendments to the 2007 CG Principles and Recommendations

– Recommendation 3.2:

• Companies should establish a policy concerning diversity and disclose the policy or a summary of that policy. The policy should include requirements for the board to establish measurable objectives for achieving gender diversity for the board to assess annually both the objectives and progress in achieving them.
– Recommendation 3.4:
  • Companies should disclose in each annual report the proportion of women employees in the whole organisation, women in senior executive positions and women on the board.

– Recommendation 3.5: Publicising on Web:
  • Any applicable code of conduct or a summary
  • The diversity policy or a summary of its main provisions
– Sex Discrimination Commissioner (Elizabeth Broderick)
  • “Male Champions of Change Group”

– Business Council of Australia (BCA)
  • 1 Year pilot program for high-achieving women
  • Personal mentoring

– AICD
  • Mentoring Program
  • Board Ready Program
  • Board Diversity Scholarship Program
  • A number of free spots for women on AICD Directors’ Program Course
• South Africa

- Black Economic Empowerment (BEE) legislation
- Black Economic Empowerment (BEE) Code 2007
  - Aspiration of having 50% of all directors of listed companies filled by black people by 2017

Companies Act 2008 - not prescriptive but Directors need to act in the best interests of the company as a whole embracing a “stakeholder inclusive approach” and broad diversity of interests

King 111 – drives diversity in broader sense ie different skills experience and backgrounds

The Women Empowerment and Gender Equality Bill 2013
  - Corporations and governments departments required to have 50% women on decision making bodies by 2017 (most radical example of gender quotation in the world!)
South Africa

– South Africa

• 2012 Statistics for South Africa:

<table>
<thead>
<tr>
<th>Category</th>
<th>Women</th>
<th>Black</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directors</td>
<td>14%</td>
<td>25.3%</td>
</tr>
<tr>
<td>Executive Directors</td>
<td>7.4%</td>
<td>9.5%</td>
</tr>
<tr>
<td>Non-Executive Directors</td>
<td>12.9%</td>
<td>27.6%</td>
</tr>
<tr>
<td>Independent Non-Executive Directors</td>
<td>21.2%</td>
<td>38.1%</td>
</tr>
</tbody>
</table>
South Africa compared with some other countries:

- 2012 Statistics:

<table>
<thead>
<tr>
<th>Country</th>
<th>% Female Board directors</th>
<th>% Female Executive Managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>8.4%</td>
<td>8%</td>
</tr>
<tr>
<td>Canada</td>
<td>14%</td>
<td>16.9%</td>
</tr>
<tr>
<td>UK</td>
<td>9%</td>
<td>13.5%</td>
</tr>
<tr>
<td>USA</td>
<td>15.2%</td>
<td>12.2%</td>
</tr>
<tr>
<td>South Africa</td>
<td>16.6%</td>
<td>19.3%</td>
</tr>
</tbody>
</table>
South Africa

• Considerable increase in female members of IoDSA:
  – 19% in 2007
  – 28% in 2014

• Considerable increase in black members of IoDSA:
  – 35% in 2007
  – 51% in 2014
  – IoDSA have taken a holistic approach to assist Boards to achieve diversity in a sustainable way with the “Circle of Engagement Model”.

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• Reasons for under-representation
  – Board domination by middle-aged men: the old boys’ club / appoint “friends, mates and buddies”!
  – Fewer women in senior managerial and senior executive positions and fewer women serving as CEO’s: Thus pool from which women board members is selected is simply smaller
  – Always been discrimination against women at these levels – in the past women would hardly ever have been appointed to senior executive positions over men in a male-dominated environment
  – The “glass ceiling”
  – Career choice?
• Reasons for appointing more women on boards
  – “The right thing to do”!
  – “The right and bright thing to do”!
  – Tapping from talent of 50% of population i.e. the widest range of talent
  – The business case?
  – Board diversity and better decision making
  – Women are more consumer/customer-orientated and improve decisions in best interests of the company
• Ways of ensuring more women on boards?
  – It will magically get right over time as more women get more experience!
    • But how?
  – Demand / insist on disclosure of number of females (at all levels) employed in companies through listing rules and voluntary Codes of Good Corporate Governance
    • Comply or Explain!
  – Determine targets (percentages) of females (at all levels) to be achieved through listing rules and voluntary Codes of Good Corporate Governance
    • Comply or Explain!
  – Female quotas mandated through legislation?
    • Norway, Spain, Italy, Switzerland, France, Israel, Belgium, Kenya, Quebec (Canada) and the Netherlands
    • Temporary loss of investor confidence, but what will happen over the long term?
    • “The Golden Skirts”?
Concluding remarks

• Debate on board diversity wider than gender diversity
• Considerable efforts worldwide to ensure that more women are appointed to senior managerial, executive and directorial positions
• More females will be appointed!
• Is quota legislation the right (“only”!) way to go?
• Huge responsibilities associated with this development
• Unintended consequences?
QUESTIONS?

END

THANK YOU

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