

# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

THIRD EDITION

PAUL  
HASTINGS



# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

THIRD EDITION

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\* New for 2013  
\*\* Updated for 2013





**“For us it’s about talent... getting and keeping the best talent. It’s about creating a culture where we can have innovative, creative solutions for our clients and our customers, and it’s about making sure that diversity and inclusion are differentiators to grow the business.”**

**Dr. Rohini Anand**  
Global Chief Diversity Officer, Sodexo

## BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

### EXECUTIVE SUMMARY

Paul Hastings is pleased to present the third edition of “Breaking the Glass Ceiling: Women in the Boardroom,” a comprehensive, global survey of the way different countries address the issue of gender parity on corporate boards. This edition is a supplement to our full 2012 report, and provides updates to jurisdictions with notable developments over the past 12 months, as well as five new jurisdictions: Austria, Denmark, Finland, India, and Sweden.

Given the dynamism and evolution of this issue, we have developed an interactive website dedicated to providing the most current information and developments on the issue of diversity on corporate boards. Included are details about the legislative, regulatory, and private sector developments and trends impacting the representation of women on boards in countries around the world. In addition, there are interviews with corporate executives and directors as well as individuals who are making strides in addressing this issue – whether at their own companies, within their industries, or as a thought leader. We are honored to share the insights of three women who have been, and are today, pioneers in their own right and have lent their voices and efforts to address this issue:

- **Dr. Rohini Anand** – Senior Vice President and Global Chief Diversity Officer at Sodexo (40% of Sodexo board members are women)
- **Judy Hope** – Professor at Georgetown University Law Center and a Director on several boards, including Union Pacific, General Mills, and Russell Reynolds. Ms. Hope is a former Director of IBM and former partner at Paul Hastings
- **Dr. Jane Shaw** – Director of McKesson Corporation, former Director at OfficeMax, and former Chair of Intel

They collectively cover the topics of (i) educating boards on the business imperative in establishing and maintaining diverse boards, (ii) strategies to open vacancies on corporate boards, (iii) building the pipeline of diverse candidates, and (iv) establishing networks of board-ready diverse candidates. We encourage you to access the full report and interviews at [www.paulhastings/genderparity](http://www.paulhastings/genderparity). We will continually update the site with new developments and additional interviews and are hopeful this compendium of information ignites discussion and debate as well as action.

### Year in Review

Europe continues to be a leader on this issue. In the past year, we saw tangible progress as well as continued debate about the best approaches for promoting greater representation of women on corporate boards. 2013 showed the highest year-on-year change recorded to date in the average number of women on boards of large corporations in European Union Member States, in part due to mandatory quotas. However, several EU countries have pursued strategies other than mandatory quotas to address the gap. Austria, Denmark, Finland, the United Kingdom, and Sweden favor legislation and corporate codes that allow companies to set their own targets and policies. Recent amendments to the UK’s corporate governance code more explicitly reference gender as a factor in making board appointments. The changes also require that companies report publicly on their board member selection process, diversity, and gender policy as well as measurable objectives for implementing and gauging progress. In Germany, the debate over fixed quotas continues within the government and no legislation addressing gender parity is expected this year.

The United States and Canada continue to exhibit only marginal growth in the percentage of women on boards since the 2012 report. However, in the United States, there has been renewed attention and discourse in the public domain regarding the lack of women in the highest echelons of corporate leadership following several op-eds and most notably, Sheryl Sandberg’s book *Lean In: Women, Work and the Will to Lead*. Notably, much of the discourse has centered on private sector initiatives, rather than mandatory quotas or other legislative solutions.

In Australia, new legislation has bolstered reporting requirements: private companies with 80 or more employees must report annually regarding specific gender equality indicators. The legislation includes potential sanctions such as naming non-compliant companies in national newspapers and jeopardizing such companies’ eligibility for government contracting. In New Zealand, the proposed NZSX/NZDX Listing Rules regarding diversity have been enacted, requiring listed companies to provide a breakdown of the gender composition of their directors and officers.

Legislative efforts to increase representation of women on boards of public and private companies in China have begun to bear results. Since 2012, over 50 cities in Mainland China have adopted local rules implementing the 2011 legislation,

although the majority are limited to state-owned entities. One city in particular, Changji (located in Xinjiang Province), adopted a goal of 18% female board representation by 2015 and 25% by 2020 – the first time a specific target for female representation has been proposed under the 2011 legislation. Although the issue of gender equality at the board level has not yet received significant attention in public discourse in India thus far, the Indian government is taking initiative to address the disparity. The lower house of the Indian Parliament recently passed a bill that is expected to become law, which would require a certain class of companies (which have not yet been determined) to have at least one woman director.

A Variety of Strategies to Fit Local Dynamics

The 2013 report continues to highlight the variety of approaches taken in various countries to increase the number of women on corporate boards. We continue to see countries implementing legislative measures, including quotas, voluntary targets, and reporting requirements. In a number of countries, corporate governance codes and stock exchange listing rules require disclosure and recommend gender diversity as a selection criterion for directors. Overall, there appears to be significant interest from both public and private sectors in building a pipeline of future women directors.

“I think what is required in the proxy disclosure could be strengthened and companies could be held more accountable for meeting the goals that they’re asked to disclose... We pay attention to what we measure. I think the best way to go in the United States, whether it’s the stock exchange listing requirements or the SEC’s disclosure requirement, is if they require companies to disclose what their targets are and then hold them accountable for the progress they’re making.”

Dr. Jane Shaw  
Director at McKesson

Legislative Mandates Continue to Spur Results... and Debate

Based on the data to date, legislative quotas still seem to be the most effective measure to immediately increase numbers. In November 2012, the European Union (EU) revitalized the debate on quotas by proposing a temporary mandatory quota (valid until 2028) with the goal of attaining 40% representation of the underrepresented sex in non-executive board member positions in listed companies by 2020 (there is an exception for small- and medium-sized enterprises). As of January 2013, 21 of 27 national parliaments have approved the proposed EU directive, with the Czech Republic, Denmark, the Netherlands, Poland, Sweden, and the UK as the main opponents.

Notably, the EU directive also included a “flexi quota” provision which provides voluntary implementation by listed companies of self-regulatory targets for more equitable representation of both genders for executive board member positions and annual reporting of the progress made in achieving the target. Similarly, certain countries have implemented non-binding quotas or targets for female representation on boards that companies can voluntarily follow. Denmark appears to have developed a middle ground between quotas and non-binding measures. New regulations enacted on April 1, 2013 require large Danish companies to set target figures for equal representation on boards and develop policies to increase the percentage of women in senior management. Equal representation is defined as at least 40% of the underrepresented gender of either board members elected at a general meeting or in upper management. Large Danish companies are required to establish policies and set targets or face fines; however, there is no fine or legal obligation to reach the target figures.

Leveraging Self-Regulation through Corporate Governance Codes and Listing Rules

In many countries, corporate governance codes and stock exchange listing requirements have been an effective way to promote gender diversity and potentially create greater opportunities for women board members. Listing requirements and corporate governance codes include direct references to gender or diversity among possible

selection criteria for board members, and require companies to disclose in annual reports whether they maintain a diversity policy or, in some cases, the gender composition of their boards.

Both Australia and Finland are examples of where these measures have been successful. Finland’s corporate governance code provides that both genders be represented on the board on a “comply or explain” basis. As of 2013, 23% of board members of listed Finnish companies are women. However, there is still room for improvement: only 4.2% of chairpersons and only 16% of executive management team leaders of listed companies in Finland are women.

Other corporate governance or listing requirement provisions may indirectly help increase the number of female representatives on boards by creating greater turnover and leading to greater access for women. For example, the Companies Bill anticipated in India restricts the number of company boards on which an individual can serve as director.

“If the company’s management and board work well together, management will not want [the board] to change very much and will extend terms. Another reason there is such a small percentage of women on boards is because the retirement age is being extended. You used to have to retire at age 60, 61, or 65. Now most boards will allow you to serve until age 75. So people tend to have longer terms and boards don’t turn over. ... I served as Audit Chair of Union Pacific for 16 years, longer than anyone else in that position in the history of the company. But there is a new Audit Chair who is doing a good job, and I think turnover is good.”

Judy Hope  
Professor at Georgetown University Law Center and Director on several boards, including Union Pacific, General Mills and Russell Reynolds

Ms. Hope and Dr. Shaw commented on the tension between ensuring the continuity and quality of the board when new members join, and the need to have turnover to create more seats for diverse candidates, including women. In raising the question of what the right tenure period would be, Dr. Shaw notes that it takes time for a new board member to really understand the business of the company. Having climbed the learning curve, boards then want the director to serve for a reasonable period of time.

The Private Sector Remains Critical

In many countries, industry associations, business schools, and non-governmental organizations continue to advocate for and develop initiatives to increase representation of women on corporate boards. For example, the Finland Chamber of Commerce organizes a mentoring program for women executives and the Finnish Business and Policy Forum published a best practices guide on strategies to assist women to advance in business. Finnish universities host educational programs to encourage women to take on business management and executive positions. Additionally, the Finnish Ministry of Social Affairs and Health is engaged in a multitude of programs to promote gender equality in society and to promote social change through influencing attitudes and subliminal perceptions regarding women’s suitability for business. Finally, the Finnish Ombudsman for Equality monitors the development and addresses issues of concern for gender equality in the Finnish social arena.

Industry groups also continue to develop voluntary codes of conduct to promote gender diversity on corporate boards. In New Zealand, the 25 Percent Group, a group committed to achieving 25 percent female participation in private

sector boards by 2015, recently launched a new Voluntary Code of Practice for Board Recruitment which provides best practice guidance in achieving diversity in board recruitment processes.

Companies have themselves taken the initiative to implement strategies to increase representation of women on boards and in building the pipeline. According to Dr. Anand, company leadership can set a strong tone by publically stating its commitments and targets, and then by holding their employees accountable for achieving those targets. At Sodexo, teams are held accountable for promoting diversity through the performance management process and by linking the company's diversity scorecard and diversity performance measures to employee incentives.

**“We’ve seen the benefits at Sodexo. We continue to grow, we meet our profitability targets, we’ve gone into different areas, we’ve developed new lines of business. And all of this only comes when you have that culture that permeates from the top. Making those sorts of connections and examples are the benefit of diverse boards, both... factually but also emotionally, for leadership.”**

**Dr. Rohini Anand**  
Global Chief Diversity Officer, Sodexo

Dr. Anand points to several initiatives implemented at Sodexo aimed at removing barriers that prevent women from moving into leadership positions and ensuring that there is a pipeline of future women leaders. Examples include formal and informal mentoring and sponsorship programs, flexible work arrangements (for both men and women), ensuring that women can transition back into the workforce without losing their seniority, and providing women access to networks. Fundamentally, Dr. Anand notes the importance of ensuring that the work culture is accepting of the different leadership styles that women bring to the workplace, rather than looking at leadership in a one-dimensional manner.

Strategies for Aspiring Board Members

In addition to legislation, corporate governance codes, and initiatives by the private sector, there are strategies that women globally can implement to better position themselves as candidates for board membership. Ms. Hope and Dr. Shaw, both experienced board members, outlined several ways in which women can get on corporate boards.

- **Develop Skills and Expertise:**
  - Dr. Shaw noted that “the qualifications for sitting on a board will come from your career history... and what skills the particular board is looking for.” The experience does not have to be in the same industry. Dr. Shaw was invited to join the Intel board because many of the issues she had dealt with on the board of a pharmaceutical company mirrored those being encountered at Intel.
  - Ms. Hope mentioned that CEOs want women candidates, but “they also want a director that has the experience they need at that time.” One of the things that helped Ms. Hope most in being attractive for board service was her experience in government service.
- **Serve on Non-Profit Boards:** Women can get relevant experience for for-profit board service by serving on non-profit boards, particularly with regard to teamwork, committee service, addressing issues related to compensation and audit, and financial matters.

- **Express Interest:** According to Dr. Shaw women need to let it be known that they are interested in serving on a board and should actively promote themselves for these positions.
- **Be Strategic:** Don't restrict yourself to the obvious. As Dr. Shaw notes, there may be an opportunity to serve on the board of a subsidiary of a parent company, for instance.
- **Networks and Sponsors:** Dr. Shaw states that women need good sponsors who can use their connections to help place them on boards and/or use their networks to get their names put forward as potential board candidates. Dr. Shaw was recruited to her first corporate board because a then-sitting director recommended her. Assess your network, expand it if necessary, and then use it.

For more advice and details on Dr. Shaw and Ms. Hope's experiences as directors, as well as Dr. Anand's insights, please see the full interviews at [www.paulhastings/genderparity](http://www.paulhastings/genderparity).

Conclusion

The discussion on gender parity is being addressed in a number of ways in different countries, including legislation, governance codes, and private sector initiatives. Although the debate over the best way to close the gap continues, there appears to be a strong consensus in many countries regarding the need for building a pipeline to increase the pool of women candidates for board seats, as well as to establish new and/or publicize existing networks of board-ready women.

Many developing countries, like India, are in the initial stages of building that pipeline, challenging cultural and social norms, as well as a low female literacy rate, that create obstacles to advancement. Other countries have closed the gap in certain spheres and not in others – for example, in Sweden there is significant gender diversity in the political sphere (45%), but the economic sphere continues to lag behind. Overall, there is significant room for improvement, and hopefully the ideas and strategies summarized in this edition will advance the discussion on how to move forward.

We welcome your feedback on the 2013 report. It is our hope that this edition sparks ideas and discussions about possible strategies and initiatives. We will continue to add new jurisdictions, in addition to updating the countries covered to date. We look forward to reporting on future efforts to increase women's participation on corporate boards globally in the upcoming year.

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SUMMARY OF CORPORATE GOVERNANCE CODES

COUNTRY	GOVERNANCE CODE	IMPLEMENTING BODY	NATURE OF REQUIREMENT
Argentina	Established by General Resolution No. 516/2007 of the Comisión Nacional de Valores	Regulator	Voluntary. Listed companies must “reply or explain” compliance in annual reports.
Australia	Corporate Governance Principles & Recommendations issued by Australian Stock Exchange Corporate Governance Council	Exchange	Comply or Explain
Austria	Austrian Code of Corporate Governance published by the Austrian Working Group for Corporate Governance	Business association	Required for Listed Companies
Belgium	Belgian Company Code issued by Belgian Committee on Corporate Governance	Regulator	Mandatory. Pecuniary sanction and nullification of appointments made in violation of the code.
Brazil	Corporate Governance Code published by the Brazilian Institute of Corporate Governance (Instituto Brasileiro de Governança Corporativa)  Corporate Governance Code published by the CVM (Brazilian Securities and Exchange Commission)	Business association  Regulator	Voluntary
Canada	National Policy 58-201 adopted by Canadian Securities Administrators	Regulator	Voluntary
China	Code of Governance for Listed Companies issued by China Securities Regulatory Commission and State Economic Trade Commission	Regulator	Required for Listed Companies

PROVISION REGARDING GENDER DIVERSITY	QUOTAS	EXISTENCE OF BOARD TERM LIMITS	DEFINITION OF INDEPENDENT DIRECTORS
--	--	--	--
Listed entities must: (1) establish and disclose a diversity policy; (2) disclose gender diversity objectives and progress; and (3) disclose the proportion of (a) women employees in the whole organization, (b) women in senior executive positions, and (c) women on the company's board.	--	--	The board should consider several factors when determining the independent status of a director, including whether the director: (1) is a substantial shareholder of the company, (2) is employed or has previously been employed in an executive capacity by the company, and (3) has a material contractual relationship with the company.
When appointing the members of a supervisory board, the general meetings of shareholders of listed companies are required inter alia, to pay reasonable attention to diversity with respect to the representation of both genders.	No	--	--
At least 1/3 of the directors of listed companies must be of a different gender than the other board members. Annual reports must discuss efforts made toward meeting minimum requirement of 1/3 of board members from a different gender.	Yes	--	--
--	--	--	--
--	--	--	A member is independent if the individual has no direct or indirect material relationship with the issuer (i.e., a relationship that could reasonably interfere with the exercise of a member's independent judgment).
--	--	--	--

COUNTRY	GOVERNANCE CODE	IMPLEMENTING BODY	NATURE OF REQUIREMENT
Colombia	--	--	--
Denmark	Danish Corporate Governance Recommendations	Exchange	Comply or explain
Egypt	Code of Corporate Governance adopted by the Egyptian Institute of Directors of the Ministry of Investment	Regulator	Comply or explain
European Union	Green Paper on Corporate Governance, dated April 5, 2011, solicited Member States' opinions regarding items concerning corporate governance, including gender diversity on corporate boards. However, no governance code has been adopted.	--	--
Finland	Corporate Governance Code issued by the Finnish Securities Market Association	Exchange	Comply or explain
	Statement for Improving Corporate Governance of Unlisted Companies issued by the Finland Chamber of Commerce	Business association	Voluntary
France	Corporate Governance Code of Listed Corporations adopted by AFEP-MEDEF	Business association	Voluntary. Companies must "comply or explain" non-compliance in annual reports.
Germany	Corporate Governance Code adopted by Government Commission on the German Corporate Governance Code	Regulator	Voluntary

PROVISION REGARDING GENDER DIVERSITY	QUOTAS	EXISTENCE OF BOARD TERM LIMITS	DEFINITION OF INDEPENDENT DIRECTORS
--	--	--	--
In assessing their composition and nominating new candidates, boards of directors shall take into consideration diversity, including gender. Also recommends that listed companies set objectives for diversity (i.e. gender, age, and international experience) at all management levels in companies, and prepare action plans. Companies are recommended to account for their objectives and their progress in their annual reports.	--	--	--
--	--	--	--
--	--	--	--
The Code requires that both genders be represented on boards of listed companies. If a board does not have members of both genders, companies must explain on their website and in their annual Corporate Governance Statement.  Recommends that gender be taken into consideration when identifying candidates for directors.	--  --	--	--
For companies with securities traded on regulated market, each board should consist of at least 20% women within three years and at least 40% women within six years.	Yes	--	To remain independent, a director must not have been a director for more than twelve years.
When appointing management boards, supervisory boards shall respect diversity and aim for appropriate consideration of women. Supervisory boards shall specify concrete objectives regarding their composition, which shall include an appropriate degree of female representation.	--	--	Supervisory board members must be independent, which is determined after considering such factors as material compensation from the company within the past two years and holding 10% or less of the company's shares.

COUNTRY	GOVERNANCE CODE	IMPLEMENTING BODY	NATURE OF REQUIREMENT
Hong Kong	Code of Corporate Governance Practices adopted by The Stock Exchange of Hong Kong Limited	Exchange	Voluntary
India	--	--	--
Indonesia	Code of Good Corporate Governance adopted by the National Committee on Governance	Regulator	Voluntary
Israel	--	--	--
Italy	Italian Corporate Governance Code adopted by Italian Stock Exchange	Exchange	Comply or explain
Japan	Regulations for Listing issued by the Tokyo Stock Exchange	Exchange	Required for Listed Companies
Jordan	Corporate Governance Code adopted by the Jordan Securities Commission	Exchange	Comply or explain
Mexico	Corporate Governance Code drafted by the Committee on Corporate Governance.	Business association	Voluntary
Morocco	Code of Good Practice on Corporate Governance adopted by the National Commission on Corporate Governance	Regulator	Comply or explain
Netherlands	Corporate Governance Code adopted by the Corporate Governance Code Monitoring Committee	Regulator	Comply or explain
New Zealand	NZSX/NZDX Listing Rules issued by New Zealand Stock Exchange	Exchange	Comply or explain

PROVISION REGARDING GENDER DIVERSITY	QUOTAS	EXISTENCE OF BOARD TERM LIMITS	DEFINITION OF INDEPENDENT DIRECTORS
--	--	Yes. Non-executive directors should be appointed for a specified term.	If an independent, non-executive director serves more than nine years, his or her further appointment should be subject to a separate resolution for shareholder approval.
--	--	--	--
--	--	--	--
--	--	--	--
In identifying candidates for directors, shareholders shall consider the gender of the candidates, among other things.	--	--	--
--	--	--	Independent officers may be an outside director or auditor.
--	--	--	Independent members are not tied to the company or any of its upper executive management, affiliate companies, or its external auditors by any financial interests or relationships other than his or her shareholding in the company, that may be suspected to bring that member benefit.
--	--	--	--
Management boards should be composed of members who, among other things, provide diversity including with respect to gender balance.	--	--	--
Supervisory boards must aim to achieve a gender and age diversity and disclose its approach and efforts in this regard.	--	None	Supervisory board members' independence is determined according to several factors, including whether the member or relatives (1) are company managers or management employees, (2) have important business relationships with the company or affiliates, and (3) hold more than 10% of the company's shares.
Listed companies must disclose in their annual reports the gender composition of their boards, subsidiary boards, and senior management, as well as an evaluation of their performance with respect to any formal diversity policy they might have.	--	--	Independent Directors are those Directors who are not executive officers or the Issuers and who have no Disqualifying Relationship under the Listing Rules.



COUNTRY	GOVERNANCE CODE	IMPLEMENTING BODY	NATURE OF REQUIREMENT
Norway	Code of Practice for Corporate Governance issued by the Norwegian Corporate Government Board	Regulator	Comply or explain
Philippines	Code of Corporate Governance issued by Securities and Exchange Commission	Regulator	Required for Listed Companies
Singapore	Code of Corporate Governance issued by the Monetary Authority of Singapore and Singapore Exchange Ltd.	Regulator and Exchange	Comply or explain
South Africa	King Code on Corporate Governance	Business association	Comply or explain
Spain	Good Governance Code issued by the Comisión Nacional de Mercado de Valores (Spanish National Stock Exchange Commission)	Exchange	Comply or explain
Sweden	Swedish Corporate Governance Code issued by the Swedish Corporate Governance Board	Business association	Comply or explain
	Rulebook for Issuers by NASDAQ OMX Stockholm	Exchange	----

PROVISION REGARDING GENDER DIVERSITY	QUOTAS	EXISTENCE OF BOARD TERM LIMITS	DEFINITION OF INDEPENDENT DIRECTORS
Code recommends that due attention should be paid to the balance between male and female members of the board.	--	--	--
--	--	--	An independent director is a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having any relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.
Boards and their committees should comprise directors who as a group provide an appropriate balance and diversity of skills, experience, gender, and knowledge of the company.	--	The independence of any director who has served on the Board beyond nine years from the date of his or her first appointment should be subject to particularly rigorous review.	An independent director is one who has no relationship with the company, its related corporations, its 10% shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgment with a view to the best interests of the company.
Code does not explicitly advocate for increased gender diversity but recommends that a board consider "whether its size, diversity and demographics make it effective" and lists gender as one of several factors of diversity.	--	Code states that companies should implement a staggered rotation of non-executive directors and that at least one-third of non-executive directors should retire by rotation annually.	Independence is defined as the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company.
Boards should reflect a diversity of knowledge, experience, and gender in order to pursue the social interests of a company. The Code recommends that female candidates should be nominated to cover vacancies of independent directors.	--	Independent directors should not stay on boards for a continuous period of more than 12 years.	--
Board members are collectively to exhibit diversity and breadth of qualifications, experience and background. Companies are to strive for equal gender distribution on the board. Nomination committees must issue a statement when the notice to the shareholders' meeting is issued, explaining its proposals with regard to the requirements concerning the composition of the board.  Does not specifically mention gender, but states that the board of directors shall be composed so that it "sufficiently reflects the competence and expertise required to govern a listed company and to comply with the obligations of such a company."	--	--	--

COUNTRY	GOVERNANCE CODE	IMPLEMENTING BODY	NATURE OF REQUIREMENT
Tunisia	--	--	--
United Kingdom	UK Corporate Governance Code issued by the Financial Reporting Council	Regulator	Comply or explain
United States	Corporate Governance Requirements (Rule 5600) issued by NASDAQ.  Corporate Governance Standards adopted in the New York Stock Exchange's Listed Company Manual.	Exchange	Required for Listed Companies

PROVISION REGARDING GENDER DIVERSITY	QUOTAS	EXISTENCE OF BOARD TERM LIMITS	DEFINITION OF INDEPENDENT DIRECTORS
--	--	--	--
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. A separate section of the annual report describing the process for board appointments should include a description of (i) the board's policy on diversity, including gender, (ii) any measurable objectives that it has set for implementing the policy, and (iii) progress on achieving the objectives.	--	--	The board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgment. The Code includes several factors that may be relevant to this determination, including whether the director has been an employee of the company within the last five years, represents a significant shareholder, and who has served on the board for more than nine years from the date of his or her first election.
--	--	--	NASDAQ Rule 5605 defines "independence" in terms of an individual's relationship with a listed company, which would impair their independence.  Section 303A.02 of the NYSE's Listed Company Manual sets forth several "independence tests" to determine whether an individual qualifies as an independent director. The tests require the board of directors to affirmatively determine that an individual has no material relationship with the listed company.





# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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NORTH AMERICA



Canada

Michelle Yetter, Associate  
Paul Hastings (Washington)

In Canada, the issue of gender diversity on corporate boards has received increasing attention over the past decade from legislators, policy advocates, and members of the business community. A 2011 survey of Financial Post 500 companies found that women held 14.5 percent of board seats, which reflected only a 0.5 percent increase from 2009. From 2009 to 2011, women’s representation on private company boards increased 3 percent; however, women’s representation on publicly listed company boards remained flat for this period. The survey found that close to half of publicly listed companies have no women on their boards.<sup>1</sup>

The Canadian Constitution guarantees the equality of the sexes. In 1982, the Canadian government enacted the Canadian Charter of Rights and Freedoms, which is a bill of rights entrenched within the Canadian Constitution. The Charter provides that every individual is equal under the law and has the right to equal protection without discrimination based upon many factors, including gender. Significantly, the Charter expressly permits laws, programs, and activities that attempt to ameliorate conditions of disadvantaged individuals or groups, including those who are disadvantaged because of their gender.<sup>2</sup>

In recent years, the Canadian government has taken an increasingly active role in initiatives to increase the proportion of women on corporate boards. In 2006, the Government of the Province of Quebec implemented a law that required Quebec Crown corporations – which are state-owned and controlled enterprises (“SOEs”) – to have equal representation of men and women on boards of directors of all Crown corporations by December 2011. Reports have indicated that Quebec’s Crown corporations were on track to have 50 percent female representation before the end of 2011.<sup>3</sup> However, it is unclear whether full compliance was reached.

In addition, Senator Céline Hervieux-Payette, P.C. (QC) has introduced several pieces of legislation that would amend various laws to require publicly listed corporations (including distributing corporations under the *Canada Business Corporations Act* that have issued securities), Crown corporations, and certain financial institutions (including banks listed in Schedule I to the *Bank Act*, certain insurance companies, and cooperative credit associations) to achieve parity in the number of women and men directors. An initial iteration of such legislation, Senate Public Bill S-206 entitled the Board of Directors Gender Parity Act, was considered in early 2011. However, the Standing Senate Committee on Banking, Trade and Commerce recommended that the Bill not proceed further in the Senate and issued a report enumerating its reasons for recommending against further consideration of this legislation. The report stated that the legislation raised several legal and constitutional issues and also observed that the corporate governance provisions of certain statutes aim to provide a framework allowing companies to decide how they should best operate.<sup>4</sup> In the fall of 2011, Senator Hervieux-Payette introduced a private member’s bill in the Senate, which is similar to Bill S-206 and would require boards of certain corporations, Crown corporations, and financial institutions to have at least 40 percent women within six years of enactment.<sup>5</sup>

In March 2012, Canada’s federal government announced a policy initiative to establish an advisory council to promote women’s representation on boards of directors. While the advisory council is still in the early stages of formation, the council will work to “link corporations to a network of women with professional skills and experience.” It has been announced that Rona Ambrose, Minister for the Status of Women, will work to establish the advisory council.<sup>6</sup>

1 Catalyst Inc., *2011 Catalyst Census: Financial Post 500 Women Board Directors* (March 2012), available at <http://www.catalyst.org/publication/525/2011-catalyst-census-financial-post-500-women-board-directors>.

2 Constitution Act, 1982, Part 1, Canadian Charter of Rights and Freedoms (Canadian Charter), Section 15(1) and (2).

3 Mary Teresa Bitti, *Look Who is Legislating Seats for Women at the Boardroom Table*, CBC (Oct. 20, 2010), available at <http://www.cbc.ca/news/world/story/2010/10/20/f-bitti-gender-parity.html>; *United Kingdom Department for Business, Innovation and Skills, Women on Boards* 23 (Feb. 2011), available at <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/11-745-women-on-boards.pdf>.

4 Eighth Report of Banking, Trade and Commerce Committee, Board of Directors Gender Parity Bill (Feb. 3, 2011), available at [http://www.parl.gc.ca/Content/Sen/Chamber/403/Debates/082db\\_2011-02-03-e.htm?Language=E](http://www.parl.gc.ca/Content/Sen/Chamber/403/Debates/082db_2011-02-03-e.htm?Language=E).

5 Senator Céline Hervieux-Payette, *Coalition for A Balanced Representation of Women and Men on Canadian Boards of Directors*, available at [http://www.eurekablog.ca/?page\\_id=9](http://www.eurekablog.ca/?page_id=9); see also Janet McFarland, *Senator to Renew Push for More Women on Boards*, *The Globe and Mail*, Oct. 26, 2011, available at <http://www.theglobeandmail.com/report-on-business/careers/management/senator-to-renew-push-for-more-women-on-boards/article559210/>.

6 Janet McFarland, *Tories to Create Advisory Council to Promote Women as Corporate Directors*, *The Globe and Mail*, Mar. 29, 2012, available at <http://www.theglobeandmail.com/report-on-business/careers/tories-to-create-advisory-council-to-promote-women-as-corporate-directors/article4096849/>.

Corporate Governance Code

Even though Canada’s government has taken a more active role in promoting women on corporate boards, Canada’s corporate governance guidelines do not address the issue. In 2005, the Canadian Securities Administrators adopted National Policy 58-201: Corporate Governance Guidelines, which sets forth suggested guidelines on corporate governance practices. These guidelines do not contain any suggested provisions with respect to diversity in the composition of corporate boards, including gender.

Non-governmental policy groups also have taken up the cause of increasing diversity on Canada’s corporate boards. The Canadian Board Diversity Council (the “CBDC”) was created in 2009 to promote board diversity in Canada by increasing Financial Post 500 and public sector board representation of women, visible minorities, Aboriginal peoples, persons with disabilities, and lesbian, gay, bisexual and transgender (LGBT) persons. Specifically, the CBDC aims to increase the percentage of women on the boards of Canada’s largest organizations. In 2010, the CBDC issued its first Annual Report Card regarding the baseline representation of women and other minority groups on Financial Post 500 boards. In the 2011 Annual Report Card, the CBDC expanded its survey participants to include both Canada’s largest 500 organizations in five sectors (1) utilities, (2) finance and insurance, (3) retail trade, (4) manufacturing, and (5) mining, quarrying, oil, and gas as well as in Canada’s largest 100 charities. Of responding directors, 22 percent of the top 500 organizations and 12 percent of the top 100 charities stated that their boards have written diversity policies on board membership, and 73 percent and 71 percent, respectively, believed their boards were diverse.<sup>7</sup>

Recently, the CBDC launched the Diversity 50 campaign, which is a sponsor-driven approach to improving board diversity in Canada. In September 2012, the CBDC will release a list of 50 diverse individuals as qualified by criteria reviewed by a group of Canada’s leading CEOs, which includes individuals from HSBC Canada, Deloitte, and Norton Rose. The Diversity 50 list will represent a database of diverse candidates for board of director positions in Canada’s largest 500 organizations.

Additionally, in 2007 Women on Board, a not-for-profit organization dedicated to promoting the appointment of women to Canadian corporate boards, launched its Mentoring Program in Canada, which connects senior executive women with CEOs or Board Chairs from participating, non-competing companies.<sup>8</sup> In April 2012, Women on Board launched *WomenOnBoard Source*, which is a searchable, online listing featuring qualified women corporate director candidates. *WomenOnBoard Source* contains background information for women executives who have participated in the Women on Board Mentoring Program.<sup>9</sup> It is through the Mentoring Program and *WomenOnBoard Source* that Women on Board seeks to develop the talent pool of Canada’s potential female directors, facilitate the appointment of mentees to Canadian directorships, and reinforce the commitment of Canadian companies to increasing gender parity.

The Mouvement d’Éducation et de Défense des Actionnaires (“MÉDAC”) is a not-for-profit organization that educates and advocates on behalf of those who invest and save money. MÉDAC achieves its mission by submitting shareholders’ proposals to Canadian companies. In recent years, MÉDAC has made gender parity on boards of directors one of its major policy issues. Significantly, MÉDAC was able to secure the National Bank’s commitment to increase the number of female directors and work toward gender parity via one of its shareholders’ proposals.<sup>10</sup>

Conclusion

While government initiatives to increase the representation of women on Canadian corporate boards are still in their early stages, both industry groups and provincial governments have continued their efforts to address the issue. Organizations such as CBDC and MÉDAC have launched grassroots corporate initiatives, continue to raise awareness, and track data regarding gender parity among boards of directors. Other entities, like Women on Board, contribute to such grassroots initiatives by supporting women business leaders with mentoring opportunities. The results of these efforts will be closely monitored, as the issue of women’s representation on corporate boards remains significant in Canada’s national debate.

7 *Canadian Board Diversity Council, 2011 Annual Report Card* (2012), available at [http://www.wxnetwork.com/content/files/final-cbdc\\_report2011\\_eng\\_14-2.pdf](http://www.wxnetwork.com/content/files/final-cbdc_report2011_eng_14-2.pdf).

8 Women On Board, <http://www.womenonboard.ca/home/default.asp>.

9 Press Release, Women On Board, Women On Board Online Listing of Qualified Women Corporate Director Candidates Available Now (Apr. 26, 2012), available at <http://www.womenonboard.ca/docs/WOBSourceReleaseApril2012-EN.pdf>.

10 Proceedings of the Standing Senate Committee on Banking, Trade and Commerce, Issue 16, Evidence (Feb. 2, 2011) (Testimony of Louise Champoux-Paille, Administrator, Mouvement d’Éducation et de Défense des Actionnaires (“MÉDAC”)), available at [http://www.parl.gc.ca/Content/SEN/Committee/403/bank/16eva-e.htm?Language=E&Parl=40&Ses=3&comm\\_id=3](http://www.parl.gc.ca/Content/SEN/Committee/403/bank/16eva-e.htm?Language=E&Parl=40&Ses=3&comm_id=3).

United States - Updated for 2013

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In the United States, the issue of gender parity has gained increasing attention in the last decade. Surveys conducted by Catalyst and the Alliance for Board Diversity reveal slightly better representation of women on Fortune 100 boards than Fortune 500 companies.<sup>1</sup> However, overall, there has been minimal growth in the last few years. A Catalyst census comparing 2009 through 2011 figures for the Fortune 500 indicated little change over the three year period. In 2009, of all board seats in the Fortune 500, women held 15.2 percent,<sup>2</sup> and that number increased slightly to 15.7 percent in 2010,<sup>3</sup> 16.1 percent in 2011,<sup>4</sup> and 16.2 percent in 2012.<sup>5</sup> This means that, of the board seats available in the Fortune 500, men held roughly 84 to 85 percent of these seats from 2009 to 2012.<sup>6</sup> The Catalyst report noted that, from 2010 to 2012, “less than one-fifth of companies had 25 percent or more women directors, while about one-tenth had no women serving on their boards.”<sup>7</sup>

Another survey by the Alliance for Board Diversity, a non-profit collaboration of four organizations – Catalyst, The Executive Leadership Council, the Hispanic Association on Corporate Responsibility, and Leadership Education for Asian Pacifics, Inc. – found that results from the past six years suggest longer term stagnation. Of the Fortune 100 companies, men held 83.1 percent and 82 percent of board seats in 2004 and 2010, respectively.<sup>8</sup> So, in six years, women only gained a 1.1 percent presence on boards of directors, an increase that was “not appreciable.”<sup>9</sup>

Regulatory Disclosure Required

To address the issue of diversity (including gender diversity) on corporate boards, in 2009 the Securities and Exchange Commission (SEC) approved rules to enhance shareholder information, which went into effect February 28, 2010.<sup>10</sup> Among other requirements, these rules require the management of publicly-held companies to disclose in their annual proxy and information statements their companies’ consideration of diversity, which the SEC does not define, in the nominating process for board members. In particular, the rule requires a company to disclose: 1) whether diversity is a factor in considering candidates for nomination to the board of directors; 2) how diversity is considered in that process; and 3) how the company assesses the effectiveness of its policy for considering diversity.<sup>11</sup>

The SEC implemented a formal comment program to gauge the interest of investors in accessing information on diversity in the boardroom. Numerous individuals and corporations, representing over three trillion dollars in assets,

submitted comments to the SEC, 90 percent of which supported the disclosure of information related to race and gender diversity on corporate boards. In light of this show of support, the SEC determined that investors wanted access to this information and finalized the rule.<sup>12</sup>

The SEC rule does not require a commitment to diversity from public companies. Rather, the SEC rule requires that companies disclose whether or not they have a diversity policy with regard to the selection of individuals for their boards.

Similarly, while the SEC does not require that a certain percentage of each board be “independent,” it does require that companies prepare disclosures regarding the independence of their board of directors.<sup>13</sup> A company must disclose in its proxy statement or Form 10-K the list of directors determined to be independent under applicable stock exchange listing criteria.<sup>14</sup> Any company that has adopted its own definition of independence, whether a listed company or not, must include this definition in the company’s proxy statement once every three years.<sup>15</sup> Though the SEC does not provide its own definition of “independence,” this term is typically defined solely in terms of relationships between a director and the company, rather than including any concept of term limits. Therefore, a director who meets the definition of “independent” can remain in his or her position for a lifetime and never lose the designation as “independent.” There is an emerging recognition that, quite apart from any diversity initiative, such a director may not fulfill the purpose of having independent directors, which is to bring objectivity and perspective that an executive director may not possess. Further, a challenge in trying to increase the number of corporate boards with diverse candidates is that there is modest turnover in board seats, leaving few vacancies to be filled with non-traditional candidates. If vacancies were forced on boards, then boards might begin to consider diverse candidates, including women. Unfortunately, this strategy has not gained cognizable support in the U.S. at this time.

Companies have, for the most part, stated that they do take diversity into consideration when filling board seats. There are, of course, notable exceptions. Berkshire Hathaway indicated in its 2012 proxy statement, as it had previously in both 2010 and 2011, that it does not have a policy regarding diversity in identifying nominees for director, and it affirmatively stated that its nominating committee does not seek diversity. Instead, “the Governance, Compensation, and Nominating Committee looks for individuals who have very high integrity, business savvy, an owner-oriented attitude and a deep genuine interest in the Company.”<sup>16</sup>

In contrast, in its 2012 proxy statement, Citigroup stated: “Diversity is among the critical factors that the nomination and governance committee considers when evaluating the composition of the board.”<sup>17</sup> Citigroup went on to explain that of the candidates nominated for election at the 2012 annual meeting, “three nominees are women (25 percent) and three nominees (25 percent) – including the chief executive officer – are Asian, African-American or Hispanic.”<sup>18</sup> This type of disclosure, with concrete numbers, appears to be what the SEC had in mind.

In a November 2010 speech, SEC Commissioner Luis Aguilar reported on the initial review of companies’ 2010 diversity disclosures.<sup>19</sup> He praised companies that provided investors with concrete facts and useful information within the “spirit” of the rule.<sup>20</sup> However, he noted that other companies limited their disclosure to “a brief statement indicating that

1 Updated Datasheet: Alliance For Board Diversity Report: Missing Pieces: Women and Minorities on Fortune 500 Boards (Jul. 21, 2011), [http://theabd.org/ABD\\_datasheet.pdf](http://theabd.org/ABD_datasheet.pdf) [hereinafter, the “Alliance for Board Diversity Report”].

2 Some boards had more than one woman and some had no women at all.

3 Rachel Soares, 2010 Catalyst Census: Fortune 500 Women Directors, CATALYST, 1, Dec. 2010, *available at* [http://www.catalyst.org/file/413/2010\\_us\\_census\\_women\\_board\\_directors\\_final.pdf](http://www.catalyst.org/file/413/2010_us_census_women_board_directors_final.pdf) [hereinafter, the “2010 Catalyst Census”].

4 Rachel Soares, 2011 Catalyst Census: Fortune 500 Women Directors, CATALYST, 1, Dec. 2011, *available at* [http://www.catalyst.org/file/533/2011\\_fortune\\_500\\_census\\_wbd.pdf](http://www.catalyst.org/file/533/2011_fortune_500_census_wbd.pdf) [hereinafter, the “2011 Catalyst Census”].

5 Rachel Soares, 2012 Catalyst Census: Fortune 500 Women Directors, CATALYST, 1, Dec. 2012, *available at* <http://www.catalyst.org/knowledge/2012-catalyst-census-fortune-500-women-board-directors> [hereinafter, the “2012 Catalyst Census”].

6 2010 Catalyst Census, *supra* note 78, 2011 Catalyst Census, *supra* note 79, and 2012 Catalyst Census, *supra* note 80.

7 2011 Catalyst Census, *supra* note 79 and 2012 Catalyst Census, *supra* note 80.

8 Alliance for Board Diversity Report, *supra* note 76.

9 *Id.*

10 Press Release, U.S. Securities and Exchange Commission, SEC Approves Enhanced Disclosure About Risk, Compensation and Corporate Governance (Dec. 16, 2009), *available at* <http://www.sec.gov/news/press/2009-268.htm>.

11 Securities and Exchange Commission, Regulation S-K, 17 C.F.R. pt. 229.407(c)(2)(vi) (2010).

12 Luis A. Aguilar, Commissioner, Securities and Exchange Comm’n, Board Diversity: Why It Matters and How to Improve It (Nov. 4, 2010), *available at* <http://www.sec.gov/news/speech/2010/spch110410laa.htm> [hereinafter, “Aguilar 2010”].

13 Item 407 of SEC Regulation S-K.

14 *Id.*

15 *Id.*

16 Berkshire Hathaway Schedule 14A Information, Definitive Notice and Proxy Statement, May 5, 2012, *available at* <http://www.sec.gov/Archives/edgar/data/1067983/000119312512119819/d280415ddef14a.htm>, at 6.

17 Citigroup Inc., 2012 Proxy Statement, Mar. 8, 2012, *available at* <http://www.citigroup.com/citi/investor/quarterly/2012/ar12cp.pdf?ieNocache=440>, at 8.

18 *Id.*

19 Aguilar 2010, *supra* note 87.

20 *Id.*

diversity was something considered as part of an informal policy.”<sup>1</sup> Aguilar reminded companies that the investors, and not just the SEC, had requested information on diversity and therefore the companies should provide information that would be useful to these investors. Aguilar echoed his 2010 comments in February 2013, when he stated that “to truly meet the needs of investors” a proxy statement should state: 1) the candidate and incumbents’ gender, racial, and ethnic background; 2) whether diversity is taken into account in identifying or evaluating potential candidates; 3) how the board defines diversity; and 4) whether or not – and why – the company uses resources specifically to identify and train women and minorities as potential candidates.<sup>2</sup> He added that if the board does not have any women, the company should state whether it has considered increasing the size of the board to enhance diversity and, if not, why.<sup>3</sup>

In his November 2010 speech, Aguilar noted similarities between statements commonly made about a lack of diversity on boards and a lack of diversity in the NFL.<sup>4</sup> He explained that instead of mandating diversity quotas, the NFL implemented the “Rooney Rule,” which requires all NFL teams to interview at least one minority candidate when filling a head coaching position.<sup>5</sup> The idea behind this rule, an idea supported by many advocacy groups, is that the problem is not a shortage of qualified women or even a calculated effort to exclude women; rather, it derives from a tradition of hiring board members (or coaches) from an existing pool.<sup>6</sup> This habit makes it very difficult for new individuals to break into the field, whether in the NFL or in the boardroom. Though this idea has not yet gained much traction, it would offer a way for women at least to get a foot in the door while precluding the argument, frequently offered against quotas or mandatory requirements, that companies would be forced to hire women for positions for which they are not qualified.<sup>7</sup>

Private Sector Initiatives

Applying the “Rooney Rule” to the boardroom is not an idea unique to Commissioner Aguilar. Calvert Investments Senior Sustainability Analyst Aditi Mohapatra has also suggested adopting a similar approach to bring more diversity to corporate boards.<sup>8</sup> Calvert is an investment management company that manages over \$11.5 billion in assets.<sup>9</sup> It selects the companies in which it invests through their financial performance as well as their environmental, social, and governance practices.<sup>10</sup> Calvert uses proxy voting as a primary method of effecting change in companies that do not fit its Sustainable and Responsible Investing (SRI) strategy.<sup>11</sup> Calvert routinely uses these proxy votes to encourage companies to change certain policies, including increasing the representation of women on boards of directors.<sup>12</sup>

Once the shareholder resolutions are submitted, often the filer of the resolution and the company will negotiate and agree to specific terms before the resolution is put to a vote; if they agree on these terms, Calvert considers the resolution “successfully withdrawn.”<sup>13</sup> If the filer and the company do not agree, the resolution will be put to a vote. Though most resolutions are not binding on the company, Calvert states that obtaining significant shareholder support

1 *Id.*

2 Luis A. Aguilar, Commissioner, Securities and Exchange Comm’n, Shareholders Need Robust Disclosures to Exercise Their Voting Rights as Investors and Owners (Feb. 20, 2013), *available at* <http://www.sec.gov/news/speech/2013/spch022013laa.htm>.

3 *Id.*

4 Aguilar 2010, *supra* note 87

5 *Id.*

6 *Id.*

7 *Id.*

8 Aditi Mohapatra, Are there Really Boards with No Women?, *FORBES*, Aug. 2, 2011, *available at* <http://www.forbes.com/sites/womensmedia/2011/08/02/are-there-really-boards-with-no-women/>.

9 Calvert Investments, About Us, *available at* <http://www.calvert.com/about.html>.

10 *Id.*

11 Any shareholder with at least \$2,000 in stock who holds that stock for at least one year is able to file a resolution calling for a company to take a specific action. See, Calvert Investments, Shareholder Advocacy, *available at* <http://www.calvert.com/nrc/literature/documents/br10059.pdf?litID=BR10059>.

12 *Id.*

13 *Id.*

for a particular resolution is often enough to influence companies to change their policies.<sup>14</sup> Since 2002, Calvert has engaged with hundreds of companies on the issue of board diversity. Through these efforts, Calvert has “successfully withdrawn” 46 resolutions on this issue and 28 female and/or minority candidates have been added to corporate boards.<sup>15</sup> In the 2011 proxy season, Calvert filed five resolutions related to board diversity, and three companies altered their selection criteria for board of directors to now include race and gender diversity.<sup>16</sup>

Corporate Governance Codes

The New York Stock Exchange (NYSE) and NASDAQ have established governance standards by which companies listed on their exchanges must adhere. However, neither the NYSE nor the NASDAQ has enacted any requirements or “best practice” recommendations with regard to diversity, gender, or even length of time individuals should serve on a board, which might encourage the turnover necessary to allow more women to be considered for those roles. NASDAQ’s mandatory Corporate Governance Requirements, found in Rule 5600, do not address diversity at all.<sup>17</sup> Rule 5605 defines “independence” of directors, but this is based on directors’ relationships rather than the length of time they have served.<sup>18</sup> Section 303A of the NYSE’s Listed Company Manual sets out the Corporate Governance Standards with which companies must comply in order to be listed on the NYSE.<sup>19</sup> These standards, like NASDAQ’s rules, require a majority of independent directors and a nominating/governance committee comprised solely of independent directors but make no mention of diversity.<sup>20</sup> These standards also do not dictate how long directors may serve nor do they mandate that a director loses his or her status as “independent” after serving longer than a specified amount of time.<sup>21</sup> Instead, any such limitations on directors or requirements of diversity must come from the companies themselves.

Media Spotlight on the Issue

The issue of women on corporate boards has been raised in the media on an ever increasing basis in 2012 and 2013, particularly with regard to Sheryl Sandberg’s concept of “lean in.” In 2012, Sandberg, COO of Facebook, published a book titled “Lean In: Women, Work, and the Will to Lead” and has turned this concept into a personal mantra for women hoping to climb the corporate ladder. She has created an online community dedicated to providing inspiration and support for other women looking to “lean in.”<sup>22</sup> Sandberg’s advice of encouraging women to “sit at the table” is not without its critics, and her book has sparked debate around the country, most notably perhaps in fellow highly accomplished Anne-Marie Slaughter’s article in the *Atlantic Magazine*, “Why Women Still Can’t Have It All.”<sup>23</sup> Regardless of one’s opinion on the authors’ statements, it is undeniable that these publications have brought renewed attention to the lack of women in senior management on corporate boards, which can only help the push to increase women’s participation at the highest level of companies.

14 *Id.*

15 Calvert Investments, Board Diversity Remains a Key Focus for Calvert Advocacy (Mar. 7, 2011), *available at* <http://www.calvert.com/newsArticle.html?article=17603>.

16 Calvert Investments, Shareholder Advocacy, *available at* <http://www.calvert.com/NRC/literature/documents/BR10059.pdf>.

17 NASDAQ, Corporate Governance Rules & the Interpretive Process, *available at* [https://listingcenter.nasdaqomx.com/Show\\_Doc.aspx?File=FAQsCorpGov.html](https://listingcenter.nasdaqomx.com/Show_Doc.aspx?File=FAQsCorpGov.html).

18 NASDAQ, Corporate Governance Requirements, *available at* <http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F2%5F8&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F>.

19 NYSE, Listed Company Manual, *available at* <http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F3&manual=%2F1cm%2Fsections%2F1cm%2Dsections%2F>.

20 *Id.*

21 *Id.*

22 See <http://leanin.org/>.

23 Anne-Marie Slaughter, *The Atlantic*, Why Women Still Can’t Have It All, (Jul./Aug. 2012), *available at* <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>.



Conclusion

Though there appears to be significant support for diversity initiatives in the United States, these efforts remain voluntary. Despite movements toward quotas or similar mandatory requirements in other countries, to date such initiatives have not taken root in the United States. Instead, in addition to firms such as Calvert, several non-profit groups have taken on the role of advocating for more diverse corporate boards, notably the Alliance for Board Diversity, Women Corporate Directors, Catalyst, and 2020 Women on Boards, among others.<sup>1</sup>

This support includes raising awareness, developing networks of women directors to provide information and assistance, collecting data and publishing reports, using proxy voting to change company policies, and recommending diversity requirements in consideration of candidates. While these approaches may not have as immediate an impact, they are less controversial than quotas and, as such, may garner broader-based support for encouraging better gender parity on corporate boards in the United States. However, since implementation of the SEC disclosure rule in 2009 and despite the extraordinary efforts of investor groups such as Calvert and advocacy groups such as those noted above, there has been no appreciable improvement in the number of woman on the boards of listed companies. Recent media attention on the dearth of women in senior management sparked by Sandberg's book may help provide momentum for change. However, if these initiatives do not begin to show results, there may be increasing support for mandatory requirements (such as quotas) or limitations on the definition of what constitutes independence in order to force "corporate America" to focus on this issue and take tangible steps to address the disparity.

<sup>1</sup> Catalyst conducts seminal research in this field and routinely publishes reports of progress (or lack thereof). Catalyst, About Us, *available at* <http://www.catalyst.org/page/59/about-us>. The Alliance for Board Diversity supports diversity on boards by offering referrals of qualified candidates and by supporting other similar organizations. The Alliance for Board Diversity, About the Alliance for Board Diversity, *available at* <http://theabd.org/>. 2020 Women on Boards primarily seeks to increase awareness about the issue through the use of social and traditional media. 2020 Women on Boards, About: The Idea, *available at* <http://www.2020wob.com/about/idea>. Women Corporate Directors is a network of women corporate directors that seeks to "leverage local, regional, and global knowledge and perspective from other Directors and boards worldwide." Women Corporate Directors, Overview, *available at* <http://www.womencorporatedirectors.com/displaycommon.cfm?an=1&subarticlenbr=28>. The organization provides a source of advice and expertise for other women directors and helps secure board positions for women. *Id.*





# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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LATIN AMERICA



Argentina

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Although gender equality appears to be on the forefront of political and social issues in Argentina, the country still experiences significant gender inequalities in large corporations. Argentina’s achievements on behalf of women in local politics are notable. It is the first country in Latin America to adopt a system of political quotas requiring all political parties to include a minimum of 30 percent female candidates on ballot lists in national elections.<sup>1</sup> Argentina has also recently re-elected its female president, Cristina Fernández de Kirchner, for a second term.<sup>2</sup>

The country’s achievements in gender equality in the corporate arena, however, have not been as impressive. In a recent analysis of gender equality worldwide, the Global Gender Gap Report rated Argentina only a 4.09 out of a 7-point rating system for women’s ability to rise to leadership positions in business.<sup>3</sup> The greatest obstacle against women’s advancement in the business sector in Argentina appears to be rooted in the male-dominated work culture, rather than the legal landscape. While Argentina’s government, judiciary, and various private enterprises have worked to create significant opportunities for women, there are currently no large-scale codified efforts that specifically address gender inequality in the corporate boardroom. However, Argentine law and society appear to be evolving in the direction of greater equality for women in corporations.

The Statistics

According to the Grant Thornton International Business Report, women in Argentina hold 18 percent of senior management positions in corporations.<sup>4</sup> While overall this percentage is underwhelming and reflects only a slight improvement over the previous two years in which women represented 17 percent of senior management in 2009-2010, it also reflects a notable improvement from 2007, when women occupied only 10 percent of senior management positions.<sup>5</sup> When focusing exclusively on large Argentine companies however, the percentage declines dramatically: women represent only 4.4 percent of senior management, 6 percent of board seats and 3 percent of general management positions.<sup>6</sup> Further, while the percentage of women in corporate leadership may be growing, surveys indicate that the percentage of companies without any women in senior management has risen to 51 percent in 2011, from 47 percent in 2009.<sup>7</sup> Only 8 percent of private companies in Argentina have a female CEO, however, this percentage is consistent with the percentage of women CEOs in most countries worldwide.<sup>8</sup>

The Legal Framework

Argentina has a strong foundation in labor law and other laws promoting equality for women in the labor market.<sup>9</sup> The

Argentine Constitution provides for equality in access to work and employment for all people, without specifically mentioning women.<sup>10</sup> In addition, Argentina considers international treaties to be controlling law in the legal hierarchy just below the National Constitution and, therefore, women benefit from Argentina’s membership in international conventions, such as the Convention on the Elimination of all Forms of Discrimination Against Women.<sup>11</sup> These international conventions guarantee women the right to work and the right to equal pay, but they do not provide specific protections against gender discrimination in the workforce.

The primary source of labor law in Argentina is National Law No. 20.744, *Ley de Contrato de Trabajo* (Law of Contract of Employment) passed in 1975.<sup>12</sup> Title VII of Law No. 20.744 provides a number of specific rights for women, including protection against termination for change in marital status and pregnancy, provisions for child care leave, and prohibitions on women working from home so that women are not required to work instead of caring for children.<sup>13</sup> Unfortunately, these legal protections often have an opposite effect in the workforce. For example, an employer is required to provide a woman with paid maternity leave both 45 days before and 45 days after the birth of her child and is required to keep the woman’s job open in anticipation of her return. The employer faces harsh penalties if he or she fails to do either.<sup>14</sup> Because of these costly provisions, employers tend to avoid hiring women altogether.<sup>15</sup>

In the corporate context, the obstacles women face in management may be more a matter of discrimination in hiring than in promotion, as women are discouraged from entering the workforce in the first place. The Equipo Latinamericano de Justicia y Género (Latin America’s Team of Justice and Gender) (ELA), a Latin American organization that supports gender equality, reports that only 4.4 percent of applicants to large corporations are women.<sup>16</sup> As one publication observed, “The main problems concerning labor discrimination against women in Argentina are not legal, but are social and economic.... [M]ost problems arise before a woman is even hired. These problems are less visible, harder to fix, and manifest themselves more broadly within societal and economic prejudices against women workers.”<sup>17</sup> Indeed, it appears there is a general lack of regulatory or private initiatives designed to support women’s employment in Latin American businesses.<sup>18</sup>

Corporate Governance Code

Argentina received worldwide praise for its decision to impose a political quota that resulted in greater participation of women in local politics.<sup>19</sup> This affirmative step did not go so far as to impact the role of women in other aspects of Argentine society, including the labor market.<sup>20</sup> As the ELA observed, “While the quota applying to legislative positions establishes a minimum of 30 percent participation of women to ensure the exercise of democracy, the [analysis] shows that this minimum is far from the norm in other areas.”<sup>21</sup>

Unfortunately, no similar government action specifically supports the role of women in executive leadership in public

1 *Detras del Numero (Behind the Numbers)*, Equipo Latinamericano de Justicia y Género, www.ela.org.ar (“Publicaciones”), at \*1 (last visited January 18, 2012). See also Leslie A. Schwindt-Bayer, *Making Quotas Work: The Effect of Gender Quota Laws on the Election of Women*, Legislative Studies Quarterly, XXXIV, 1, Feb. 2009, at 5 (“...the Argentine law was the first by a democratic state that applied to all political parties and, consequently, offered the greatest opportunity to increase women’s representation in the entire legislature, not merely in one political party’s legislative delegation.”)

2 Mimi Whitefield, *Women Still Face Gender Gap in Latin American, Caribbean Politics*, The Miami Herald (Oct. 20, 2011), www.miamiherald.com.

3 World Economic Forum, *The Global Gender Gap Report* 2011, Country Profiles 17 (2011).

4 *Argentina: la mitad de las empresas no cuenta con mujeres en puestos directivos (Argentina: Half of Companies Have No Women in Management)*, AméricaEconomía.com (Mar. 07, 2011, 7:54 PM), http://www.americaeconomia.com/negocios-industrias/argentina-la-mitad-de-las-empresas-no-cuenta-con-mujeres-en-puestos-directivos.

5 *Id.*

6 *Sexo y Poder (Sex and Power)*, Equipo Latinamericano de Justicia y Género, www.ela.org.ar (“Publicaciones”), at \*11 (last visited January 18, 2012).

7 AméricaEconomía.com, *supra* note 4.

8 *Id.*

9 See Gabriela T. Mastaglia & Valerie Oosterveld, *Women’s Rights Under Labor Law: A Comparative Study of Argentina and Canada*, 19 Loy. L.A. Int’l & Comp. L.J. 915, 919-923 (1997).

10 *Id.* at 919.

11 *Id.* at 923 (Argentina codified its entry into the Convention under Law No. 23.179).

12 *Id.* at 919-20.

13 *Id.* at 928-32.

14 *Id.* at 930-31.

15 *Id.* at 934-36.

16 *Sexo y Poder (Sex and Power)*, *supra* note 6, at \*3.

17 Mastaglia & Oosterveld, *supra* note 9, at 935-36.

18 Sylvia Maxfield, *Women’s Leadership Conference of the America’s, Women on the Verge: Corporate Power in Latin America* 2 (2005).

19 *Global Gender Gap Report*, *supra* note 3 (Argentina has a legislated candidate quota of 30% on all ballots, as well as voluntary political party quotas.).

20 Kery Boyne, Note, *UN Women: Jumping the Hurdles to Overcoming Gender Inequality, or Falling Short of Expectations?*, 17 Cardozo J.L. & Gender 683, 701 (2011) (“Despite the fact that Argentina was the first Latin American country to adopt a quota for female participation in Congress, laws that are aimed at the promotion of gender equality or the protection of women’s rights fail to fully address the underlying social determinants [that] contribute to the feminization problems.”).

21 *Sexo y Poder (Sex and Power)*, *supra* note 6, at \*3 (unofficial translation) (“Mientras que la ley de cupo aplicable a espacios legislativos establece el 30% como participación mínima de mujeres para asegurar el ejercicio de la democracia, el IPM demuestra que ese mínimo está lejos de ser la norma en otros espacios.”).



or private corporations. While Argentina does have a voluntary Corporate Governance Code, it does not contain any provisions addressing gender equity in the boardroom.<sup>22</sup> The Corporate Governance Code was adopted under General Resolution No. 516/2007 of the Argentine Securities Commission (Comisión Nacional de Valores). While the Code is voluntary, it imposes a “reply or explain” disclosure obligation requiring listed companies to include with their annual report a separate report on their level of compliance with the voluntary Code and how they are achieving its recommendations. The purpose of the Code and the reporting requirement is to further the goals of enhancing transparency in Argentine companies, imposing greater responsibility on directors and managers, and ensuring equitable treatment of minority shareholders.<sup>23</sup>

The Trend Toward Gender Equality

Although the Code is only a recent initiative and may be the impetus for further regulation of Argentine companies, it appears that there is only nominal focus on gender equality in corporate board rooms in Argentina at this time. However, there have been small steps by individual Argentine corporations, as well as a few recent legal developments that indicate a trend favoring gender equality in Argentina that may soon result in gender equality initiatives for corporate board rooms.

In 2009, the Argentine legislature passed the Comprehensive Protection Act to prevent violence and discrimination against women in all areas of a woman's life.<sup>24</sup> The law is aimed at multiple facets of inequality, including discrimination in the workplace, that threatens a woman's access to employment, recruitment, promotion, and job stability through change in marital status and pregnancy.<sup>25</sup> Not only does this legislation carry penalties for acts of discrimination, but its presence promotes awareness of the obstacles faced by women in the labor market. This recent legislation seems to indicate a general shift to greater involvement of the government in gender equality issues in private employment. For example, although judicial decisions do not hold precedential value in Argentina, two recent cases indicate the judiciary's willingness to play a more aggressive role in promoting gender equality. In *Women in Equality Foundation et. al., c/ Freddo S.A.*, the Court of Buenos Aires (*el Corte de Justicia de Buenos Aires*) determined that a company's preference for hiring men violated the law and, as a result, the company would be required to hire women to reasonably and fairly correct that inequality.<sup>26</sup> This case marked the first instance in which the judiciary in Argentina sought to impose a type of affirmative action to address discrimination.

More recently, the Court of Salta (*el Corte de Justicia de Salta*) imposed a quota on professional driver (chauffeur) collectives in the city after finding that the complete absence of women in the industry was a product of gender discrimination.<sup>27</sup> The Court required that 30 percent of driver positions must be reserved for women and that failure to meet the quota would result in penalty.<sup>28</sup> The decision was later vacated by the Court of Appeals following the determination that the lack of women in the industry was not based on actual discrimination. The decision is currently

22 See *Synthesis Report: Voluntary Corporate Governance Codes in Latin America, The 2007 Meeting of the Latin American Corporate Governance Roundtable, Organisation for Economic Co-Operation and Development*, 10-11 October 2007 and *Argentina Approves Corporate Governance Code, Latin American Private Equity & Venture Capital Association*, Dec. 10, 2007 <http://lavca.org/2007/12/10/argentina-approves-corporate-governance-code/>.

23 The Code's nine chapters address: 1) the loyalties and responsibilities of the Board of Directors; 2) the responsibilities of the Chairperson of the Board; 3) the requirements of individual board committees; 4) responsibilities to the shareholders; 5) conflicts of interest; 6) information transparency, fluency, and integrity; 7) audit procedures; 8) dispute management and settlement; and 9) interest groups and social responsibility. The Code does not address the representation of women on the Board of Directors. See *World Bank, The 2007 Meeting of the Latin American Corporate Governance Roundtable, Country Report: Voluntary Corporate Governance Code in Argentina* (Oct. 10-11, 2007), available at <http://www.oecd.org/dataoecd/4/3/39741335.pdf>.

24 Law No. 26.845 (Apr. 14, 2009) was implemented by Decree No. 1011/2010 (July 20, 2010).

25 Enrique Caviglia, *Reglamentación de la Ley de Protección de las Mujeres* (Regulation of the Law on Protection of Women), *Cronista.com* (Sept. 27, 2010), available at [http://www.cronista.com/contenidos/2010/09/27/noticia\\_0004.html](http://www.cronista.com/contenidos/2010/09/27/noticia_0004.html).

26 *Derechos de las mujeres y discurso jurídico (Rights of Women and Legal Discourse), Equipo Latinoamericano de Justicia y Género*, [www.ela.org.ar](http://www.ela.org.ar) ("Publicaciones"), [www.ela.org.ar](http://www.ela.org.ar) (last visited January 18, 2012), at 73 (citing *Fundación Mujeres en Igualdad y otro c/ Freddo S.A. s/amparo* (2002)).

27 *Id.* at 73 (citing *Sisnero Mlrtha Graciela; Caliva Lía Verónica; Bustamante Sandra; Fundación Entre Mujeres c/ Tadelva S.R.L.; Ahynarca S.A.; Alto Molino S.R.L. y otros s/ amparo* (Nov. 18, 2009)).

28 *Id.*

being appealed to the Supreme Court of Argentina.<sup>29</sup> These two cases are the first instances in which any branch of the government has required gender parity in private enterprise and threatened to impose penalties for a company's failure to meet those requirements. Although these cases are not binding upon other companies (because Argentina operates under a civil law system), they indicate that the government, particularly the judiciary, is now willing to impose equality requirements on private corporations. These decisions may force a change in the country's social climate and male-dominated work culture.

Private companies and non-profit organizations are undertaking efforts to achieve gender equity in the private sector. For example, the World Bank recently partnered with eleven large corporations, including Coca-Cola Argentina, Avon Argentina, and Wal-Mart Argentina, to design and implement a program focused on gender equity.<sup>30</sup> The program targeted gender equity in human resources policies, such as recruitment, promotion, and training, as well as professional development, work-life balance policies, sexual harassment, and a non-sexist company image.<sup>31</sup> A survey of the participating companies revealed that only one had a stated commitment to equality in hiring, while eight companies advertised jobs with age, sex, and attractiveness requirements and four performed discriminatory tests as part of the interview process.<sup>32</sup> The program required, and achieved, corrective steps in all of these areas. The benefits of the World Bank program were two-fold. Not only did the perceptions of gender equality improve at these eleven companies, but the program developed a clear, exportable model for other private companies in Argentina to address obstacles specific to the law and culture of Argentina.<sup>33</sup> As these types of projects expand, more private companies may seek to achieve gender equality on their own initiative without government intervention.

Conclusion

Although Argentina still has social and culture obstacles to overcome, its evolving legal system and private sector initiatives seem to indicate that the country is taking valuable steps toward greater gender parity in the workforce. Because gender disparities in Argentina are greatest in the hiring process, it may be some time before the effects of these initiatives are reflected in the boardrooms of large companies.

29 *Id.* (citing *Sisnero Mirtha Graciela; Caliva Lía Verónica; Bustamante Sandra; Fundación Entre Mujeres c/ Tadelva S.R.L.; Ahynarca S.A.; Alto Molino S.R.L. y otros s/ amparo* (June 8, 2010)).

30 *World Bank, Argentina: Gender Equity in the Private Sector*, Report No. AAA46-AR 14-14 (May 10, 2010).

31 *Id.* at 16.

32 *Id.* at 21.

33 *Id.* at 22.

Brazil

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Brazil is the world's eighth-largest economy and has had an annual growth rate of 3.25 percent since 2000, compared with 2.7 percent for the U.S. and 10 percent for China. Brazil's stock market is up more than 12 percent per year on average over the past 12 years – compared with about 1 percent for the S&P 500 and 5 percent for Hong Kong's Hang Seng Index.

According to a recent study conducted by the Center for Work-Life Policy (the “Center”), a non-profit New York based research group, at least 80 percent of college-educated Brazilian women aspire to top-level positions and 59 percent of Brazilian women consider themselves “very ambitious.”<sup>1</sup> Ripa Rashid, Executive Vice President of the Center, noted that President Dilma Rousseff’s victory on October 31, 2010 “marked a milestone for a country where only one of the 68 companies that form the Bovespa<sup>2</sup> benchmark stock index is run by a female executive”<sup>3</sup> and stresses that President Dilma Rousseff has made female empowerment a “key objective” in her government. Indeed, President Dilma Rousseff populated almost a third of her cabinet with women, and in February 2012 appointed a woman to serve as CEO of the country’s largest SOE, the energy conglomerate Petrobras.

In the private sector, women are similarly taking on key positions, including GE Brazil's new President, Adriana Machado, and Standard & Poor’s Managing Director, Regina Nunes. American women are also assuming leadership positions in Brazil, with the recent appointments of Donna Hrinak as President of Boeing Brazil and Grace Lieblein as President and General Manager for GM.

Consistent with the limited presence of women in senior executive positions at public companies in Brazil, women have made only a modest impact in the boardroom. In 2010, of a total 2,647 board seats of listed companies, 7.71 percent were held by women.<sup>4</sup> This number decreased slightly to 7.10 percent in 2011 according to a survey managed by the Brazilian Institute of Corporate Governance (Instituto Brasileiro de Governança Corporativa, or “IBGC”)<sup>5</sup> and only one-third of Brazilian public and private companies have a woman on their boards. As described below, while corporate governance has garnered attention over the past two decades through the implementation of corporate governance codes, those codes do not address gender parity on corporate boards.

Corporate Governance Code

There have been two initiatives to establish best practices in corporate governance in Brazil. The IBGC, a nonprofit organization founded in 1995 that promotes corporate governance in Brazilian companies, has been the central forum for the introduction and dissemination of corporate governance concept in Brazil. It stands today as the main reference and only organization in Brazil that focuses on the development of best practices in corporate governance. The IBGC published a Corporate Governance Code in 1999 and has updated the Code twice, with its third and latest version released in 2004. Those recommendations addressed the relationship between controlling and minority shareholders and provided guidelines for a better functioning of the Board of Directors. IBGC members do not have to adhere to the Code and, as noted above, the Code is silent on the issue of gender parity.<sup>6</sup>

In addition to the IBGC, the CVM (Brazilian Securities and Exchange Commission) published its Corporate Governance Code in 2002, again as a series of recommendations. It has not been updated since its issuance. Although the CVM

1 “Brazil Women More Ambitious Than U.S. ones,” Businesswork/Bloombergy, December 19, 2011.

2 BM&FBOVESPA, a Brazilian company created in 2008 through the merger of the São Paulo Stock Exchange (Bolsa de Valores de São Paulo) and the Brazilian Mercantile & Futures Exchange (Bolsa de Mercadorias e Futuros), conducts all equity and equity derivatives trading in Brazil. It is the largest stock exchange in Brazil, followed by the Rio de Janeiro Stock Exchange (BVRJ) which trades in government bonds and currencies.

3 “Brazil Women More Ambitious Than U.S. ones,” Businesswork/Bloombergy, December 19, 2011.

4 “Women on Boards 2011,” Catalyst, September 2011.

5 “Mulheres no Conselho de Administração,” Instituto Brasileiro de Governança Corporativa, November 2011.

6 IBGC Code of Best Practice of Corporate Governance can be found at <http://www.ibgc.org.br/English.aspx>.

Code contains recommendations only, it implies higher behavior standards than those required by law. The Code was built on CVM's 25 years of experience plus the analysis of experience in other countries as well as national and international corporate governance codes and research. The objective in publishing the CVM Code was to give guidance on questions that can significantly influence relationships between management, board members, independent auditors, and controlling and minority shareholders. As with the IBGC Code, the CVM Code is voluntary and does not address the issue of gender parity.

Interestingly, BOVESPA formed Novo Mercado (“NM”), a special listing segment of the stock market for companies that comply with distinct listing rules focused on good governance practices. “The objective behind NM is creating a more propitious environment for companies to afford investors a higher level of accountability through good corporate governance practices and greater transparency, and, as a consequence, reduce funding costs.... based on several studies and empirical evaluations demonstrating that investors are willing to pay more for stock in companies that adopt good corporate governance practices and are more transparent in their dealings with the market.”<sup>7</sup> Those listing rules set forth requirements with regard to a number of areas, including the implementation of a code of conduct and the structure, function and operation of the board of directors of a company listed on the NM. However, those provisions are silent as to the composition of the board overall, including with regard to gender.

Proposed Quota Legislation

Despite the clear progress of women in the political sphere and emerging in the corporate sphere, there appears to be a public on-going debate as to whether mandatory requirements, such as quotas, are appropriate to accelerate the pace of change in the boardroom. According to a January 18, 2012 article published in O estado de Sao Paulo, a highly-regarded Brazilian newspaper, most women who currently hold positions on a management board of a Brazilian company oppose the imposition of a mandatory gender quota on corporate boards. They object on the grounds that gender alone should not be the decisive factor and that other criteria must be considered, such as competence and experience; therefore, the article posits, gender should not be strictly applied through a mandatory quota system.<sup>8</sup>

On April 27, 2010, Senator Maria do Carmo Alves introduced at the Senate’s Social Affairs Commission (“Commissao de Assuntos Sociais”) a bill which would require a minimum of 40 percent women on the boards of companies in which the Brazilian State directly or indirectly holds the majority of the shares, e.g., a state-owned enterprise of SOE.<sup>9</sup> The bill establishes a gradual implementation of the quota system over a period of nine years, with SOEs achieving at least 10 percent improvement every two years until attaining the 40 percent quota by the end of the transition period.<sup>10</sup> The bill comes into effect one year after enactment, therefore, implementation is not expected before the first semester of 2014. While imposing a quota, the bill does not provide for sanctions for noncompliance. Pecuniary sanctions were not considered effective particularly for these large companies, and the possible nullification of board appointments which were not in compliance with the quotas were viewed as too strong to be implemented at least during the transition period.

In April 2011, the Senate's Economic Affairs Commission voted in favor of the bill and, in September 2011, the Senate's Constitution and Justice Commission (“Comissão de Constituição e Justiça”) also ruled in favor of the bill. Despite such seemingly strong and consistent support, the process has been dramatically slowed by a senator's request that the bill be referred to one of the powerful commissions of the Brazilian Senate, the Social Affairs Commission (“Comissão de Assuntos Sociais”), which will review the proposed legislation to assess the societal impact of the bill, were it to pass. In late May 2012, the bill was still pending before the Social Affairs Commission. If it is passed by the Social Affairs Commission, it will then be submitted for passage to the Brazilian Chamber of Deputies.

In arguing for the implementation of the gender parity bill in the preliminary report, Maria do Carmo Alves noted women represent 47 percent of the Brazilian labor market and are the majority of the Brazilian population, representing 51.3 percent. Therefore, the quota system is thus a necessity, according to Alves, in order to match “the participation

7 See, <http://www.bmfbovespa.com.br/en-us/markets/equities/companies/corporate-governance>.

8 Fernando Scheller, “Conselhos abrem temporada de caça as mulheres,” O estado de Sao Paulo, January 18, 2012.

9 Bill No. 112 (2010).

10 See, Bill no. 112 (2010), Art. 2. Assuming the bill becomes effective in 2014, then women should occupy at least 10 percent of the corporate board seats by 2016, 20 percent before 2018, 30 percent before 2020 and 40 percent as of 2022.

of women in the production of public goods and their presence in the representative bodies that decide the use of resources produced from the efforts of the whole society, including, necessarily and gradually, from the work done by women.”<sup>11</sup>

As described in the report, the bill contemplates a practical application of legal principles (such as the equality between men and women set out in Articles 1 and 5 of the Brazilian Constitution<sup>12</sup>), as well as those contained in the international standards ratified by Brazil (such as the Convention on the Elimination of All Forms of Discrimination against Women of the United Nations and Convention 111 of the International Labour Organization).

Conclusion

The movement that began with the election of President Dilma Rousseff is gaining momentum with the intended result of providing more equality between men and women in the decision-making process not only at a political but also at an economic level. Certainly, it would be noteworthy if the bill passed, particularly in the regional context where South American countries are just now focusing on the issue of gender parity on corporate boards. Covering SOEs only, publicly listed and private companies remain outside the scope of the bill. However, its passage will be significant and may engender even more momentum for implementing quotas more broadly in Brazil and, indeed, in South America.

Whether or not the bill passes and becomes law will not be known for several months. However, given the momentum, largely coming from the European movement in support of gender parity on corporate boards and often through quotas, as well as the building support in Brazil, the Brazilian legislature may well follow this trend and pass the gender quota applicable to SOEs. Whether that then encourages the legislature to broaden its application to listed companies remains to be seen.

11 Maria do Carmo Alves' preliminary report on the bill No. 112.

12 Article 1 of the Brazilian Constitution sets forth that: "The Federative Republic of Brazil, formed by the indissoluble union of States, Municipalities and the Federal District, is a democratic state of law and is founded on: ... III - the dignity of the human person..."

Article 5 of the Brazilian Constitution sets forth that "All are equal before the law is guaranteed to all Brazilian and any foreigner living in Brazil, the inviolability of the right to life, liberty, equality, safety and property, according to the following terms: I - men and women are equal in rights and obligations under the terms of this Constitution..."



Colombia

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According to a March 2012 report by GMI Ratings, the Republic of Colombia has the highest percentage of women on boards of directors in Latin America, at 6.8 percent.<sup>1</sup> This is noteworthy in light of the regional average of 4.7 percent.<sup>2</sup> According to the Women on Boards study, Mexico has the next highest percentage in Latin America with 6.5 percent participation.<sup>3</sup> While Colombia leads Latin America with regard to women directors, as further discussed below, there remains significant opportunity for improvement in access to professional opportunities for women in Colombia, including on corporate boards and in senior executive positions. Notably, the broader issue of enhancing women's professional opportunities in Colombia has recently reached the highest levels of the executive branch of government.

Legislative Framework

In 1995, Colombia created a National Directorate for Women's Equality, which in 1999 was elevated to become the Office of the Presidential Council for Women's Equity (the "Council").<sup>4</sup> One of the Council's main goals is promoting the presence of women in the labor market and increasing political participation by women. The Colombian government has also promulgated several laws geared towards increasing female participation in the public sphere, including a policy focusing on improving life and equal opportunities for women in rural communities,<sup>5</sup> providing equal opportunities for women,<sup>6</sup> and addressing violence and discrimination against women (the definition of violence includes the concept of economic violence caused due to female status) ("Ley N. 1257").<sup>7</sup>

Under Article 12 of Ley N. 1257, the Minister for Public Protection is responsible for promoting mechanisms to increase participation of women in the workforce and ensuring equality of salaries between women and men. While there is no quota system for corporate board participation by women, there is a 30 percent quota for female participation in public political institutions. Although the use of quotas to augment female participation in the political arena is a relatively basic concept, it does suggest an increasing awareness in Colombia as to the importance of participation by women in leadership positions.<sup>8</sup> There are also no provisions in the various laws concerning corporate governance that specifically promote gender diversity on boards.<sup>9</sup>

In 2011, Colombia re-affirmed its national policy towards gender equity in the National Policy on Gender Equity for Women created as part of President Juan Manuel Santos's Plan for National Development.<sup>10</sup> This program is geared towards furthering opportunities for equal participation of women in society, and includes a forum for discussing women's issues such as reconciling work and family life, reducing the unemployment rate, affirmative action, entrepreneurship, access to resources, and job training.<sup>11</sup>

Non-Governmental Organizations

Colombia also has a strong level of activism by large, established non-governmental organizations (NGOs) created to increase

1 See, GMI Ratings' 2012 Women on Boards Survey, at p. 19 (March 2012), *available at* [http://info.gmiratings.com/Portals/30022/docs/gmiratings\\_wob\\_032012.pdf](http://info.gmiratings.com/Portals/30022/docs/gmiratings_wob_032012.pdf) (this is a lower number than found in the UK review of Women on Boards).

2 Women on Boards, UK Department for Business Innovation and Skills, at p. 25, Feb. 2011, *available at* <http://www.bis.gov.uk/news/topstories/2011/Feb/women-on-boards> (citing Women on Boards: Statistical Review by Country, Region, Sector and Market Index; Governance Metrics International; March 2009).

3 *Id.*

4 Ley N. 188 (1995); *and* Decree N. 1182 (1999).

5 Ley N. 731 (2002).

6 Ley N. 823 (2003).

7 Ley N. 1257 (2008).

8 Ley N. 581 (2000).

9 These laws, passed by the Colombian legislature, include the following: the Commercial Code (amended by Law 222 of 1995), Financial Framework Law 35 (1993), Law 446 (1998), Resolutions 400 and 1200 (1995), Resolution 275 (2001).

10 *Proceso de Formulación de la Política Pública Nacional de Equidad de Género para las Mujeres*, Equidad Mujer, Republica de Colombia (formulated December 2011) (last accessed Jul. 24, 2012), *available at* [www.equidadmujer.gov.co/consultavirtual/paginas/consultavirtual.aspx](http://www.equidadmujer.gov.co/consultavirtual/paginas/consultavirtual.aspx).

11 *Id.* (providing links to various issues covered by this policy effort).

professional opportunities and corporate leadership opportunities for women. The Women's Network was founded in 1995 by Isabel Londono, who received a doctorate in education from Harvard and works to promote post-graduate education and gender equality. The Women's Network is an association for professional women working in Bogota and has over 6,500 members. In 1999, the Women's Network merged into the Foundation of Women for Colombia ("Foundation") which was being created at that time, and the merged organization is currently known as the Foundation. The Foundation was formed through work led by Dr. Martha Lucia Vasquez, an advisor on the Presidential Council for Women's Equity and Vice President of the InterAmerican Commission of Women of the Organization of American States (OAS). In her role with the OAS, Dr. Vasquez has been vocal in addressing the role of women in Latin America and the Caribbean.<sup>12</sup>

The Foundation works to develop professional opportunities for women. In March 2011, the Foundation held a conference for female CEOs in Colombia. It noted that 4 percent of CEOs in Colombia are women, compared with only 3 percent of CEOs in the United States. The Foundation also promotes women's participation in U.S. MBA programs and has participated in Harvard's Dynamic Women in Business program.<sup>13</sup>

In addition to the Foundation, the World Corporation for Colombian Women ("CMM"), which was originally formed in 1989 to promote micro-credit, is now dedicated to female economic and social advancement.<sup>14</sup> CMM is another example of a Colombian organization working to increase participation by women in the workforce and in the nation's economy.

An outspoken advocate for women's rights in Colombia, Professor Sandra Idrovo Carlier from the INALDE Business School of Colombia has spoken often on the issue of corporate governance and the need for greater gender diversity in high positions at private (i.e. non-governmental) companies. Indeed, in a 2009 interview, Professor Carlier explained that companies are losing the benefits and opportunities provided by inclusion of women on boards or in other senior positions because of misconceptions that women are not as committed or prepared as men and are not as good at negotiations or networking.<sup>15</sup> She stated that, to truly effectuate a change in female participation and equality in Colombian corporations, there must be a change in culture.<sup>16</sup> Professor Carlier has been internationally recognized and was a featured speaker at the March 2012 International Seminar on Women and Leadership, Higher Level Female Talent, held in Miami by El Instituto Panamericano de Alta Dirección de Empresa (IPADE Business School).<sup>17</sup>

Similarly, Colombian businesswoman Yolanda Auza Gomez, President of Unisys de Colombia and General Manager of Unisys LACSA, also promotes female participation in business, and has been recognized as one of Latin America's top 25 businesswomen. Ms. Gomez launched a mentoring program for young business women through the Colombian Chapter of Women Corporate Directors International.<sup>18</sup>

Conclusion

While Colombia leads Latin America in the percentage of women on corporate boards, there is significant room for improvement in professional opportunities for women in Colombia, including on corporate boards and in senior executive positions. There are several NGOs dedicated to furthering professional opportunities for women and increasing the visibility of gender parity on corporate boards in Colombia. Colombia's continued efforts to further female participation in corporate leadership are worth following closely going forward.

12 See e.g. Consejera Presidencial para la Equidad de la Mujer, *available at* <http://web.presidencia.gov.co/programa/conspresmujer.html>; *and* Biografías Oficiales de la OEA, Dra. Martha Lucía Vásquez Zawadzky, *available at* [http://www.oas.org/documents/spa/biography\\_Martha\\_Vasquez.asp](http://www.oas.org/documents/spa/biography_Martha_Vasquez.asp).

13 *Mujeres Colombianas Presidentas*, Fundación Mujeres Por Colombia (March 8, 2011), *available at* <http://www.fundacionmujeresporcolombia.org/2011/03/08/mujeres-presidentas/>.

14 *Corporación Mundial de la Mujer Colombia* (last visited June 8, 2012), *available at* [www.cmmbogota.org](http://www.cmmbogota.org). CMM co-sponsored the conference on female CEOs in Colombia.

15 See e.g., Sandra Idrovo, Conclusiones Medellín Ciudad Cluster Cámara (2009) <http://www.youtube.com/watch?v=yqp8fGapq2g>. See also, Sandra Idrovo Carlier, Consuelo Leon Llorente, Marc Grau Grau, (2012) "Comparing work-life balance in Spanish and Latin-American countries," *European Journal of Training and Development*, Vol. 36 Iss: 2/3, pp.286 – 307 (illustrating the type of research completed by Professor Carlier regarding issues relevant to women in the workplace. Professor Carlier's collaborators for this article were professors from Spanish universities).

16 *Id.*

17 Seminario Internacional Mujer y Liderazgo, Talento femenino más Alta Dirección, El Instituto Panamericano de Alta Dirección de Empresa (IPADE Business School (March 2012)). Another such conference will be held in September of 2012, and Professor Carlier is again scheduled to participate. See Notice of Seminario Internacional Mujer y Liderazgo, Talento femenino más Alta Dirección, El Instituto Panamericano de Alta Dirección de Empresa (IPADE Business School (to be held September 2012 in Miami)), <http://www.ipade.mx/profesores-investigacion/centros-de-investigacion-del-IPADE/centro-de-investigacion-de-la-mujer-en-la-alta-direccion/Pages/seminario-internacional-mujer-y-liderazgo-2012.aspx>.

18 See *Latin America's Top 25 Businesswomen*, *Latin Business Chronicle*, p. 3 (Mar. 3, 2010), *available at*, [www.latinbusinesschronicle.com/app/article.aspx?id=4023](http://www.latinbusinesschronicle.com/app/article.aspx?id=4023); *and Latin America: Female Boardroom Blues*, *Latin Business Chronicle* (Nov. 7, 2011), *available at* [www.latinbusinesschronicle.com/app/article.aspx?id=5218](http://www.latinbusinesschronicle.com/app/article.aspx?id=5218).

Mexico

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Mexico is the largest economy in Spanish-speaking Latin America,<sup>1</sup> and is home to many of the region's businesses.<sup>2</sup> Although the country is an economic leader in the region, women only occupy approximately 6.8 percent of board positions in Mexico.<sup>3</sup> In 2009, there were only three female CEOs among Mexico's top 100 listed companies.<sup>4</sup> Nonetheless, Mexico may be among the leading Latin American countries for gender equality in the workplace: in a 2010 ranking of the top 10 most powerful women CEOs in Latin America, six of the CEOs led companies in Mexico.<sup>5</sup>

Gender roles, a culture of “machismo,” and discrimination in Mexican society may explain the lack of women in corporate leadership positions. Mexican women are expected to assume primary responsibility for household management and the rearing of children.<sup>6</sup> Therefore, many women executives find it difficult to reconcile their professional lives with their family lives.<sup>7</sup> Many Mexican women feel that they must choose between having a career and having a family.<sup>8</sup> The culture of “machismo” in the workplace is also a significant barrier to women's professional advancement.<sup>9</sup> In the 1980s, it was common practice for employers to require women employees to sign a resignation letter when hired, so that the employers could fire them quickly if they became pregnant.<sup>10</sup> Although the resignation letters are no longer commonplace, women continue to face “subtle discrimination all the way to sexual harassment” in small domestic companies, as well as in large multinational corporations, in Mexico.<sup>11</sup> Gender discrimination is so prevalent in Latin America that 61 percent of female executives reported that they have experienced discrimination.<sup>12</sup> For example, Ivonne Monteagudo, Senior Vice President of Sam's Club Mexico, recalls overhearing a male manager decide to fire a female employee rather than a male employee, because the former did not have to support a family.<sup>13</sup>

1 Prudential sees Latin America's 2 largest economies picking up speed in Q – Brazil, Mexico, *Business News Americas*, (Apr. 19, 2012) <http://www.bnamericas.com/news/banking/prudential-sees-latin-americas-2-largest-economies-picking-up-speed-in-q1> (last visited July 16, 2012); *Mexico Overview*, *The World Bank*, <http://www.worldbank.org/en/country/mexico/overview> (last visited July 16, 2012).

2 Greg Brown, *The Top 500 companies in Latin America*, CBS (July 2005) [http://findarticles.com/p/articles/mi\\_m0BEK/is\\_7\\_13/ai\\_n14874187/pg\\_2/?tag=content;col1](http://findarticles.com/p/articles/mi_m0BEK/is_7_13/ai_n14874187/pg_2/?tag=content;col1) (last visited July 16, 2012).

3 *Latin America: Female Boardroom Blues*, Knowledge@Wharton, (Oct. 19, 2011) reprinted in *Latin Business Chronicle* (Nov. 7, 2011), <http://www.latinbusinesschronicle.com/app/article.aspx?id=5218>. See also Irene Natividad, *‘There is no denying the effectiveness of quotas’: why Europe will surpass the U.S. in changing the face of the corporate board*, *Business Library* (Fall 2010), [http://findarticles.com/p/articles/mi\\_go2446/is\\_5\\_34/ai\\_n56248109/](http://findarticles.com/p/articles/mi_go2446/is_5_34/ai_n56248109/) (stating that of 23 Mexican companies surveyed, Corporate Women Directors International found that 52% of the companies had female directors and 5.8% of directors were women); Sylvia Maxfield, *Women on the Verge: Corporate Power in Latin America* (Report of the Women's Leadership Conference of the Americans), Inter-American Dialogue & Simmons School of Management 4 (April 2005) (stating that women only occupy 3% of corporate board seats in Mexico) (citing Gina Zabludovsky & Sonia de Avelar, *Empresarias y Ejecutivas en México y Brasil* (2001)).

4 Jose J. Ruiz, *The New Breed of CEOs in Mexico*, *Hedrick & Struggles* 6, [http://www.heidrick.com/PublicationsReports/PublicationsReports/HS\\_NewBreedofCEOsInMexico.pdf](http://www.heidrick.com/PublicationsReports/PublicationsReports/HS_NewBreedofCEOsInMexico.pdf).

5 *Poder Femenino* in *Las CEOs más Poderosas de América Latina*, *América Economía*, [http://rankings.americaeconomia.com/2010/top\\_ceo/poder\\_femenino.php](http://rankings.americaeconomia.com/2010/top_ceo/poder_femenino.php) (last visited Jan. 25, 2012).

6 *Tierra de Hombres* in *Las CEOs más Poderosas de América Latina*, *América Economía*, [http://rankings.americaeconomia.com/2010/top\\_ceo/terra\\_hombres.php](http://rankings.americaeconomia.com/2010/top_ceo/terra_hombres.php) (last visited Jan. 25, 2012) (discussing the Dean of Administration and Accounting at ITAM of Mexico, Carlos Alcérreca's view on the changing roles of women in companies).

7 In a 1994 study, nearly all executive women in Mexico surveyed reported considerable obstacles in the workplace. The most significant barrier identified was women's difficulty in reconciling their professional role with their family role. Gina Zabludovsky & Sonia de Avelar, *Empresarias y Ejecutivas en México y Brasil* 62 (2001).

8 *Latin America: Female Boardroom Blues*, *supra* note 3.

9 See, e.g., Zabludovsky & de Avelar, *supra* note 7.

10 *Latin America: Female Boardroom Blues*, *supra* note 3.

11 Interview with Ivonne Monteagudo, *Mujeres, machismo y oportunidad: Las mujeres y el liderazgo empresarial en México*, in *Enfocándose en América Latina, Un Proyecto de Economica, International Museum of Women*, <http://www.imow.org/economica/projects/story?language=es&key=5678> (last visited Jan. 24, 2012).

12 *Latin America: Female Boardroom Blues*, *supra* note 3.

13 Interview with Ivonne Monteagudo, *supra* note 11.

In addition to the machismo culture, cronyism in Mexican society hinders progress towards gender equality in the workplace. The Inter-American Development Bank reports that “cronyism and connections are a more accepted mode of doing business in Latin American than in the rest of the world.”<sup>14</sup> Male directors and CEOs tend to hire friends and professional contacts and, unless a woman is part of a family-run business, it is difficult for her to break into the business world. As a result, many of the women directors of Mexican companies serve on the boards of their family businesses.<sup>15</sup>

Legislative Framework

Mexico does not currently have any laws or regulations establishing gender quotas for boards of directors.<sup>16</sup> However, Mexico has several laws that promote gender equality, including equal pay for equal work laws, maternity laws, and equal opportunity laws.<sup>17</sup> Under the Mexican Constitution,<sup>18</sup> men and women are equal before the law<sup>19</sup> and all citizens have the freedom to work in a lawful profession of their choice.<sup>20</sup> The Constitution also enumerates a number of equal rights, regardless of gender, including the prevention of discrimination against working mothers.<sup>21</sup> Further, Mexican Federal Labor Law states that employees performing equal work must receive equal pay.<sup>22</sup>

Despite these Constitutional and federal protections, gender discrimination in employment persists in Mexico, and over the past two years, the Mexican government has considered various proposals to reform the labor laws. In March 2010, the National Action Party (PAN) presented a labor reform bill to the Chamber of Deputies containing five reform platforms, which PAN believes will lead to greater economic competitiveness and job creation. One of the five reform platforms is the promotion of “gender equity, inclusion, non-discrimination, and protection of rights.”<sup>23</sup> This initiative would prohibit requiring proof of non-pregnancy as a condition of obtaining employment, provide protective measures for working mothers, and punish sexual harassment in the workplace.<sup>24</sup> By specifically addressing aspects of gender discrimination in the workplace, the bill aspires to allow women greater access to the Mexican job market.

Although the PAN bill has not yet been passed into law, the debate on labor reform continues. In June of 2011, President Felipe Calderón reaffirmed his support of the bill.<sup>25</sup> President-elect Enrique Pena Nieto has promised to pursue labor reform by increasing economic growth to six percent per year and creating jobs.<sup>26</sup> Although he stated that he would discuss labor reform with outgoing President Felipe Calderon, <sup>27</sup> it is unclear how the pending labor legislation will be affected.

14 Theresa Braine, *Latin America Business Puts Few Women on Board*, *Women's E-news* (Aug. 29, 2005), <http://www.womensenews.org/story/business/050829/latin-american-business-puts-few-women-board>.

15 *Tierra de Hombres* in *Las CEOs más Poderosas de América Latina*, *supra* note 6.

16 *Latin America: Female Boardroom Blues*, *supra* note 3.

17 Maxfield, *supra* note 3, at 19.

18 See 1917 *Constitution of Mexico*, available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf> (last visited June 27, 2012).

19 *Id.* at art. 4.

20 *Id.* at art. 5.

21 See Article 123 which provides for equality of workers regardless of gender, including no strenuous work of pregnant employees, paid maternity leave 6 weeks prior to and after birth, job retention during maternity leave, two extra rest periods of 30 minutes to breastfeed, and women are entitled to nursing aid and infant care services.

22 Ama Toriente, *Minimum Employment Standards in Mexico*, *United States Department of Labor*, <http://www.dol.gov/ilab/media/reports/nao/minemployment.htm#xiii> (last visited June 27, 2012).

23 *El PAN le apuesta a la reforma laboral*, *CNN Expansión* (March 18, 2010), <http://www.cnnexpansion.com/economia/2010/03/18/pan-diputados-reforma-laboral-cnn>.

24 *Id.*

25 Jorge Ramos & Xóchitl Rangel, *Urge reforma laboral por jóvenes y mujeres: FCH*, *El Universal* (June 3, 2011), <http://www.eluniversal.com.mx/notas/770332.html>.

26 Anahi Rama & Tomas Sarmiento, *Mexico's Pena Nieto to push for quick reforms*, *Reuters* (July 2, 2012), <http://www.reuters.com/article/2012/07/02/us-mexico-election-idUSBRE8610JU20120702>.

27 *Id.*



In a speech in August 2011 to the American Chamber of Commerce of Mexico, Margarita Zavala, Mexico's first lady, a former congresswoman, and current President of the Civil Advisory Board to the Integral Family Development Agency, argued for the inclusion of women on boards of directors.<sup>28</sup> Ms. Zavala referenced various international studies that found that companies that have boards composed of at least 30 percent women outperform companies that do not. Ms. Zavala spoke out against the cultural and institutional obstacles that hinder women in the workplace, urging prompt reform.<sup>29</sup>

As demonstrated by these legislative initiatives and the public debate, there is some support for more public sector efforts targeting gender inequalities in the workplace, including on boards of Mexican companies.

Corporate Governance Code

The Mexican Corporate Governance Code offers voluntary recommendations on corporate governance for private and public companies. It was drafted largely by the Committee on Corporate Governance and is “the first of its kind in Latin America.”<sup>30</sup> The Committee on Corporate Governance was composed of members of the Mexican Stock Exchange, the Mexican Bankers' Association, the Mexican Institute of Finance Executives, the Mexican Institute of Public Accountants, as well as the industrial, retail, and service sectors.<sup>31</sup> Notably, none of the drafters were women.<sup>32</sup>

The purpose of the Code is to increase transparency consistent with international standards, and to increase competitiveness and investment. The Code has five sections: (1) Board of Directors, (2) Evaluating and Compensating Directors, (3) Auditing, (4) Finances and Planning, and (5) Stockholder Information. Regarding board composition, the Code recommends that boards have 3-15 board members, of which 25 percent should be independent directors.<sup>33</sup> Although the Code is voluntary, the Mexican Securities Laws require that 25 percent of board members consist of independent directors.<sup>34</sup> The Code does not include a recommendation for gender diversity with regard to board composition, nor does the Code discuss term limits or other restrictions limiting a director's independence after a certain number of years served.

Private Sector Initiatives

There is also potential for private sector reform in Mexico. According to Ms. Monteagudo, transnational companies of U.S. origin are adopting new policies in Mexico to promote the advancement of women in the workplace. Following their lead, some Mexican companies have adopted similar policies to stay competitive.<sup>35</sup> The American Chamber of Commerce of Mexico surveyed 24 transnational companies for its report, Best Practices in Diversity and Labor Inclusion, and found that 75 percent of the transnational companies reported that they have “better results by having women who serve on their executive committee.”<sup>36</sup>

The American Chamber of Commerce of Mexico discovered that many transnational companies have adopted various programs to help retain women employees in Mexico, including flexible hours, maternity and paternity support,

28 *Margarita Zavala se promulga por reforma laboral para mujeres, El Informador* (Aug. 25, 2011), <http://www.informador.com.mx/mexico/2011/317256/6/margarita-zavala-se-promulga-por-reforma-laboral-para-mujeres.htm>.

29 *Id.*

30 *Corporate Governance Code for Mexico*, 1 (Sept. 26, 2002), [http://www.ecgi.org/codes/documents/mexico\\_code\\_en.pdf](http://www.ecgi.org/codes/documents/mexico_code_en.pdf).

31 *Id.* at 1, 2.

32 *Id.* at 13-14.

33 *Código de Mejores Prácticas Corporativas*, 14 (2006) [http://www.ri.pemex.com/files/content/Codigo\\_de\\_Mejores\\_Practicas\\_Corporativas\\_CCE.pdf](http://www.ri.pemex.com/files/content/Codigo_de_Mejores_Practicas_Corporativas_CCE.pdf). This is the revised Corporate Governance Code for Mexico.

34 Luis Lavalle Moreno, *Comments to the New Securities Law*, Martínez, Algaba, Estrell, de Haro, Y Galcan-Duque, 8 (Feb. 2006), S.C., [http://www.iln.com/articles/pub\\_302.pdf](http://www.iln.com/articles/pub_302.pdf).

35 Interview with Ivonne Monteagudo, *supra* note 11.

36 *American Chamber Mexico, Best Practices in Diversity and Labor Inclusion* slide 2 (2011), [http://www.amcham.com.mx/member-services/best\\_practices\\_in\\_diversity\\_and\\_labor\\_inclusion.aspx](http://www.amcham.com.mx/member-services/best_practices_in_diversity_and_labor_inclusion.aspx).

mentoring programs, women's networks, and programs promoting respect and diversity inclusion.<sup>37</sup> The majority of the programs are available to all employees regardless of gender, even though they may be specifically intended to increase the participation of women in the workplace, to help reconcile work with family life, and to promote leadership and diversity.<sup>38</sup> However, a 2009-2010 study found that nine major transnational companies in Mexico City, including Avon, Manpower, Hewlett Packard, General Electric, Santander, Microsoft, Nestlé, Televisa, and Coca Cola declined to use quota policies to promote women into management on the grounds that it would affect “the transparency of the promotion processes.”<sup>39</sup>

Civil society in Latin America more broadly, and in Mexico specifically, is helping to promote and support women in corporate management positions. For example, the PanAmerican Institute for High Business Direction (IPADE), a private university in Mexico and one of the leading business schools in Latin America, has a Research Center for Women in Senior Management. The Center was founded three years ago by women business leaders, and its mission is to “enhance personal and professional development of women managers and entrepreneurs.”<sup>40</sup> The Center develops initiatives through research, publications, seminars, and networking events. It is working with business schools in Argentina, Spain, and Colombia to host a seminar for Latin American women directors.<sup>41</sup>

Several local and international women's organizations have also developed initiatives to increase the presence of women in board rooms. The Mexican Association of Executive Women is a network of business women from small, medium, and large businesses.<sup>42</sup> Its mission is “the search for unity of executive women and the support of their participation in better opportunities of employment and wealth, while achieving equity and justice in a democracy.”<sup>43</sup> La Asociación Por Ti Mujer is a blog managed by Colombian women living in Spain that includes Mexico in its reporting of issues affecting women, including wage and work inequality.<sup>44</sup> Women Corporate Directors International, which has a chapter in Mexico City, advises boards on the participation of women in the work force, hosts events, and claims to have helped “secure board and advisory positions for numerous women throughout the world.”<sup>45</sup>

Conclusion

Although women have made some advancement in the workplace, Mexico continues to lag behind much of the world in gender equality on corporate boards of directors. The private and public sectors have commenced reforms to promote women's participation in the workforce; however, cultural stereotypes continue to hinder progress. There is some movement to affect change through legislation; however, the Mexican Corporate Governance Code has yet to implement requirements that would directly or indirectly increase the number of women in the boardroom.

Professional women's associations and organizations in Mexico are striving to increase access for women to management and board positions. However, until Mexican society realizes that maintaining the traditional gender roles not only hurts women who aspire to climb the corporate ladder, but also harms the country's economy overall, women will have to continue to fight for their seat at the board room table.

37 *Id.* at slide 4, 5, 20, 23, 29, 32, 37.

38 *Id.* at slide 3.

39 *Centro de Investigación de la Mujer en la Alta Dirección, Executive Summary of Best Practices Project in Mexico: Promotion and Retention of Female Talent, Instituto Panamericano de Alta Dirección de Empresa*, 6.

40 Telephone Interview of María del Carmen Bernal González (June 8, 2012); *Centro de Investigación de la Mujer en la Alta Dirección*, <http://www.ipade.mx/profesores-investigacion/centros-de-investigacion-del-IPADE/centro-de-investigacion-de-la-mujer-en-la-alta-direccion/Pages/centro-de-investigacion-de-la-mujer-en-la-alta-direccion.aspx> (last visited June 8, 2012).

41 *Id.*

42 *Asociación Mexicana de Mujeres Empresarias A.C.*, <http://www.ammjenacional.org/> (last visited June 8, 2012).

43 *Id.*

44 *La Asociación Por Ti Mujer*, <http://www.asociacionportimujer.org/2009/09/quienes-somos.html> (last visited June 6, 2012).

45 *Women Corporate Directors International*, <http://www.womencorporatedirectors.com/> (last visited June 6, 2012).



# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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AFRICA



Morocco

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As a general matter, gender parity in Morocco is weak, although there are signs of improvement. According to the Global Gender Gap Reports issued by the World Economic Forum, Morocco ranks among the worst, ranking 127 out of 134 countries in 2010 and, slightly worse in 2011 with a global ranking of 128th.<sup>1</sup>

In a 2009 survey conducted by Sunergia / The Economist, Morocco did not fair any better when it came to executive pay. The survey further noted the low proportion of women in corporate management in Morocco, commenting that “women were almost absent in the closed circle of CEOs and very little present in the general management.” Indeed, in Morocco men held roughly 85 percent of the management positions.<sup>2</sup> Governance Metrics International issued its own report in 2009, concluding that representation of women on boards of directors of Moroccan companies was close to 0 percent.<sup>3</sup>

These surveys and general condemnation of Morocco as compared to global statistics, led Soraya Badraoui Drissi, President of the Association of Entrepreneurs Women of Morocco (Association des Femmes Chefs d’Entreprises du Maroc “AFEM”)<sup>4</sup> and member of the corporate board of Top Class Espresso,<sup>5</sup> to observe that, since the last report issued by the World Economic Forum, “Morocco had continued to decline in terms of elimination of inequalities between gender.”<sup>6</sup>

However, this picture would not be complete if it were based solely on citing statistics. One must recognize the recent reforms undertaken by the Moroccan legislature to achieve equality between men and women in all areas, particularly within the civil (e.g., voting rights) and economic rights (e.g., access to jobs, day care, etc.). Indeed, many public and/or private initiatives and projects have recently emerged.

In July 2011, the Moroccan Constitution was modified to give greater recognition of parity between women and men. Specifically, Article 19 of the Moroccan Constitution states that

Men and women enjoy equal human rights and freedoms of a civil, political, economic, social, cultural and environmental [nature], as set out in this and other provisions of the Constitution, and in international covenants and conventions duly ratified by the Kingdom... The Moroccan government is working to achieve parity between men and women. It is created for this purpose an Authority for Equality and the Control of all Forms of Discrimination.<sup>7</sup>

Article 19 strengthens the principle of equality between women and men by explicitly stating that they both enjoy equal rights under the law. In this regard, for example, the Moroccan Constitution states that Moroccan law must include provisions “likely to promote equal access for women and men to electoral functions”<sup>8</sup> and also provides a quota

1 Global Gender Gap Report 2010: Rankings and Scores; Global Gender Gap Report 2011: Rankings and Scores.  
2 “Les salaires des cadres 2009,” Les documents de l’économiste, April 2009.  
3 “Women on Boards: A Statistical Review by Country Region, Sector and Market Index,” March 2, 2009.  
4 The AFEM is an independent association created on September 28, 2000 to offer women business owners a setting in order to: (i) contribute to the development of the national economy through greater involvement in the economic and social debate, and (ii) participate in the decisions guiding the country’s economic life. The AFEM to date includes almost 300 members.  
5 Company specialized in the import of coffee and hot drinks distribution.  
6 “Le capital femmes,” Economie, January 22, 2010.  
7 See Article 19, Constitution of the Kingdom of Morocco (not official translation).  
8 Article 30 of the Moroccan Constitution sets forth that “In accordance with electoral all major citizens enjoying their civil and political rights. The law makes provisions to promote equal access of women and men to electoral functions.”

system for the representation of women within Regional Councils.<sup>9</sup> This quota system implies that at least 12 percent of the members of the Regional Councils have to be women.

In late 2010, to address the issue of gender diversity on corporate boards, Soraya Badraoui Drissi stated that the solution would be to pass a law imposing specific gender parity quotas, which would definitively resolve the problem of under-representation of women on corporate boards.

In response to recent developments in Europe — and more precisely in France which has influenced the drafting and amendments of the Moroccan Constitution — private initiatives have emerged in order to enable an effective parity between women and men on corporate boards. For instance, AFEM encourages the Moroccan government to pass a law imposing a quota of women on corporate boards. Indeed, the AFEM considers that, without quotas, it will be difficult to get women involved in decision-making or governing roles in Moroccan companies.

The same point of view is shared by Maria Sharaf, President of Deve Network,<sup>10</sup> a non-profit organization founded in 2008 to promote fairness in the workplace including better representation of women on boards of directors and management committees. Sharaf has commented that voluntary approaches will not produce effective results and only a binding quota will be effective in Morocco.

As noted by AFEM, quotas have already been proposed for political office, and suggested that what is to be implemented for Regional Council elections could be imposed on corporate boards as well. Indeed, as noted above, in 2009 a quota of 12 percent was imposed during the regional elections in order to increase the number of women in Regional Councils.

According to representatives of AFEM, a draft of a legislative proposal is still under consideration and is expected to be submitted to the Moroccan Parliament before the end of 2012. It is anticipated that the proposed legislation will include a quota for representation of women on the boards of Moroccan companies.

There have been other efforts as well. The Moroccan Code of Good Practice on Corporate Governance entered into force in March 2008. Section 3.4.1 of this code states that “the composition of the management board is essential to enable it to perform its role. It should be composed of members with integrity [who are] competent, informed, involved, providing diversity (training, professional experience, gender balance, age, nationality) likely to generate real debate and to avoid the systematic search of consensus.”<sup>11</sup>

Deve Network recognizes that there has been somewhat of a breakthrough in Morocco with the passage of the Moroccan Labor Code in 2003 and the Moroccan Family Code in 2004.<sup>12</sup> And, it notes that the Moroccan Code of Good Practice on Corporate Governance in 2008 invites companies to ensure gender diversity in the composition of management boards and executive boards. However, Deve Network also stresses that these initiatives and steps all operate in a context where women are almost absent from these bodies.

Another public/private initiative aimed at improving equality between women and men was recently conducted by the Department of Employment and Vocational Training (“DEVT”) in partnership with Deve Network and with the technical and financial support from the German Cooperation for Sustainable Development (“GIZ”). This initiative is intended to raise awareness at all levels of decision-making regarding the place of women in the workplace. This initiative resulted in the publication of a report in order to inform, assess, monitor, and improve the actual practice of equality and parity in private and public companies. Several lines of study have been proposed for the evaluation and the improvement of professional equality, including gender equality in governance and decision-making positions.<sup>13</sup> This report concludes that the phenomenon of “glass ceiling” is very significant in Morocco and prevents women from reaching management

9 Article 146 of the Constitution provides that “An organic law shall state: The conditions of democratic management of their affairs by the regions and other territorial authorities, the number of advisers, the rules for eligibility, to incompatibilities and if imposed for the same mandates as well as the electoral system and provisions to ensure greater participation of women in these councils...”  
10 Deve Network is non-profit organization, founded in 2008. The purpose of this organization is to promote fairness in the workplace through programs of action including the representation of women and men on boards of directors and management committees.  
11 See, the Moroccan Code of Good Practice on Corporate Governance, at Section 3.4.1 (March 2008) (not official translation).  
12 The Moroccan Labour Code became effective on September 11, 2003 and the Moroccan Family Code became effective on February 3, 2004.  
13 “Atteindre l’Egalité et la parité Professionnelle et Salariale entre les femmes et les hommes,” November 2011.

positions and executive boards. Only 12 percent of women are in leadership positions while they represent over a quarter of the workforce.<sup>14</sup>

In order to strengthen the gender diversity framework, Deve Network has taken the initiative to spread among managers a national report on human development in Morocco which sets an ambitious target of 40 percent of women in decision-making positions by 2030.<sup>15</sup>

While no formal action has yet been taken by the Moroccan Parliament, there has been some positive movement largely resulting from the private sector initiatives noted above including the partnership between the DEVT and Deve Network. Morocco is becoming one of the first Maghreb countries to recognize the important role women can play in decision-making positions in the private sector, while trying to promote gender parity by imposing a quota on representation of women in political office.

This has been very recently affirmed by the position taken by a Moroccan political party (PRE), which encouraged the participation of women in politics. Significantly, on May 16, 2012 Meriem Bensalah-Chaqroun was elected President of the General Confederation of Enterprises of Morocco (CGEM), becoming the first woman to hold that position since the independence of the Kingdom in 1956.<sup>16</sup> Finally, in May-June 2012, Morocco hosted the 2012 World Cornerstone Conference of the International Women's Forum. All of these developments give room for optimism that further progress will be made with regard to women in leadership positions in Morocco, including on the boards of directors of Moroccan companies.

14 Page 58 of the report "Atteindre l'Egalité et la parité Professionnelle et Salariale entre les femmes et les hommes," November 2011.  
15 "Comprendre la responsabilité sociétale de l'entreprise et agir sur les bases de la norme ISO 26000," organisation internationale de la francophonie, 2011.  
16 HD Maroc: "Election pour la première fois d'une femme à la tête du patronat", May 16, 2012.



South Africa

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While there have been significant strides in increasing the number of women directors in South African companies, women continue to be significantly underrepresented in boardrooms. According to the Businesswomen’s Association’s (“BWA”) 2011 Census, women comprise 15.8 percent of total director positions, 4.4 percent of CEOs, and 5.3 percent of Chairpersons in South Africa.<sup>1</sup> Although all three indicators have decreased marginally since 2010, there are signs of improvement.<sup>2</sup> First, the percentage of companies with no women directors has decreased. Even more impressively, the percentage of listed companies, including state-owned enterprises (“SOEs”), with three or more women directors increased dramatically over the past three years: from 17.1 percent in 2009 to 41.6 percent in 2011.<sup>3</sup> Moreover, the number of directorship positions held by women has increased from 1,056 in 2010 to 1,127 in 2011, while the number of women holding at least one directorship has also grown, indicating an increase in the pool of women directors.<sup>4</sup>

Notably, the number of women on boards of SOEs far surpasses that of companies listed on the JSE Ltd. (“JSE”).<sup>5</sup> The BWA Census found that women accounted for 31.9 percent of directors at SOEs, as compared to 14.8 percent at JSE-listed companies.<sup>6</sup> In addition, 90 percent of the SOEs surveyed had three or more women directors and the remaining 10 percent had at least two women directors.<sup>7</sup> However, only 38.6 percent of JSE-listed companies had three or more women directors and 21.9 percent of JSE-listed companies had no women directors at all.<sup>8</sup>

While the percentage of women directors in South Africa surpasses that of other countries (including the U.K. (9 percent), the U.S. (15.7 percent), and Canada (14 percent)),<sup>9</sup> the actual numbers are low and the growth rate is small. From 2005 to 2011, the percentage of women directors increased by only 5.8 percent (excluding subsidiaries, which were not included in the 2005 census).<sup>10</sup> Moreover, the low percentage of women CEOs and Chairpersons indicates that there is still significant room for improvement, particularly since women make up more than 51 percent of the South African population<sup>11</sup> and 45.1 percent of the workforce.<sup>12</sup>

In many ways, South Africa’s efforts to increase the presence of women, both in business generally and in boardrooms specifically, are a by-product of the country’s efforts to overcome the legacy of apartheid. Apartheid, which ended in 1994, systematically excluded a majority of South Africans from meaningful participation in the economy for almost 50 years.<sup>13</sup> Women in general, as well as certain racial groups, were excluded. Laws limited the rights of women of all

1 *Businesswomen’s Association of South Africa, BWA South African Women in Leadership Census 2011* at 23-24 (2011), available at <http://www.bwasa.co.za/Census/BWASAWomenInLeadershipCensus2011/tabid/14947/Default.aspx> [hereinafter *BWA Census*]. The BWA’s annual census quantifies the representation of women on the boards of companies listed on the JSE, including their subsidiaries, as well as on boards of state-owned enterprises in South Africa.

2 *Id.* at 24.

3 *Id.* at 32.

4 *Id.* at 26.

5 Previously called the Johannesburg Stock Exchange, the largest stock exchange in South Africa, it was officially changed to the “JSE Ltd.” in 2006.

6 *BWA Census* at 33.

7 *BWA Census* at 34.

8 *Id.*

9 *Id.* at 29.

10 *Id.* at 31.

11 Mid-year Population Estimates 2009 (StatsSA).

12 National Labor Force Survey 2009 (StatsSA). The National Labor Force survey provides that persons are “considered employed” if they are 15 – 65 years old and are those who performed work for pay, profit, or family gain in seven days prior to the survey interview, for at least an hour, or who were absent from work during these seven days, but did have some form of formal work to which to return.

13 Department Of Trade And Industry, South Africa’s Economic Transformation: A Strategy For Broad-Based Black Economic Empowerment, 3 (2003).

racess to own, inherit, or alienate property.<sup>14</sup> Since the end of apartheid, South Africa has worked to develop a legislative framework to overcome existing economic disparities and entrenched inequalities that are a result of apartheid.

Legislative Initiatives

The equality clause in the South African Constitution’s Bill of Rights provides a basis for government legislation promoting gender parity:

- “National legislation must be enacted to prevent and prohibit unfair discrimination.”<sup>15</sup>
- “To promote the achievement of equality, legislative, and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”<sup>16</sup>

Since the end of apartheid, the South African government has implemented several pieces of legislation that advance gender equity. The Employment Equity Act and the Broad-Based Black Economic Empowerment (“BBBEE”) Act have implemented broad requirements for diversity and equity in business generally. The BBBEE also addresses diversity in boardrooms specifically. In addition, several legislative initiatives addressing gender equity are currently pending review, including the draft Strategic Framework on Gender and Women’s Economic Empowerment (“Strategic Framework”) and the proposed gender equality bill.

A. BBBEE Scoring System

As a result of South Africa’s recent history with apartheid, efforts to redress the effects of discrimination have focused primarily on racial discrimination rather than other forms of discrimination.<sup>17</sup> The largest and most well-known program implemented by the South African government to address historic discrimination in the economic sector is the BBBEE Scorecard.<sup>18</sup> The BBBEE scoring system rates companies based on black<sup>19</sup> participation, giving each company a total score based on their weighted scores in seven categories: Equity Ownership, Management, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development, and Socio-economic Development.<sup>20</sup> Depending on the company’s score, they receive a “BBBEE status,” ranging from a Level One Contributor to a Level Eight Contributor, with Level One Contributors as the best score. South African law requires state and public entities to take into consideration a company’s BBBEE status when issuing licenses, awarding contracts, entering partnerships, or selling SOEs, thereby incentivizing companies to have strong BBBEE ratings in order to be competitive.

Remedying gender discrimination is only a secondary focus of BBBEE, and the BBBEE is limited in scope to the empowerment of black women only. Still, while BBBEE primarily focuses on race, scores also take into account gender, disability, youth, unemployment, and rural location. Therefore, companies have an additional incentive to recruit black women in particular. The Management category for BBBEE scoring encompasses participation on the company’s board of directors, with the target being 50 percent black voting members. The Adjusted Recognition for Gender allows

14 Federation of South African Women, Women’s Charter (April 17, 1954), <http://www.anc.org.za/show.php?id=4666>.

15 *S. Afr. Const.* 1996, ch. 2, § 9(4).

16 *S. Afr. Const.* 1996, ch. 2, § 9(2).

17 Dudu Msomi, Factors Affecting Women Representation on Boards of Directors, 108 (University of Pretoria, 2006) (citing B. Mathur-Helm, *Equal Opportunity and Affirmative Action for South African Women: A Benefit or Barrier?*), Women in Management Review 20 (1), at 56-71).

18 In 2003, South Africa passed the Black Economic Empowerment Act (“BEE”). The BEE system was criticized for being narrow and only empowering a few black individuals, failing at its goal of large-scale black empowerment. In 2007, the Broad-Based Black Economic Empowerment: Codes of Good Practice on Black Economic Empowerment were implemented, expanding the prior Act and adding additional scoring categories.

19 “Black” as defined by the BEE Act includes “Africans, Coloureds and Indians,” where “Coloureds” refers to people of mixed-race. Codes of Good Practice on Broad-Based Black Economic Empowerment, Schedule 1: Interpretation and Definitions. The High Court of South Africa ruled in 2008 that Chinese South Africans were to be considered “black” for purposes of the BEE Act and other affirmative action programs, as they had been defined as “Coloured” under apartheid. Sky Canaves, *In South Africa, Chinese is the New Black*, The Wall Street Journal China Realtime Report (Jun. 19, 2008, 7:59 AM), <http://blogs.wsj.com/chinarealtime/2008/06/19/in-south-africa-chinese-is-the-new-black/>

20 See Codes of Good Practice on Broad-Based Black Economic Empowerment.

additional points for black women members, up to the target of 50 percent of the black members being women.<sup>21</sup>

The BBBEE system, while similar to the quota systems utilized in some countries, is not actually a quota system. Companies are not required to have a minimum number of female or black board members on their boards of directors.<sup>22</sup> The BBBEE Level rating is based on the total score from seven categories, allowing companies to achieve competitive BBBEE scores in a variety of ways. For example, a company can compensate for a low Management score with strong scores in other categories, such as Employment Equity or Preferential Procurement. That a company without any female or black directors on its board can still have a strong BBBEE score suggests that the BBBEE is less effective at remedying gender inequality at the board level than quotas or other similar systems.

B. The Strategic Framework on Gender and Women’s Economic Empowerment

In an effort to address gender discrimination more broadly, in 2007 the Department of Trade and Industry (“DTI”), which implements BBBEE, released a draft of the Strategic Framework, the sister strategy to BBBEE.<sup>23</sup> The goal of the Strategic Framework is to ensure that gender concerns are addressed throughout the government and its initiatives in a direct, rather than tangential, way. In order to address the underrepresentation of women on boards of directors, the Strategic Framework proposes two “interventions.” The first is the development of a national database of qualified business women for board service. The second is the establishment of a Gender Sensitive Monitoring System for selection processes and a 50 percent quota for appointing female directors.<sup>24</sup> No additional details regarding the 50 percent quota were provided, and it is unclear what progress these proposals have made to date. The DTI released a Status Quo Report in 2011, in which it was announced that the Strategic Framework will be revisited and updated.<sup>25</sup> The Status Quo Report puts forward 20 recommendations for consideration by the DTI in its revision of the Strategic Framework, ranging from defining “women’s economic empowerment,” to specific programming for women, to micro-, meso-, and macro-level interventions for gender equality.<sup>26</sup>

C. Proposed Gender Equity Bill

In 2010, the Department for Women, Children and People with Disabilities issued a Green Paper<sup>27</sup> proposing the passage of gender equality legislation to ensure enforcement of existing gender equity laws in the public and private sectors. The proposed gender equity legislation would (i) establish punitive sanctions for public and private entities that violate anti-discrimination laws;<sup>28</sup> (ii) make affirmative action mandatory for all employers;<sup>29</sup> and (iii) implement mandatory measurement of progress towards gender equality, including gender audits, analysis and compulsory reports.<sup>30</sup> The minister for the Department for Women, Children and People with Disabilities had hoped the bill would

be submitted for consideration by the Cabinet in March 2012,<sup>31</sup> but more recently has said that the Department will submit the bill “this year.”<sup>32</sup>

Private Sector Initiatives

The private sector in South Africa has not been as pro-active as the government in developing initiatives to ensure gender equity on boards. Most of the private sector efforts to increase the representation of women on boards were initiated by South Africa’s business associations. However, as discussed more fully below, there are some impressive private sector initiatives, such as the 2009 King Code of Governance for South Africa and the King Report on Governance for South Africa (together referred to as “King III”), as well as increasing support for board diversification from institutional investors.

In addition to conducting an annual census on the number of women directors, the BWA has also taken steps to try to accelerate growth in numbers. For example, as part of its Census report each year, BWA publishes a list of the “top performing” and “worst performing” companies in terms of the number of women directors.<sup>33</sup> In addition, the BWA has pledged to create a pool of talented women from which companies can identify and develop potential directors.<sup>34</sup> In 2011, BWA also called on private sector entities like the JSE to add gender diversity as a pre-requisite for listing.<sup>35</sup> Thus far, the JSE has not taken any action in response. The JSE does not have a separate corporate governance code. The King Code of Governance (“King Code”) (referenced above and described in more detail below) applies to all companies listed on the JSE, and although the King Code’s provisions are not mandatory, the JSE-listing requirements provide that all listed companies must disclose and explain any non-compliance with the King Code in their annual report.

The Business Unity South Africa (“BUSA”) organization promotes the interests of the South African business community in order to create an environment in which businesses can thrive. It is made up of a variety of professional associations, industry groups, and chambers of commerce. Like the BWA, the BUSA has also developed a number of recommendations for companies to follow in order to improve board diversity,<sup>36</sup> including:

- increasing board size to create space for the appointment of designated groups, in particular black people, women, and people with disabilities;
- implementing various restrictions to increase director turnover, such as setting maximum term limits and stipulating a retirement age, and limiting the number of boards a director can sit on; and
- providing training and mentoring for new board members.

Similar to BWA, BUSA has also pledged to develop a database of potential board candidates, training for future directors, and programs to monitor changes in board composition on an on-going basis.<sup>37</sup>

21 Codes of Good Practice on Broad-Based Black Economic Empowerment, Code Series 200.

22 An article on Women on Boards mentions 1996 legislation implementing a quota reserving one-third of SOE’s board seats for women, but we were not able to confirm the existence of this legislation. Marie-Laurence Guy, Carmen Niethammer, & Ann Moline, *Women on Boards: A Conversation with Male Directors*, Global Corporate Governance Forum (2011) at 26. The legislation referred to may have been the 1997 ANC Constitution, which recommends that women be represented at a rate not below 30 percent in all elected structures of the ANC. Arguably this could include boards of SOEs. African National Congress Constitution 1997, rule 14.1.

23 Department of Trade and Industry, Draft Strategic Framework on Gender and Women’s Economic Empowerment (2007).

24 *Id.* at 16.

25 Department of Trade and Industry, Towards an Enabling Environment for Women’s Economic Empowerment in South Africa: A Status Quo Report (2011).

26 *Id.* at 8-14.

27 Green Paper: Toward a Gender Equality Bill (draft), Ministry for Women, Children and People with Disabilities (2008), available at <http://www.pmg.org.za/node/26586>.

28 Ministry for Women, Children, and People with Disabilities, Green Paper: Towards a Gender Equity Bill (*draft*), § 22.

29 *Id.*

30 *Id.* at § 23.

31 Theo Barclary, *Gender Equality Reform in South Africa Beset By Delays*, Think Africa Press, Sept. 27, 2011, available at <http://thinkafricapress.com/south-africa/gender-equality-reform-south-africa-beset-delays>.

32 Lulu Xingwana, Minister of the Department for Women, Children and People with Disabilities, “Summary of the Country Statement presented by Minister Lulu Xingwana at the United Nations 56th Session of the Commission on the Status of Women”, New York (Feb. 28, 2012), available at <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=25446&tid=58333>.

33 Eddah Njoki, *Breaking the Glass Ceiling*, Black Business Quarterly, July 11, 2011, available at <http://www.bbqonline.co.za/articles/business/375-breaking-the-glass-ceiling>.

34 *Id.*

35 Press Release, “Businesswomen’s Association of South Africa, BWA Calls for Gender Diversity as a JSE Listing Requirement as 2011 Women in Leadership Census” is Released (Mar. 25, 2011), available at <http://womenpartner.org/blog/2011/05/03/bwa-calls-for-gender-diversity/>.

36 Business Unity South Africa, Transformation Study: A Snapshot of the Demographic Profile and Pace of Transformation of JSE Listed Companies at 4-5 (2011), available at <http://www.busa.org.za/docs/SUMMARY%20A%20Snapshot%20of%20the%20Demographic%20Profile%20and%20Pace%20of%20Transformation%20of%20JSE%20listed%20companies.pdf>.

37 *Id.* at 5.

Corporate Governance Code

The King reports are named after Mervyn King, a veteran corporate lawyer and a former South African Supreme Court judge, who formed the first King Committee in 1993, shortly after South Africa gained independence.<sup>38</sup> This committee issued the first King report on corporate governance in 1994. King III, the most recent report, was issued in 2009 by the third King Committee, which consists of professionals and experts in various areas of corporate governance. The Committee was convened by the Institute of Directors in Southern Africa (“IoDSA”), a non-profit organization promoting good governance. The King reports include a voluntary code of governance referred to as the King Code. It is closely aligned with the Companies Act, and the JSE Listings Requirements incorporate certain provisions of the King Code. The King Code promotes ethics as the foundation of corporate governance and, along with the Companies Act of 2008 and the JSE Listing Requirements, serves as a guide for corporate entities throughout South Africa.

The King Code does not explicitly advocate for increased gender diversity, but it recommends that a board consider “whether its size, diversity and demographics make it effective” and lists gender as one of several factors of diversity.<sup>39</sup> The BWA is currently advocating for gender diversity to be made a requirement in the King Code on Corporate Governance.<sup>40</sup> The King Code provides that the majority of the board should consist of non-executive directors, and that the majority of those directors should be independent.<sup>41</sup> It also states that companies should implement a staggered rotation of non-executive directors, and that at least one-third of non-executive directors should retire by rotation annually.<sup>42</sup> In particular, independent non-executive directors are recommended to undergo an evaluation of their independence by the chairman and the boards each year, and an especially rigorous review by the board if they are to serve longer than three terms (i.e. nine years). As mentioned above, the BUSA is advocating for restrictions on director terms to increase turnover, such as maximum term limits, to create more opportunities to fill empty board seats with diverse directors.

Institutional investors and shareholder activists have recently begun exerting more influence on board diversification by pressuring companies to appoint directors with diverse backgrounds and expertise as a way to improve decision-making.<sup>43</sup> For example, the Public Investment Corporation (“PIC”), the single largest shareholder on the JSE, used its shareholder power to encourage one company to expedite appointment of a qualified black woman PIC had nominated for a director position.<sup>44</sup>

Conclusion

While some may disagree with the use of quotas or other government intervention to promote gender equality in business, a 2006 survey of South African board members indicated that the main driving force behind companies seeing a need for female representation on their boards was government-initiated legislation, such as the BBBEE Act.<sup>45</sup> Arguably, the legislation is working, though maybe not as quickly as some would like. The percentage of female South African directors has increased from 7.1 percent in 2004 when the survey started, to 15.8 percent in 2011.<sup>46</sup> The argument that government intervention, especially the BBBEE, is having a positive effect is bolstered by the fact that

38 Neil Stuart, *An Audience with the GRI's Mervyn King*, Inside investor Relations, Sept. 9, 2010, <http://www.insideinvestorrelations.com/articles/case-studies/16371/audience-mervyn-king/>.

39 King Code of Governance Principles, King Report on Governance for South Africa ¶ 71 (3rd ed. 2009).

40 *BWA Census* at 7.

41 King Code Of Governance Principles, King Report On Governance For South Africa ¶ 64 (3rd ed. 2009). The code defines an “independent non-executive director” at ¶ 67.

42 King Code of Governance Principles, King Report on Governance for South Africa ¶¶ 74 and 75 (3rd ed. 2009).

43 Msomi, *supra* note 17 at 21.

44 *Id.*

45 *Id.* at 99.

46 Businesswomen’s Association of South Africa, Presentation on BWA South African Women in Leadership Census 2011 at 4, available at [http://www.bwasa.co.za/Portals/4/docs/ho/CENSUS\\_Presentation\\_Final.pdf](http://www.bwasa.co.za/Portals/4/docs/ho/CENSUS_Presentation_Final.pdf).

63.3 percent of female directors are Black<sup>47</sup> as compared to 37.3 percent white women directors.<sup>48</sup> Thus, there is a chance the gender equity legislation if enacted as proposed in the Green Paper, which seeks to enforce gender equity legislation across private and public sectors, may have a real impact. However, the gap between the number of women directors on JSE-listed companies and SOEs emphasizes the continued importance of private sector initiatives as well.

47 *BWA Census* at 50. The census uses separate categories for Black, Indian, and Coloured, all of which the BBBEE Act considers “Black.” Broken down, the census found that female directors were 46.7 percent Black, 8.3 percent Indian, and 8.3 percent Coloured. *Id.*

48 It is worth noting that according to the Mid-year Population Estimates 2011, white South Africans comprise only nine percent of the population and that white women, as a percentage of women, are not necessarily as underrepresented on boards of directors as these numbers might otherwise suggest.





# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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EUROPE



European Union

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Gender equality is a founding principle of the European Union<sup>1</sup> and is reflected in a number of directives and recommendations issued by the European Commission (the “EU Commission”).<sup>2</sup> Despite these principles and commitments, until the mid-2000s the European Union and individual Member States had experienced a long period of inequality between men and women due mainly to historical and cultural factors.

In response, on March 1, 2006, the European Commission issued its first “Strategy for Equality between Women and Men 2006-2010” (the “EU First Strategy”)<sup>3</sup> to address gender equality as a fundamental right, a common value among EU Member States, and necessary to achieve EU objectives of growth, employment and social cohesion. The EU First Strategy outlined six priority areas for the period 2006-2010 including equal economic independence for women; equal representation in decision-making; and elimination of gender stereotypes and, for each area, setting forth priority objectives and actions.

On September 21, 2010, the European Commission issued the strategy for the next five year period and, in the “Strategy for Equality between Women and Men 2010-2015” (the “EU Second Strategy”), expressly included the issue of women on corporate boards of directors.<sup>4</sup>

The EU Second Strategy made it imperative for the European Commission and Member States to make the issue of gender parity on corporate boards a matter of high priority. More women graduate from university than men and 45.5 percent of workers across the European Union were women. Yet, by 2010 women only represented 12 percent of the board seats of European public companies.<sup>5</sup> In light of this lack of gender balance, in 2011 the European Commission launched a number of initiatives under the EU Second Strategy. Those initiatives were designed to encourage Member States and their businesses to consider the issue of gender diversity on corporate boards while also calling on publicly listed companies in the EU to introduce specific measures to enhance representation of women on their boards.

In particular, on April 5, 2011 the European Commission issued a Green Paper on Corporate Governance (the “Green Paper”).<sup>6</sup> The Green Paper invited the views of Member States, the European Parliament, the European Economic

1 In particular, Article 2 of the European Union Treaty affirming the prevalence of, *inter alia*, the recognition of equality between women and men in European society; Article 23 of the Charter of Fundamental Rights of the European Union; and Article 57 of the Treaty on the Functioning of the European Union.

2 In particular, Council Directive 75/117/EEC on the application of the principle of equal pay for men and women; Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions; Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Council Directive 2000/78/EEC establishing a general framework for equal treatment in employment and occupation; Directive of the European Parliament and Council 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; and the Recommendations of the EU Commission No. 84/635 soliciting affirmative measures to eliminate actual disparity between women and men.

3 EU Commission, Strategy for equality between women and men 2006-2010, SEC (2006). The EU First Strategy builds on the Framework Strategy for equality between women and men for the period 2001-2005. It combined the launch of new actions and the reinforcement of successful existing activities. It reaffirmed the dual approach of gender equality based on gender mainstreaming (the promotion of gender equality in all policy areas and activities) and specific measures.

4 Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “Strategy for equality between women and men 2010-2015,” COM(2010). The EU Second Strategy spells out a series of actions based around five priorities: the economy and labor market; equal pay; equality in senior positions; tackling gender violence; and promoting equality beyond the EU. Those actions include, in particular, getting more women into the labor market and helping to reach the Europe 2020 target employment rate of 75 percent overall for women and men; putting forward targeted initiatives to get more women into top jobs in economic decision-making positions; promoting female entrepreneurship and self employment; instituting an annual European “equal pay day” to raise awareness of the fact that women continue to earn an average of nearly 18 percent less than men across the EU; and working together with all Member States in combating violence against women.

5 Italian Chamber of Deputies, Bill of Law No. A.C. 2426-2956-B and EU Commission, “Database on women and men in decision-making,” <http://ec.europa.eu/social/main.jsp?catId=764&langId=en>.

6 Corporate governance codes have played an important role in addressing gender balance on corporate boards. In many countries the business sector has promoted the need for gender diversity in board composition in their corporate governance codes. Corporate governance codes in Europe are based on the “comply or explain” principle and, although they do not carry penalties for non compliance to their rules, they exert a strong pressure on companies to comply in order to avoid reputational downside and disapproval of the market.

and Social Committee and other interested parties on a number of items concerning corporate governance, including gender diversity on corporate boards. The European Commission solicited suggestions on the introduction of specific measures – such as targets – to ensure gender balance on boards of public companies. Specifically, the EU Commission asked:

- Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. national, EU or international level?
- Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?
- Should listed companies be required to ensure a better gender balance on boards? If so, how?<sup>7</sup>

In addition to persuasive measures such as quotas, the EU Commission asked interested parties to express their opinion of whether companies should establish boardroom diversity policies that address work-life balance for women and men, as well as policies and programs designed to encourage mentoring, networking and training.

All of the parties that responded to the questions posed by the Green Paper were in favor of more diverse boards.<sup>8</sup> However, only a few respondents, such as the Council of Bars and Law Societies of Europe (the “CCBE”) and Financial Services User Group’s (FSUG), were in favor of enacting strong measures such as mandatory quotas to ensure better gender balance on boards.<sup>9</sup> Most of the participants considered self-regulation and/or “soft” measures, e.g., enacting an EU recommendation rather than an EU directive or regulation, as being more appropriate to address, at the EU level, the issue of gender balance on boards of publicly listed companies.<sup>10</sup> One of the respondents was Euroshareholders, an organization of European shareholder associations that represents the interests of shareholders in the EU. In its comments, Euroshareholders recommended that the EC “monitor the progress in the increase of gender diversity on the boards both in the Member States that have implemented the gender quota and in those that have not done it. In case the EC observes too little progress in the countries where quotas have not been implemented, it would then be advisable to introduce quotas as a temporary measure in all EU Countries.”<sup>11</sup>

Following the public consultation, on November 15, 2011 the EU Commission issued its Work Program for 2012<sup>12</sup> which stated that it is considering a legislative initiative, in the form of a recommendation (soft law) to improve gender balance on the boards of companies listed on European stock exchanges.

As the Green Paper consultation was underway, on March 1, 2011 EU Justice Commissioner Viviane Reding issued a press release calling on publicly listed companies within the EU to sign the “Women on the Board Pledge for Europe”

7 See Section 1.1.3 of the Green Paper at [http://ec.europa.eu/internal\\_market/company/docs/modern/com2011-164\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf).

8 This point of view is well expressed, for example, by The U.K. government. It affirmed that “gender diverse boards are better boards, benefiting from the holistic thinking brought to the table by individuals with a wider range of backgrounds and experiences, a departure from ‘group think’ and a greater affinity to shareholders, investors and customers. The UK fully supports this approach. In line with this approach we would support discussions at an EU level on how board diversity could be reflected in governance requirements to ensure that companies are focused on having effective strategies to increase their boardroom diversity.”

9 CCBE stated that “insofar as the number of women serving on boards among European companies is still low, it is desirable to promote greater representation of women on boards. Therefore CCBE favors the introduction of quotas in listed companies. These should be determined first at a relatively low and practicable threshold (20 percent for example), and then progress over time. The implementation of such quotas should be optional – on a “comply or explain” basis – during a transitional period of three years before becoming binding.” FSUG responded to the public consultation stating that a vast majority of FSUG members “is in favor of a legally binding approach (imposing gender quota) which would be reviewed after a period. The FSUG consider that non-binding measures are insufficient, which is highlighted by the fact that a number of Member States do not follow the recommendations on remuneration and directors’ pay adopted by the Commission in 2009.”

10 The responses to the public consultation were more than 400 in total and are available at [http://ec.europa.eu/internal\\_market/consultations/2011/corporate-governance-framework/index\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/index_en.htm).

11 Available for reference at: [http://ec.europa.eu/internal\\_market/consultations/2011/corporate-governance-framework/individual-replies/euroshareholders\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/individual-replies/euroshareholders_en.pdf).

12 COM(2011) 777 final, vol. 2 at [http://ec.europa.eu/atwork/programmes/docs/cwp2012\\_annex\\_en.pdf](http://ec.europa.eu/atwork/programmes/docs/cwp2012_annex_en.pdf).

and to take concrete steps to increase the number of women in top jobs in their companies by March 2012. The target set by Commissioner Reding is to increase the presence of women on corporate boards of public companies up to 30 percent by 2015 and 40 percent by 2020.<sup>13</sup>

One year later, on March 5, 2012, Commissioner Reding released “Women in Economic Decision-making in the EU,” a progress report assessing the status of gender diversity on corporate boards of EU public companies and the results of self-regulatory actions (the “Progress Report”). The Progress Report recognizes that there has been some improvement due mainly to the introduction in January 2011 of a mandatory quota law in France.<sup>14</sup> However, the report concludes that the average of 13.7 percent women on boards of publicly listed companies in the EU in January 2012 is still far behind the minimum target of 30 percent and notes that, at this rate, it will take approximately 40 years to achieve the target of 40 percent of each gender by 2020.

The Progress Report shows also that, in one year, only 24 public companies in the EU signed the pledge and voluntarily adopted measures to increase gender balance in their corporations. In light of the modest progress made in 2011 through voluntary measures, on March 5, 2012 the EU Commission launched a new public consultation of stakeholders for an assessment of possible EU-level measures to enhance female participation in economic decision-making, which will inform the Commission’s decision on whether to propose action and on the form it should take. The deadline for this consultation was May 28, 2012.<sup>15</sup>

Almost 500 individuals, companies, organizations, and governments from all over Europe responded to the public consultation; their responses are now being reviewed by the EU Commission. A summary of the main outcomes of the public consultation will be included among the documents accompanying a possible legislative initiative as part of the Commission’s Legislative Work Program for 2012.<sup>16</sup>

Gender parity between men and women is also a goal for other European bodies, including the Committee on Women’s Rights and Gender Equality of the European Parliament (FEMM), a committee of the European Parliament specifically dedicated to advocating for gender equality within the European Union and abroad. On February 24, 2011, FEMM issued a draft report and motion for a European Parliament resolution on “Women and Business Leadership” 2010/2115 (INI) (the “Women and Business Leadership Report”).

13 The press release and the “Women on the Board Pledge for Europe” are available at [http://ec.europa.eu/commission\\_2010-2014/reding/women-pledge/index\\_en.htm](http://ec.europa.eu/commission_2010-2014/reding/women-pledge/index_en.htm). During her speech, Commissioner Viviane Reding stated that “For the next 12 months, I want to give self-regulation a last chance. I would like companies to be creative so that regulators do not have to become creative. What counts for me is the outcome. My goal is to bring women’s presence on the boards of the major European publicly listed companies to 30 percent in 2015 and to 40 percent by 2020. I call on publicly listed companies from all over Europe to sign the “Women on the Board Pledge for Europe” and to develop their own credible way to get more women into top jobs. A year from now on International Women’s Day (8 March 2012), the Commission will assess whether there is significant progress and whether credible self-regulatory initiatives were developed to enhance women’s participation in decision-making. If this has happened by March 2012, I will congratulate the European business world. If it has not happened, you can count on my regulatory creativity.”

14 In particular, the proportion of women on the boards of French companies in the CAC 40 index<sup>19</sup> in January 2012 had increased to 22.3 percent, up from 12.3 percent in October 2010. Such change, prompted by the binding quota, makes up more than 40 percent of the total change EU-wide.

15 The targets of the consultation were Member States, business/industry organizations, individual companies, civil society organizations with an interest in gender and/or social issues, trade unions, equality bodies, and other organizations or individuals. Such stakeholders were asked to give their opinion on the following questions:

- (1) How effective is self-regulation by businesses to address the issue of gender imbalance in corporate boards in the EU?
- (2) What additional action (self-regulatory/regulatory) should be taken to address the issue of gender imbalance in corporate boards in the EU?
- (3) In your view, would an increased presence of women on company boards bring economic benefits, and which ones?
- (4) Which objectives (e.g. 20 percent, 30 percent, 40 percent, 60 percent) should be defined for the share of the underrepresented sex on company boards and for which timeframe? Should these objectives be binding or a recommendation? Why?
- (5) Which companies (e.g. publicly listed / from a certain size) should be covered by such an initiative?
- (6) Which boards/board members (executive / non-executive) should be covered by such an initiative?
- (7) Should there be any sanctions applied to companies which do not meet the objectives? Should there be any exception for not reaching the objectives?

16 In particular, a recommendation aimed at improving gender balance on company boards has been included among the initiatives planned by the EU Commission for the 3rd quarter of 2012. See for reference: [http://ec.europa.eu/atwork/pdf/forward\\_programming\\_2012.pdf](http://ec.europa.eu/atwork/pdf/forward_programming_2012.pdf).

The Women and Business Leadership Report was adopted by FEMM on June 9, 2011, approved by the European Parliament on July 6, 2011 and forwarded to the Council of the European Union, the EU Commission and the Member States.<sup>17</sup>

The Women and Business Leadership Report is a non-legislative resolution of the European Parliament and is not binding on Member States. It invites the European Commission and the Member States to implement new policies balancing representation of women and men on corporate boards and in management positions at all levels. It also welcomes single Member States’ initiatives in setting mandatory thresholds for women’s representation on management bodies.

Moreover, the Women and Business Leadership Report calls the European Commission:<sup>18</sup>

- i. to present, as soon as possible, comprehensive current data on female representation in all types of companies in the European Union and on the compulsory and non-compulsory measures taken by the business sector as well as those recently adopted by the Member States with a view to increasing such representation;
- ii. following this exercise, and if the steps taken by companies and the Member States are found to be inadequate, to propose binding legislation, including quotas, by 2012 to increase female representation in corporate management bodies to 30 percent by 2015 and to 40 percent by 2020, while taking account of the Member States’ responsibilities and of their economic, structural, legal and regional specificities;
- iii. to present a road map setting out specific, measurable and attainable targets for the achievement of balanced representation in enterprises of all sizes and to draw up a specific guide for small/medium sized enterprises; and
- iv. to set up a website dedicated to good practice in this area with a view to disseminating and exchanging best practices.

Recently, the EU commitment on gender equality has been strongly extended outside the European Union. In fact, on April 16, 2012 the European Union and the United Nations Entity for Gender Equality and Empowerment of Women (UN Women) executed a memorandum of understanding to establish a strategic partnership in the field of gender equality and women empowerment to reach common goals and objectives. In particular, the areas of mutual concerns include, among others, cooperation in increasing the representation and participation of women in political and economic decision-making.<sup>19</sup>

Gender parity has become a high priority not only at the European Union level but also at the Member States level. A number of Member States have already introduced into their national legislation mandatory quotas for corporate boards. Norway, Sweden, Spain, France, Iceland, and, most recently, Italy are European countries that have adopted affirmative action to promote gender parity while some others, such as Germany, have started discussions on this issue.<sup>20</sup>

It also appears that influential industry groups have started considering gender diversity in board composition. In particular, on December 5, 2011, a group of European Business Schools (the “EU Business Schools Group”)<sup>21</sup>

17 The European Parliament has the power to recommend amendments to the proposals for EU directives and regulations drawn up by the EU Commission, which are also referred to the Council of the European Union.

18 See for reference: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-330>.

19 The MoU is available at [http://ec.europa.eu/europeaid/who/partners/international-organisations/documents/un-woman\\_en.pdf](http://ec.europa.eu/europeaid/who/partners/international-organisations/documents/un-woman_en.pdf).

20 Germany, in particular, has adopted a ‘flexi-quota’ approach with a two-steps model like the one introduced in Norway in 2003. In particular, companies have the opportunity to voluntarily introduce board diversity into the companies within 2013. Then, if this soft law approach will not be a successful, a mandatory quota law would be introduced obligating listed companies to increase the share of women in supervisory boards to 30 percent until 2018 or 2020 at the latest.

21 The group includes Business Schools such as IESE (ES), EDHEC (F), INSEAD (F), Cambridge Judge Business School (UK), IMD (CH), RSM (NL), Boston University Leadership Institute(BE), ESMT (D) and the business school association EFMD (European Foundation of Management Development) as well as professional organizations such as the GTWN (Global Telecom Women’s Network), WITT (Women in Telecoms and Technology), WoB (Women on Boards), the FT Non-Executive Director’s Club, EPWN (European Professional Women’s Network), IFA (Institut Francais des Administrateurs), TIAW (The International Alliance for Women).



published a “Call to Action” to set concrete steps to promote senior female leadership in Europe and support Commissioner Reding’s initiative to break the glass ceiling for women in the boardrooms of Europe’s publicly listed corporations.<sup>22</sup>

On March 7, 2012 the EU Business Schools Group launched a “Women on Board Initiative” where it published a first list of more than 3500 board-ready women to bring Europe into the 21st Century.<sup>23</sup> The EU Business Schools Group also published five sets of criteria as guidelines for both the selection of (female and male) board members and for the selection of board ready women to preempt any argument that there are not any qualified women or that it is difficult to locate board-ready women.

Conclusion

Since 2010, the European Union and, in particular, the European Commission have prioritized the issue of gender inequality on corporate boards of European public companies. In 2011-2012 such initiatives accelerated through both the implementation of mandatory quota laws at some Member States, and the business sector, through the voluntary enactment of measures to increase gender balance in boardrooms and the pressure exercised by the Business Schools.

So far, despite the positive results obtained in the last two years, such measures do not suggest the target goals of 30 percent by 2015 and 40 percent by 2020 will be achieved. Therefore, the European Commission is now on the way to introduce, within the Commission’s Legislative Work Program for 2012, a legislative measure in the form of a recommendation to the Member States aimed at breaking the glass ceiling on a more aggressive timetable.

22 Available at [http://ec.europa.eu/commission\\_2010-2014/reding/pdf/call\\_board\\_en.pdf](http://ec.europa.eu/commission_2010-2014/reding/pdf/call_board_en.pdf).  
23 The list of candidates published in the context of the “Women on Board Initiative” is available at <http://www.edhec.com/html/Communication/womenonboard.html>.

Austria - New for 2013

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As a result of the initiatives launched at the European level, the promotion of boardroom diversity was also put on the agenda by the Austrian Government. And, as in other countries, it led to an ongoing debate about whether mandatory quotas are required to ensure a better gender balance on boards or whether self-regulation and/or “soft law” measures are more appropriate.

The Austrian Federal Minister for Women and Civil Service, Gabriele Heinisch-Hosek, considers the introduction of mandatory quotas as a necessary measure to speed up the process of promoting women to board positions.<sup>1</sup> Her position is in line with the developments in countries with legislative quotas, such as Norway and Finland, where the proportion of women on the boards has substantially increased over the last years.<sup>2</sup> In contrast, the Austrian Federal Minister of Economic Affairs, Reinhold Mitterlehner, promotes the right of private companies to choose their own manpower. Pointing out that the shareholders bear the full commercial risk of a company, he argues that any interference by the state through quotas or promotion plans may potentially lead to economic disadvantages, particularly in light of the current difficult economic climate.

In 2011, the Austrian Government adopted a gender diversity quota for state-owned companies. This resulted in a noticeable increase in the average percentage of women on supervisory boards of such companies, amounting to 33% as of February 2013.<sup>3</sup> Meanwhile, the percentage of women on boards of private companies, in particular those listed on a stock exchange, still lags substantially behind.

State-Owned Companies

In March 2011, the Austrian Federal Government set an example by voluntarily imposing a 25% gender diversity quota on supervisory boards of companies in which the state owns 50% or above. The deadline for implementation is December 31, 2013. By 2018, the quota will increase to 35%.

The 25% quota currently applies to 55 companies, of which 44 are fully owned by the state. For the time being, there are no sanctions imposed for failing to implement the quota. After 2018, statutory measures can be initiated if the 35% quota has not yet been reached. Nevertheless, the initiative resulted in a sound increase of female participation in state companies. In the years 2007/2008, the percentage of women in supervisory boards of state-owned companies was only 16.1%. That number is expected to increase on average to 33% in 2013.

Corporate Governance Code and Corporate Law

Unlike for state-owned companies, the Austrian Federal Government has abstained so far from enacting a mandatory gender quota law for publicly listed companies, but rather relied on “soft law” when addressing the issue of gender balance on boards in the private sector.

The Austrian Code of Corporate Governance,<sup>4</sup> the commitment to which is mandatory for all stock exchange-listed companies, requires that when appointing the members of a supervisory board, the general meeting of shareholders shall, *inter alia*, pay reasonable attention to diversity with respect to the representation of both genders.<sup>5</sup> However, the

Code does not specify what is meant by the term “reasonable”. In 2012, this rule was changed from a C-rule (“comply or explain” rule) to an L-rule (legal requirement) as a result of a change in the Austrian Stock Corporation Act (see further below).

The Austrian Commercial Code furthermore required listed companies to disclose in their annual corporate governance reports which measures have been initiated for the promotion of women to supervisory and management boards and to other executive positions.<sup>6</sup> In practice, however, these reports fall behind expectations and one out of eight top Austrian companies tends to disregard this provision completely.<sup>7</sup>

As of 2012, the Austrian Stock Corporation Act (*Aktiengesetz*) requires that the general meeting of shareholders must consider a balanced composition of the supervisory board. The criteria that have to be taken into consideration are the professional and personal competences and skills of the designated members, as well as the representation of men and women. However, there is no requirement that each gender has to be represented or that a certain mandatory quota has to be fulfilled; this provision is thus open to interpretation. The wording of the law suggests that professional qualification is ranked above gender diversity.

The recent change in the law has opened up a discussion on whether shareholders’ resolutions can be challenged on the basis of insufficient gender diversity. For various reasons, however, this is generally rejected. The main reason is that the legislators (intentionally) did not include insufficient gender diversity among the reasons on the basis of which shareholders’ resolutions can be challenged. Additionally, the criterion of gender diversity is listed among other criteria, such as age and internationality, without any ranking or priority.

The report of the Austrian Chamber of Labor of 2013 shows that despite the legislative changes, only modest progress has been made in 2012. Compared to state-owned companies, the percentage of women in boardrooms of listed companies is still very low, with only 3.3% on management boards and 11.6% on supervisory boards. Hence, hardly any increase may be observed since the introduction of the legislative initiatives.

A few non-listed companies committed themselves voluntarily to take steps to increase the representation of women on their boards. The progress has been modest – only a marginal increase in the percentage of women on corporate boards can be observed. By January 2013, of the top 200 Austrian companies, only 5.6% of management boards and 13.5% of supervisory boards were women.<sup>8</sup> One possible explanation is that the percentage of women in boardrooms was substantially low from the start and, therefore, the momentum required to increase that percentage is slowly building. Furthermore, this topic is closely linked to the sociopolitical question of whether framework conditions need to be further improved to enable women to take advantage of the required quotas and to fulfill managerial roles in the corporate environment.

Conclusion

Despite requirements in the Corporate Governance Code and corporate law today, the representation of women on boards of privately-owned, and in particular, exchange-listed companies, is still behind that of state-owned companies in Austria. It remains to be seen how the Austrian Government will react to that fact and whether further legislative measures will be enacted both at the national and the European level to achieve a better gender balance on boards.

1 <http://diepresse.com/home/politik/innenpolitik/1265142/HeinischHosek>.  
2 [http://ec.europa.eu/justice/gender-equality/files/womenonboards/factsheet-general-2\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/womenonboards/factsheet-general-2_en.pdf).  
3 Progress Report of the Minister for Women and Civil Service of February 28, 2013, GZ BKA-F140.200/0049-II/1/2013.  
4 [http://www.wienerboerse.at/corporate/pdf/CG%20Kodex%20deutsch\\_Juli\\_2012\\_v2.pdf](http://www.wienerboerse.at/corporate/pdf/CG%20Kodex%20deutsch_Juli_2012_v2.pdf).  
5 Rule 52 of the Austrian Corporate Governance Code.

6 Section 243b para 2 of the Austrian Commercial Code (*Unternehmensgesetzbuch*).  
7 Report of the Austrian Chamber of Labor of 2013.  
8 Report of the Austrian Chamber of Labor of 2013..

Belgium

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In April 2011, the daily financial newspaper *L’Echo* released the results of a study on gender parity in Belgium’s main listed companies. These results showed that, on average, women:

- are absent from 48 percent of the boards of directors and from 57 percent of the executive committees;
- represent only 9 percent of the board of directors;
- represent only 9 percent of the executive committees;
- represent 36 percent of the employees/workers of the company.

The study further showed that the limited representation of women on corporate boards is noticeable even in sectors typically considered “women-oriented,” indicating that the problem is not related to particular industries or types of activities performed by the company.

Following the example of other European countries like Norway, Finland, France, Spain, Holland and Germany, the matter was referred in March 2011 to the Belgian Parliament, where five proposed bills had already been submitted on the issue.

THE LAW OF JULY 28, 2011

On September 14, 2011, the Belgian State Gazette published the law of July 28, 2011 designed to improve the representation of women on corporate boards of listed companies, certain public entities and the National Lottery (“*loi du 28 juillet 2011 modifiant la loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques, le Code des sociétés et la loi du 19 avril 2002 relative à la rationalisation du fonctionnement et de la gestion de la Loterie Nationale afin de garantir la présence des femmes dans le conseil d’administration des entreprises publiques autonomes, des sociétés cotées et de la Loterie Nationale*”, hereafter the “Law”).

The Law is meant to be a temporary measure, subject to review by the Parliament after 12 years.

A. Scope of the Law

1. Autonomous public entities – National Lottery

The Law applies to autonomous public entities as defined under the law of March 21, 1991 (“*loi du 21 mars 1991 portant réforme de certaines entreprises publiques économiques*”)<sup>1</sup> and provides that at least one-third of the directors designated by the Belgian State or by a company controlled by the Belgian State shall be of a different gender than the others. If this proportion is not met, the next director appointed must be of the minority gender, otherwise the appointment shall be null. The same applies where an appointment of a director results in the board failing to meet the minimum quota, *i.e.* in that case, the next director appointed must be of the minority gender otherwise its appointment shall be null.<sup>2</sup>

The provisions of the Law regarding the National Lottery are similar to those described above.

1 “Autonomous public entities” refers to public interest bodies having entered a management agreement with the Belgian State granting such bodies a larger autonomy of management (for example: “B-Post” (Belgian Post), “SNCB” (Belgian Railway company), “Belgacom” (telecommunications) and “Belgocontrol” (air traffic management)).

2 If a board meets the quota, it can appoint a majority gender director even if it brings the board under the quota. This appointment shall not be null but the next appointment must be of a minority gender director, under penalty of nullity.

2. Listed companies

The Law also inserts two new provisions in the Belgian Company Code (hereafter “BCC”). Although the Law is clearly directed towards listed companies incorporated as public limited liability companies (“*sociétés anonymes*”), it also applies to listed companies incorporated as partnerships limited by shares (“*sociétés en commandite par actions*”) or as European public limited liability companies (“*sociétés anonymes européennes*”).

First, the corporate governance declaration (which is part of the board’s annual management report) must contain an overview of the efforts made towards meeting the minimum requirement of one-third of board members from a different gender.<sup>3</sup> This requirement applies only to companies the *shares* of which are admitted to trading on a regulated market.

Second, at least one-third of the directors of listed companies must be of a different gender than the others on their boards of directors. If this proportion is not met, the next director appointed must be of the minority gender, otherwise the appointment shall be null. The same applies in case an appointment of a director results in the board failing to meet the minimum quota, *i.e.* in that case, the next director appointed must be of the minority gender otherwise its appointment shall be null. By contrast to Article 96 BCC, Article 518*bis* BCC refers to “*securities* admitted to trading” instead of “*shares* admitted to trading.” Its scope of application thus appears to be larger, as securities (“*titres*”) include, but are not limited to, shares (“*actions*”). The Law may thus lead to a situation where a company may find itself subject to Article 518*bis* CBB because it has issued bonds (or other securities other than shares) admitted to trading, but not to Article 96 BCC.

For the purpose of enforcing the quota, Section 2 of Article 518*bis* BCC stipulates that, if the board of directors falls under the quota, the next general meeting of the company must remedy the situation and appoint members to the board to ensure that it complies with this requirement. Otherwise, any advantage, whether financial or otherwise, owed to the directors for the performance of their duties shall be suspended until the quota is met (and the Parliament’s preparatory work specifies that the advantages accrued during the period when the quota was not met will not be paid to the directors retroactively). Belgium has thus opted for a pecuniary sanction in addition to the nullity of any appointment in violation of the Law.

B. Calculation of the quota

1. Gender of corporate entities

If a company is appointed as director of an autonomous public entity or listed company, it shall be deemed to have the same gender, for the purpose of the Law, as the individual designated as its permanent representative on the board.

2. Rounding

The Law provides that the minimum number of directors of the different gender must be rounded to the nearest whole number.

C. Coming into force

The provisions applicable to autonomous public entities and to the National Lottery will be effective as from the first day of the accounting year beginning after the publication of the Law in the Belgian State Gazette (*i.e.* September 14, 2011).

Listed companies must comply with the Law as from the sixth accounting year following September 14, 2011. For the companies with accounting years matching calendar years, this means January 1st, 2017. The pecuniary sanction described above shall be applicable as from the seventh accounting year after the Law’s publication (January 1st, 2018 for the companies with accounting years matching calendar years).

3 See, Article 96, §2, al. 1, 6° BCC.



For “small” listed companies (within the meaning of the BCC)<sup>4</sup> and companies with less than 50 percent of their securities admitted to trading on a regulated market, the aforementioned implementation periods are increased by an additional period of two years.

Companies admitted for the first time to trading on a regulated market after the publication of the Law shall be subject to the Law as from the sixth accounting year following their admission to trading.

Conclusion

The Belgian Parliament’s recent legislation to improve the representation of women on corporate boards recognizes women’s historically limited representation in such positions. The Belgian legislation impacts both public entities and listed companies, and the provisions affecting the latter may include a broader set of companies beyond those that have listed shares for trading on a regulated market. Because this legislation is relatively new, its full impact remains to be seen, but the possible nullification of board appointments may provide a strong mechanism for enforcement.

4 Within the meaning of the BCC, “small companies” are listed companies meeting at least two of the following three criteria on a consolidated basis: (i) average number of workers under 250 workers for the pending accounting year, (ii) balance sheet of maximum 43,000,000 EUR, (iii) annual net turnover of maximum 50,000,000 EUR).

Denmark - New for 2013

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In Denmark, the gender composition of corporate boards has been the object of public attention for several years, with a number of different initiatives implemented to increase the share of women in boardrooms and in management in general. Until April 2013, however, all of these initiatives were “soft law” and not legislative.

In May 2013, 7.9 percent of the board members in listed companies elected by the general meeting were women. In February 2013, the percentage of women elected by the general meeting was 7.24 percent. Thus, there were virtually no changes during the spring 2013 season.

Danish Corporate Governance Recommendations

The Danish Corporate Governance Recommendations, which apply primarily to Danish listed companies, were first published in 2001. Several amendments to the recommendations have been made since then, with the current version of the Corporate Governance Recommendations published in May 2013.

In August 2011, the recommendation on management diversity was supported by a recommendation to set objectives for diversity at all management levels in companies. It was explicitly recommended that diversity, not just gender, be taken into consideration when boards of directors are assessing their composition and nominating new candidates. The recommendation is not only directed at board diversity, but also at increasing the pipeline through focus on diversity in the various levels of management. Companies are recommended to prepare plans of action describing the focus areas and to report on the objectives set. In connection with the presentation of their annual reports, it is recommended that companies account for their objectives and the status of meeting their objectives. The recommendation relates to diversity in general, i.e., not only gender, but also, among other criteria, age and international experience.

The recommendations are not mandatory. The soft law approach gives individual companies the flexibility to organize their governance optimally. Under the “comply or explain” approach, the individual company decides whether and to what extent it wishes to comply with the recommendations. If a company fails to comply with a recommendation, it must explain why and describe the approach it follows, including what it does instead.

Other Soft Law Initiatives

In Danish politics, gender equality has been a centre of attention for several years. When the current government took office in October 2011, the government specifically mentioned in its platform that it would initiate a dialogue with representatives from the industry with a view to ensuring more women in boardrooms.

In 2007, the Department for Equal Rights, a section of the Ministry of Employment, introduced a soft law initiative called “Charter for Women in Management.” The purpose of this initiative was that Danish companies and organisations, on a voluntarily basis, could adopt the Charter and thereby commit to prepare a report describing how the company or organisation in question intended to fulfil the obligations stipulated in the charter. Among other things, these obligations required the companies or organisations to draw up a strategy, set target figures for the proportion of women in management, and lay down recruitment procedures and career development plans in order to make sure that female management talent is visible. In 2012, the number of companies and organisations that had adopted the Charter reached 110. The Charter was discontinued in January 2013 with the introduction of the legislation described under New Danish Legislation below.

Another soft law initiative was “Operation Chain Reaction.” The purpose of this initiative was to strengthen the competitiveness of Danish companies by increasing the number of women serving on their boards. Launched in 2010, the initiative comprised the introduction of “Recommendations for More Women on Company Boards,” a set of guidelines prepared by prominent members of the Danish business sector and the Danish Minister of Equality.

As had been the case with the Charter for Women in Management, Operation Chain Reaction was founded on the principle of voluntariness. By adopting Operation Chain Reaction, the companies committed themselves to making special and active efforts to train and recruit female candidates to their boards. In 2012, only 55 companies had adopted Operation Chain Reaction.

New Danish Legislation

As the expected effects of the different soft law initiatives failed to materialise, the Danish Parliament decided to address the issue through legislation, thereby not only covering listed companies, but all Danish companies of a certain size. The new rules are based on a form of soft law approach requiring the companies to set targets for the proportion of the underrepresented gender on their boards and in management, thereby taking the same approach that the Committee on Corporate Governance has taken in its recommendation on gender diversity.

On 14 December 2012, the Danish Parliament adopted a bill in pursuit of equal representation of men and women in the management of large Danish companies. The new regulation came into force on 1 April 2013. The act implements a model for creating equal access for men and women to boards and other management levels in private and public companies. The purpose of the rules is to create actual progress and to increase the share of women on boards and in management in large Danish companies, seeking to achieve an equal proportion of men and women on boards and in management in general. Equal proportion is defined in the preparatory work as at least 40 percent of the underrepresented gender of either the board members elected at the general meeting or at the managerial levels below the board of directors.

The new rules cover not only listed companies, but all Danish companies of a certain size, i.e., approximately the 1,100 largest Danish private companies as well as all public companies/organisations. The rules will influence both the board of directors in the form of requirements for setting target figures (see Board of Directors) and the other management levels in the form of a requirement to prepare a policy to increase the proportion of women in management in general, i.e., at all managerial levels below the board of directors (see Other Management Levels).

The new rules cover listed companies, large commercial enterprises and foundations, a number of financial undertakings, state-owned public limited companies, and all other public organisations. Large enterprises will be covered if exceeding two of the following criteria in two consecutive financial years:

- Balance sheet total of DKK 143 million;
- Revenue of DKK 286 million; or
- Average number of employees of 250.

Board of Directors

If a company/organisation does not have an equal proportion of men and women serving on its board of directors (i.e., one of the two genders represents less than 40 percent of the board members elected by the general meeting), the board of directors must set a target figure for the proportion of the underrepresented gender on the board. The determination of the target figure must consist of two elements: i) a proportion (target figure); and ii) a time horizon within which the company/organisation will endeavour to realise the said target figure. As a general rule, the time horizon may not exceed four years. There are no requirements in regard to the proportion (i.e., no quotas). However, it follows from the preparatory work and comments to the bill that the target figure must be ambitious while at the same time realistic. Moreover, pursuant to the Danish Equal Rights Act, the target figures set in state-owned public limited companies ought to be at least 33 percent, whereas the target figures set in all other public companies/organisations ought to be at least 40 percent. The phrase *ought to be* means that the public companies/organisations comprised by the Danish Equal Rights Act must endeavour to reach the stipulated target figures, but there is no legal obligation to do so.

For all privately-owned companies and state-owned public limited companies, any failure to set a target figure will be punishable by fine. For all other public organisations, any failure to set a target figure will result in a reprimand from the relevant minister. It is important to emphasize that there are no legal implications if the target figure is in fact not ambitious or not met.

Other Management Levels

If a company/organisation does not have an equal proportion of men and women at the management levels below the board of directors (i.e., one of the two genders is represented by less than 40 percent at the other management levels) and if the company/organisation has more than 50 employees, the company/organisation must prepare a policy to increase the proportion of the underrepresented gender in management in general and also at management levels below the board of directors. The intention behind the duty to prepare a policy is to seek to increase the pipeline of women who possess the necessary competences to be elected to boards by focusing on gender diversity at the managerial levels.

The new rules grant the covered companies/organisations full flexibility in relation to the form, content, and implementation of the policy. However, a number of examples of potential initiatives are given in a set of guidelines issued by the Danish Business Authority. Among these are recruitment procedures that contribute to increased visibility of female talent, including career development plans and mentor/networking schemes.

Any failure to prepare a policy will be punishable by fine, but there are no consequences if the targets set out in the policy are in fact not met.

Duty to Report

The new rules entail a duty for the affected companies/organisations to report on their target figures and policies, if any. In connection with the presentation of their annual report, privately-owned companies and state-owned public limited companies must account for the status of meeting their target figure and for their policy. They must also provide a description of the policy, how the policy has been implemented, and an assessment of what has been achieved during the past year. If the target figure set by the company has not been met, then the company must explain the reasons. For public organisations, similar obligations apply, provided, however, that the reporting must be made to the relevant minister instead of in the annual reports.

Companies/organisations that have an equal proportion of the two genders at the board of directors and/or an equal proportion at the management levels below the board of directors and therefore have not prepared a policy, must report on such equal proportion.

Companies reporting as part of the UN's Global Compact are exempt from the general duty to report on the target figure and the policy, as they are required to address these issues in their reporting under the UN Global Compact rules.

The duty to report takes effect for financial years starting on 1 January 2013 or later. For most companies, the first reporting must therefore take place in connection with the presentation of the 2013 annual report in the spring of 2014.

Any failure to comply with the reporting requirements of the Danish Financial Statements Act will be punishable by fine, but there are no consequences if the targets set out are not met.

Conclusion

Even though the Corporate Governance Recommendations setting objectives for gender diversity on all management levels have become law and therefore are not limited to listed companies, the new rules only apply to approximately the 1,100 largest Danish private companies and all public organisations. The Danish business landscape, however, is characterized by a large number of small and medium-sized companies. These companies are not covered by the new rules and thus there will be no legal obligation to harvest female talent within these companies. Consequently, from a general perspective, the new rules may have a limited impact.

The rules are mandatory in the sense that the covered companies must set target figures and prepare a policy if the composition of the board of directors and the other management levels are not equal (i.e., either gender represents less than 40 percent). It is also important to note that the new rules are flexible in the sense that no quotas are set. However, given the fact that companies are subject to a reporting duty, and the target figures/policy, therefore, to some extent, will become publicly known, it has been argued that the rules do in fact introduce a form of quotas through the back door.

In general, however, the new rules have been well received by the industry.



Finland - New for 2013

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Finland is generally considered to be one of the forerunners in gender equality.<sup>1</sup> When it comes to the number of women on the boards of listed companies, Finland lists among the top in the EU. The number of female board members in listed companies has tripled during the last ten years. In 2013, 23 percent of board members in all Finnish listed companies are women. The number has increased slightly from 22 percent in 2012. The number of women in board positions varies, however, in accordance with the size of the company: while in large cap companies<sup>2</sup> one third (31%) of board members are women (28% in 2012), the share of female board members is smaller in mid cap (23% in both 2013 and 2012) and small cap companies (18% in 2013 and 16% in 2012).<sup>3</sup>

Despite the positive developments in Finland, there is still a long way to go to achieve full gender parity on the boards of listed companies. The number of male board members is still significantly higher than the number of female board members. Further, women rarely hold the highest position on the board. In 2012, only five women acted as the chairperson of the board of a Finnish listed company, representing only 4.2% of the total number of chairpersons.<sup>4</sup>

With regard to other top positions in listed companies, the number of women in executive management teams and other executive positions is even lower than the number of women on boards. In 2012, there was only one female CEO in all of the listed companies in Finland. Only 16% of the executive management team members, including CEOs, in listed companies were women in 2012 (19% excluding CEOs).<sup>5</sup> It is also common that the responsibility of women in executive management teams is within administration, reflecting the stereotype of operational business being the domain of men. In 2012, 36 out of 350 directors for business operations, excluding CEOs, were women, which is 9.3%. If CEOs are factored in, the percentage of women among directors for business operations is 7.3. Women with responsibility over business operations are more common in the fields of activity generally dominated by women such as the service sector.

Corporate Governance Code

There are no statutory quotas for the private sector in Finland and the number of female board members is mainly governed by recommendations based on self-regulation. In listed companies, self-regulation is based on the Corporate Governance Code (the CG Code) issued by the Finnish Securities Market Association and the related application guidelines.

The CG Code states that “both genders shall be represented on the board.”<sup>6</sup> Listed companies must follow the CG Code on a “comply or explain” basis, meaning that they must specify and explain the basis for each deviation on their website and in their annual Corporate Governance Statement.<sup>7</sup> The application guidelines for the CG Code state that it is not sufficient to explain that a suitable female director could not be found or that the Annual General Meeting decided on the composition of the Board of Directors differently from the recommendation.<sup>8</sup> The Finnish Securities Market Association has found, however, that an exception concerning the gender composition of boards is among the most common deviations made by listed companies. The Securities Market Association has further found that the explanations given by companies are too general in nature and not sufficiently informative.<sup>9</sup>

To date, the self-regulatory approach has proven to function well with regard to gender parity in listed companies. Since the updated CG Code was issued in 2008, the percentage of listed companies with an all-male board of directors has fallen from close to 50 percent in 2008 to only 13 percent in 2013.<sup>10</sup>

In regard to private companies, the Finland Chamber of Commerce issued a Statement for Improving Corporate Governance of Unlisted Companies in January 2006 which recommends that major companies comply with the Recommendation for Listed Companies to the appropriate extent. The statement includes an Agenda for Improving Corporate Governance of Unlisted Companies, i.e., companies not considered able to implement the Corporate Governance Code for Listed Companies, but that would like to improve their operations in conformity with good corporate governance principles. The Agenda includes a recommendation according to which “the board members’ age and the representation of both genders are factors to consider when deciding the composition of the board.”<sup>11</sup>

Statutory Quotas in the Public Sector

While there are no statutory quotas for the private sector in Finland, the Finnish Act on Equality between Women and Men sets out statutory gender quota requirements for public sector governing bodies.<sup>12</sup> Governing entities of the state and municipalities, as well as all management or administrative entities or entities consisting of elected officials applying public authority, are required by law to have a minimum of 40 percent of the underrepresented gender among its members. Entities which are not included in public administration, but which carry out tasks assigned to them by public authorities and thus apply a certain level of public authority, such as state-owned companies, are required to appoint men and women to their governing bodies in an “equitable proportion.” In practice, the aim is to reach a minimum of 40 percent representation of the underrepresented gender.

Legislative Developments

The proposed EU directive on gender quotas for boards of listed companies has been much debated in public discussion lately. Consultations collected by the Ministry of Justice show that defenders of the directive mostly represent civil organizations promoting women’s rights as well as labor unions. The opponents of statutory quotas

1 E.g., Finland granted women the right to vote as early as 1906, and currently 43 percent of the Members of Parliament are women. Ten out of 19 ministers in the Finnish Government are women. Each year since 2006, Finland has ranked as one of the top three countries in the Global Gender Gap Index issued by the World Economic Forum. In 2012, Finland ranked second in the index after Iceland.

2 Large cap companies are defined as listed companies with a market value of at least EUR 1,000 million. Companies with a market value of EUR 150 million or more are categorized as mid cap companies, whereas companies with a market value below that are small cap. See Finland Chamber of Commerce's report "The Glass Ceiling is Cracking – Self-regulation Beats Quotas" (2012), page 3, available at [http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING\\_Self-regulation-Beats-Quotas\\_finncham.pdf](http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING_Self-regulation-Beats-Quotas_finncham.pdf). Accessed on 31 May 2013.

3 Leena Linnainmaa's (President of the Finland Chamber of Commerce) presentation in World Chambers Congress in Doha, Qatar, dated 24 April 2013, available at <http://www.slideshare.net/K3FIN/doha-women-executives-2013>; Finland Chamber of Commerce's Press Release dated 3 May 2013, available at <http://kauppakamari.fi/2013/05/03/naisten-osuus-porssiyhtioiden-hallituksissa-kasvaa-yha/>. Accessed on 31 May 2013.

4 The Glass Ceiling is Cracking – Self-regulation Beats Quotas, Finland Chamber of Commerce 2012 [http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING\\_Self-regulation-Beats-Quotas\\_finncham.pdf](http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING_Self-regulation-Beats-Quotas_finncham.pdf). Page 19. Accessed on 31 May 2013.

5 The Glass Ceiling is Cracking – Self-regulation Beats Quotas, Finland Chamber of Commerce 2012 [http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING\\_Self-regulation-Beats-Quotas\\_finncham.pdf](http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING_Self-regulation-Beats-Quotas_finncham.pdf). Pages 21 – 24.

6 Recommendation 9 of the Finnish Corporate Governance Code 2010, at <http://cgfinland.fi/files/2012/01/finnish-cg-code-2010.pdf>. Accessed on 31 May 2013.

7 Recommendation 54 of the Finnish Corporate Governance Code 2010, at <http://cgfinland.fi/files/2012/01/finnish-cg-code-2010.pdf>.

8 Guideline: comply or explain: Departure from the Recommendations of the Finnish Corporate Governance Code, Securities Market Association 20 Jan 2012: [http://cgfinland.fi/files/2012/01/Guideline\\_comply-or-explain\\_en.pdf](http://cgfinland.fi/files/2012/01/Guideline_comply-or-explain_en.pdf). Accessed on 31 May 2013.

9 Guideline: comply or explain: Departure from the Recommendations of the Finnish Corporate Governance Code, Securities Market Association 20 Jan 2012, page 3, at [http://cgfinland.fi/files/2012/01/Guideline\\_comply-or-explain\\_en.pdf](http://cgfinland.fi/files/2012/01/Guideline_comply-or-explain_en.pdf).

10 The Glass Ceiling is Cracking – Self-regulation Beats Quotas, Finland Chamber of Commerce 10/2012 [http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING\\_Self-regulation-Beats-Quotas\\_finncham.pdf](http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING_Self-regulation-Beats-Quotas_finncham.pdf), p. 10.

11 Chapter “Board of Directors” in Recommendation Improving Corporate Governance of Unlisted Companies at <http://kauppakamari.fi/wp-content/uploads/2012/04/Improving-corporate-governance-of-unlisted-companies.pdf>. Accessed on 31 May 2013.

12 Section 4a of the Finnish Act on Equality between Women and Men (609/1986), unofficial translation: <http://www.finlex.fi/en/laki/kaannokset/1986/en19860609?search%5Btype%5D=pika&search%5Bpika%5D=609%2F1986>. Accessed on 31 May 2013. The Act is currently subject to amendments in connection with the reform of Finnish non-discrimination legislation. Amendments will mainly extend the application of the Act also to gender minorities instead of being limited to “equality between men and women.”

consist of organizations representing the business sector as well as certain women's interest groups. One of the main arguments against imposing statutory quotas is that they can make an appointment seem as only a means to comply with legislation and, in effect, deprive skilled women of professional acknowledgement. This would work as a detriment to demonstrating the benefits of including accomplished women on boards.<sup>1</sup>

The Finnish Government is interested in improving gender parity in listed companies' boards, even with legislative measures if necessary. The Government Action Plan for Gender Equality 2012-2015 states, *inter alia*, that if sufficient improvement is not noted, legislative measures will be undertaken to ensure a more equal gender representation on the boards of listed companies, taking into account the 40 percent quota which is currently applied in the public sector. An evaluation of whether improvements have been sufficient will be conducted in June 2014.<sup>2</sup>

Other Measures to Improve Gender Parity

Business organizations are active in promoting gender parity also through other measures. For instance, the Finland Chamber of Commerce organizes a mentoring program for women executives in order to assist women in developing experience and confidence in preparation for leadership positions. The Finnish Business and Policy Forum EVA, on the other hand, has published best practices on how to get women to the top in the business world.<sup>3</sup>

Furthermore, Finnish universities and other education facilities have issued educational programs to encourage women to take on business management and executive positions. Also, the Finnish Ministry of Social Affairs and Health is engaged in a multitude of programs to promote gender equality in society and to promote social change through influencing attitudes and subliminal perceptions regarding women's suitability for business. Measures include mainstreaming of gender perspectives in impact assessments in decision making, ensuring equal pay, and various forms of international cooperation. The Finnish Ombudsman for Equality monitors the development and addresses issues of concern for gender equality in the Finnish social arena.

Conclusion

The Finnish model of self-regulation has achieved significant developments while avoiding some of the potential detrimental effects of quotas imposed by law. This can be used as an example of successful implementation of gender parity recommendations based on a corporate governance code. However, it should be noted that in order to fully attain gender parity in the boards of listed companies, the companies themselves need to be active and willing to voluntarily comply with the recommendation. The yield that self-regulation will have in Finland is yet to be seen. It has been established that the CG Code has led to a substantial fall in the number of companies with all-male boards and that it has encouraged companies to appoint women as board members. However, it is up to the listed companies to implement the recommendation and to prove that the aim of 40 percent can be achieved quickly enough to avoid the need for statutory quotas.

1 See U-letter on the consultation regarding the directive proposal dated 22 January 2013, available at [http://oikeusministerio.fi/material/attachments/om/valmisteilla/lakihankkeet/yhtiooikeus/6EZWqa0H9/Yhteenvento\\_15.1.2013\\_jarjestetysta\\_kuulemisesta\\_ja\\_lausuntopalautteesta.pdf](http://oikeusministerio.fi/material/attachments/om/valmisteilla/lakihankkeet/yhtiooikeus/6EZWqa0H9/Yhteenvento_15.1.2013_jarjestetysta_kuulemisesta_ja_lausuntopalautteesta.pdf). Accessed on 31 May 2013.

2 See Government Action Plan for Gender Equality 2012-2015, p. 21-22, available at [http://www.stm.fi/c/document\\_library/get\\_file?folderId=5197397&name=DLFE-24302.pdf](http://www.stm.fi/c/document_library/get_file?folderId=5197397&name=DLFE-24302.pdf). Accessed on 31 May 2013.

3 See The Finnish Business and Policy Forum EVA's "Women to the top – recommendations," dated 24 September 2007, available at [http://www.eva.fi/wp-content/uploads/files/2155\\_Toimenpidesuosituksset\\_english.pdf](http://www.eva.fi/wp-content/uploads/files/2155_Toimenpidesuosituksset_english.pdf). Accessed on 31 May 2013.

France

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Empowerment and sufficient participation in decision-making and governance at all levels for women in Europe has been and remains a long-standing topic. Depending on the country, different approaches have been adopted in order to promote boardroom diversity and to increase the number of women serving on corporate boards, from voluntary initiatives and non-mandatory corporate governance codes, to legal requirements imposing specific gender quotas.

In 2010, the proportion of women serving on corporate boards in France's CAC 40 listed companies was 15 percent, while there was only 9.5 percent female participation on the boards in a sample of 103 listed companies. Further, there were few indications that this trend would change.

In light of the stagnation in progress under the voluntary approach, the French Parliament decided to implement a mandatory regulatory approach in order to give France's largest companies a serious and immediate incentive to change their behavior. After passing gender quota legislation in 2011, the proportion of female non-executive directors at France's top listed companies increased to 23.5 percent in June 2012 – far higher than the 2010 numbers.

The French Constitution

In July 2008, the French Constitution was modified to enable the introduction of board gender quotas into French law. This was in response to a 2006 proposal regarding equal pay between men and women that was rejected by the French Constitutional Council on the rationale that such a quota violated the French Constitution as a kind of discrimination. Article 3 of the Constitution provides for equality between men and women only for political and electoral functions and does not address the private sector. Expanding the scope of Article 3 was thus necessary in order to enable a larger introduction of gender quotas into French law. In 2008, Article 3 of the Constitution was modified and the new Article 1 now states that “French law favors equal access for men and women to elective functions and political mandates as well as to social and business functions.”<sup>1</sup> Therefore, equality between men and women is now constitutionally required in both public and private sectors and can be guaranteed through the implementation of quotas.<sup>2</sup>

Voluntary Approach: Corporate Governance Code

After the revision of the French Constitution, a new law was proposed in December 2009 by two French deputies, Jean-François Copé and Marie-Jo Zimmerman, aimed at establishing quotas for women on corporate boards. One of the main French employer’s organizations, AFEP-MEDEF, anticipated this legislative move and advocated for a voluntary approach. In April 2010, the AFEP-MEDEF amended its voluntary corporate governance code applicable to companies whose securities are traded on a regulated market. Pursuant to the revised Article 6-3 of the Code, “Each Board should consider what would be the desirable balance within its membership...in particular as regards the representation of men and women.”<sup>3</sup> To reach this goal, AFEP-MEDEF code states that each board should “reach and maintain a percentage of at least 20 of women within a period of three years and at least 40 of women within a period six years, from the date of publication of this recommendation or from the date of the listing of the company’s shares on a regulated market, whichever is later.”<sup>4</sup> Boards of directors that are elected are not included in the quotas.

The AFEP-MEDEF Code also states that corporate boards that do not include any women as of the date of its publication should appoint one female director no later than the next general meeting of shareholders, either by

appointing a new female board member or by replacing a male board member whose mandate is expiring.<sup>5</sup> Six years from the date of publication of the Code, for boards that have fewer than nine administrators, the difference between the number of male and female board members should not be greater than two.

The AFEP-MEDEF Code also requires that one-half or one-third of the members of the board of widely-held and controlled companies, respectively, must be independent. In establishing criteria to assess “independence,” the Code states that, in order to remain independent, a director must “not ... have been a director of the corporation for more than twelve years.”<sup>6</sup> As such, this tenure restriction should facilitate further turn-over in board seats.

Compliance with corporate codes is not mandatory but rather is voluntary for French companies. Based on 2011 figures, it did not appear that such voluntary approaches were producing effective results. According to the fundamental corporate governance principle “comply or explain,” the reasons for non-compliance only have to be explained in the companies’ annual reports. Hence, as long as the companies explain it, they are not subject to any sanctions. Considering that self-regulation has not been effective, in January 2011 France adopted a new law implementing gender quotas on corporate boards.

The Law

On January 27, 2011, after more than a year of discussions, the French national assembly (“Assemblée nationale”) and the French Congress (“Sénat”) came up with a common text aimed at improving the representation of women on corporate boards. The law covers both listed companies whose shares admitted to trading on a regulated market and non-listed companies with revenues or total assets over 50 million euros or employing at least 500 persons for the last three years.

This French law will be implemented gradually. An immediate change could be problematic, not only for legal reasons, but also because an abrupt shift on corporate boards could hinder the trust of business partners and result in economic losses.

During the transition period, which runs for three years starting on the date the law is published, corporate boards that do not include any women should appoint a female board member when replacing a male board member whose mandate is expiring on the date of the next general assembly of shareholders. After the transition period, the law is similar to the AFEP-MEDEF Code, except that it is accompanied with effective sanctions.

Under the Law, the proportion of female and male directors should not be below 40 percent in both listed and non-listed companies. Companies have six years from the enactment of the law to reach this 40 percent level, with companies whose shares are admitted to trading on a regulated market are required to achieve 20 percent before the end of the third year. In addition, when there are no more than eight directors on a corporate board, the difference between the number of directors of each gender should not be greater than two. It is important to note that the law imposes absolute gender quotas, meaning that the quotas must be reached without prior consideration as to the skills of the candidates, although it is stated that the appointments should be done in accordance with the social interest of the company.

In imposing sanctions for non-compliance, the French legislature chose not to adopt any pecuniary sanctions as being too easy to bypass for top-listed companies. Thus, the main sanction when breaching the law is the nullity of the non-compliant appointment.

Conclusion

In recent years, the French government has adopted increasingly stringent measures to achieve gender parity on corporate boards. While certain organizations have advocated for self-regulation, the French government enacted more stringent legislation imposing quotas after it appeared that a voluntary approach did not significantly increase gender diversity on corporate boards in France. The legislation’s requirements will be implemented over a multiyear period and

1 The formal text reads: “la loi favorise l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives ainsi qu'aux responsabilités sociales et professionnelles.”  
2 It is interesting to note that, in Germany, the introduction of quotas is still considered a violation of the German Constitution.  
3 See Corporate Governance Code of Listed Corporations, AFEP-MEDEF (Amended April 2010) (English language version can be found at [www.ecgi.org/codes/](http://www.ecgi.org/codes/)) (last accessed July 31, 2012).  
4 See Code, Section 6.3.

5 *Id.*  
6 See Code, Section 8.4.



may be enforced by nullification of board appointments for companies that are not in compliance.

France is the European Member State that has had the most dramatic increase since the new law was enacted in 2011. Additionally, there has been progress in cultivating women for board positions. In 2012, the European PWN-Paris published a guide entitled *Administrateur(e) Au Feminin*, written by Marian Garnier, Co-Vice President of women on Board & Executive Forum to assist women in becoming board-ready.<sup>7</sup> The purpose of the guide is to “help others get an idea of what [is] ahead when joining a board” in order to be better prepared and to be effective board members. With the significant progress made in France in the past year or so, all eyes continue to watch to see whether the tide in France will ripple across other European Member States who currently lag behind.

<sup>7</sup> See, *Administrateur(e) Au Feminin*, by Miriam Garnier, Co-Vice President Women on Board & Executive Forum, published by European PWN-Paris (2012) (available at <http://www.europeanpwn.net>) (last accessed July 31, 2012).

Germany

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In response to the increasing pressure at the European level, there is an ongoing debate in Germany as to whether to enact a mandatory gender quota law for publicly listed companies. Much of the response has been triggered by the various legislative initiatives proposed by Viviane Reding, Vice-President of the European Commission and EU Commissioner for Justice, Fundamental Rights and Citizenship, as addressed in the above chapter on the European Union. This debate continues to roil in Germany as recent press releases noted that the percentage of women on corporate boards increased by no more than 3 percent in Germany from October 2010 to January 2012.<sup>1</sup>

The debate came to a head in 2011 when Chancellor Angela Merkel had to intercede in an increasingly contentious dispute between the German Federal Secretary of Family Affairs, Kristina Schröder, and the German Federal Secretary of Employment, Ursula von der Leyen (both members of the ruling party Christian Democratic Union) as to whether gender quotas should be imposed on corporate boards. Merkel ended the dispute by issuing a decree stating that no mandatory quota requirement will be introduced before 2013. A law may be introduced at that time if the percentage of women on corporate boards of publicly listed companies has not shown demonstrable improvement. However, Chancellor Merkel did not further determine what percentage would have to be achieved.

Furthermore, the question of a quota was also disputed between the leading party in the German Parliament, the Christian Democratic Union and its coalition party, the Free Democratic Party, with the Free Democratic Party rejecting any kind of a legal quota. This dispute was settled by Patrick Döring (Secretary General of the Free Democratic Party), not only in light of more pressing issues such as the European debt crisis and the energy turnaround in Gemany,<sup>2</sup> but also because of the emergence of the “Flexi-Quota.”

The “Flexi-Quota” proposal, as endorsed by both Schröder and Merkel, would allow publicly-listed companies to set their own voluntary goals instead of establishing a legally-mandated quota. A company’s goal must be made public and may not be changed retroactively. If a company fails to establish its own objective, this might trigger a fine, the amount of which is not yet determined. The idea was to increase competition between companies to attract women for middle and upper management, as well as on corporate boards. However, since the idea of a Flexi-Quota is still very new, no further steps have been taken so far to enact it and it remains merely a proposal at this time.

Although some of the opposition parties (especially the Social Democratic Party) advocate for a rigid quota, in light of the controversy surrounding the issue, it is unlikely that a mandatory quota law will be passed in the next year, particularly since the current cabinet will remain in office until September/October 2013. In addition, given the substantial opposition to such law in the EU Commission, it does not appear likely that an EU directive would be implemented in the near future forcing Member States to adopt a mandatory quota system. So far, even Reding has moderated her position a bit by now suggesting that the German government should recommend that companies voluntarily adopt such policy rather than mandating a quota.<sup>3</sup> During the last convention of DLDwomen (Digital Life Design), Reding stated that further steps will be decided in October 2012, but Reding still advocates for achieving 40 percent women on corporate boards by 2020.<sup>4</sup>

1 See, Women in Economic Decision-Making in the EU: Progress Report, page 10, Figure 3 - [http://ec.europa.eu/justice/gender-equality/files/women-on-boards\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf).  
2 See, Press Release dated 5 June 2012 - <http://www.zeit.de/news/2012-06/05/deutschland-fuer-fdp-sind-maut-frauenquote-und-mindestlohn-kein-thema-mehr-05142140>; N-TV.de, 5 June 2012 - <http://www.n-tv.de/politik/FDP-Unionsthemen-vom-Tisch-article6427076.html>  
3 See, Press Release dated 1 June 2012 - <http://www.faz.net/aktuell/beruf-chance/frauenquote-chefinnen-per-gesetz-11768021.html>.  
4 See, Press Release dated 17 July 2012 - <http://www.ksta.de/politik/unternehmen-reding-will-gesetzliche-frauenquote,15187246,16605050.html>.

Corporate Governance Code

In 2001, the German Justice Minister appointed the Government Commission on the German Corporate Governance Code (the “Commission”) and, on February 26, 2002 the Commission adopted the German Corporate Governance Code (the “Code”).<sup>5</sup> The Code is enacted under the statutory authority of Article 161 of the Stock Corporate Act as amended by the Transparency and Disclosure Law entered into force on July 26, 2002. The Code, which is reviewed annually, is intended to make Germany’s corporate governance rules “transparent and understandable... [and] to promote the trust of international and national investors, customers, employees and the general public in the management and supervision of listed German stock corporations.”<sup>6</sup>

Germany has a dual board system with the Management Board responsible for managing the business and the Supervisory Board responsible for appointing, supervising and advising members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise.”<sup>7</sup> Pursuant to Article 5 of the Code, the Supervisory Board appoints and dismisses the members of the Management Board of a listed company in Germany. When appointing the Management Board, the Supervisory Board “shall also respect diversity and, in particular, aim for an appropriate consideration of women.”<sup>8</sup> With regard to the Supervisory Board, the Code states that the Supervisory Board shall specify concrete objectives regarding its composition which, whilst considering the specifics of the enterprise, take into account the international activities of the enterprise, potential conflicts of interest, the number of independent members of the Supervisory Board, an age limit to be specified for the members of the Supervisory Board and diversity. These concrete objectives shall, in particular, stipulate an appropriate degree of female representation.<sup>9</sup> Further, the concrete objectives established by the Supervisory Board and the status of their implementation must be published in a Corporate Governance Declaration.

The Code also requires that a reasonable number of Supervisory Board members be “independent” and sets forth the elements to be considered when determining independence. Those criteria follow internationally recognized principles, such as no material compensation from the company within the past two years; holding 10 percent or less of the company’s shares; not a close family member of any Management Board member.<sup>10</sup> This is not an exhaustive list and is not rigidly applied.<sup>11</sup> There is no provision for term limits to force vacancies on a board, nor is there any explanation as to what constitutes “an appropriate degree of female representation.”

Increasingly, more listed companies in Germany are committing to take steps to increase women’s representation on their boards. The following prominent German companies (each a listed company) have set voluntary targets to ensure a higher representation of women on their boards:

- *Deutsche Telekom AG*: set a target of 30 percent for women’s share in middle and upper management jobs and on the supervisory board by 2015
- *E.ON AG*: 14 percent of its leading management shall be women by 2016
- *Henkel AG & Co. KGaA*: although currently 25 percent of the supervisory board positions are held by women, this percentage is to be doubled as soon as possible
- *Bayer AG*: by 2015 30 percent of the leading management and by 2017 20 percent of the members of the supervisory board shall be women

5 German Corporate Governance Code, as amended on May 26, 2010 with proposals from the plenary session of 17 January 2012, issued by the Government Commission on the German Corporate Governance Code, can be found at <http://www.corporate-governance-code.de> (last accessed on July 13, 2012).  
6 The Code at Article 1.  
7 The Code at Article 1.  
8 The Code at Article 5.1.2.  
9 The Code at Article 5.4.1.  
10 The code at Article 5.4.2.  
11 See, “Explanations to the amendments proposed by the Government Commission at its plenary meeting of 17 January 2012,” available at <http://www.corporate-governance-code-de> (last accessed July 13, 2012).

- *SAP AG*: 25 percent of its leading management positions worldwide shall be held by women by 2017 and the supervisory board shall have at least one woman as the shareholder representative<sup>12</sup>
- *Daimler AG*: 20 percent of its leading management shall be women by 2020.

Conclusion

As consideration of the issue of gender parity on corporate boards continues at both the European Union and Member States levels, the discussion regarding gender parity on corporate boards becomes more increasingly focused in Germany, with both listed companies and government actively promoting increased representation of women in upper management and on Supervisory Boards. Further, the increased attention to the issue by the Commission is expected to further the discussion.

In June 2012, the Commission held its 11th Corporate Governance Conference which included a discussion by Schröder on “A fair chance for women in good corporate management: On the importance of transparency and competition.”<sup>13</sup> Further, in a press release on April 19, 2012, the Commission concluded that the Code “has so far fulfilled its purpose of improving corporate governance.”<sup>14</sup> Its conclusion was based on an assessment conducted by the Berlin Center of Corporate Governance which polled the Supervisory and Management Board chairs of the 487 companies listed on the Frankfurt stock exchange between October 2011 and February 2012. While the assessment did not consider the specific recommendations with regard to women, it did conclude that the companies feel “strong pressure” to comply with the Code and, if so, it may be that there will be more progress by these companies in appointing more women to Supervisory Boards and, in turn, for Supervisory Boards to appoint more women to Management Boards. However, since these are recommendations and are voluntary, without more aggressive measures women’s share on corporate boards may still increase very slowly in Germany.

<sup>12</sup> The supervisory board of stock companies in Germany consists of shareholders’ representatives and employees’ representatives (whereas their number may vary); currently women are more frequently represented as employees’ representatives and not so often as shareholders’ representatives.

<sup>13</sup> See, Press Release dated 6 June 2012, available at <http://www.corporate-governance-code-de> (accessed July 13, 2012).

<sup>14</sup> See, Press Release dated 19 April 2012, available at <http://www.corporate-governance-code-de> (accessed July 13, 2012).



Italy

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In 2009, only 4 percent of Italian public companies had at least one woman on their boards of directors.<sup>1</sup> Although the representation of women on boards of larger Italian public companies (e.g., those whose profits are greater than €10,000,000) was significantly higher, it did not exceed 14 percent. In particular, research from the EU Commission showed that among European Member States only Malta, Cyprus, Luxembourg and Portugal had worse ratios than Italy.<sup>2</sup>

In response to recent developments in Europe, particularly the EU Second Strategy and the Green Paper on Corporate Governance issued by the EU Commission, on June 28, 2011 the Italian Parliament passed (with a supermajority vote)<sup>3</sup> a mandatory gender quota law (Law No. 120) (the “Gender Parity Law”).<sup>4</sup> The Gender Parity Law, which applies to public companies with shares traded on the Italian Stock Exchange, Italian companies listed in EU stock markets, and Italian state-owned enterprises (“SOEs”), requires these companies to have gender parity on their boards of directors and boards of statutory auditors starting from the first renewal occurring one year after enactment.<sup>5</sup>

The Gender Parity Law will be effective only for a limited period of time as it will apply to three renewals of the boards of directors and the boards of statutory auditors. Since such boards can be appointed for a maximum period of three years (until the approval of the financial statements of the third year), the law will be effective, with respect to each listed company, for up to nine years from the first renewal of the relevant board. Under the Gender Parity Law, Italian public companies are required to change their bylaws to ensure that the underrepresented gender (whether men or women) shall receive at least 20 percent of the director positions and statutory auditor positions in the first renewal of the board of directors. For the second and third renewals, the Gender Parity Law requires that at least 33 percent of the board and statutory auditor positions must be filled by the underrepresented gender.

In the event that public companies fail to comply with the mandatory quota rule, a multi-tier sanctioning scheme would apply. First, Commissione Nazionale per la Società e la Borsa (“Consob”)<sup>6</sup> would issue a notice warning such companies to comply with the Gender Parity Law within four months from notification. If the legal quota is not met within such four month period, noncompliant companies will be charged a fine ranging from €100,000 to €1,000,000, or €20,000 to €200,000 depending on whether the violation concerns, respectively, the board of directors or the board of statutory auditors. In addition, Consob will issue another formal warning directing the companies to comply with the mandatory quota within a subsequent three-month period and, in the event the companies again fail to comply, the election of the board of directors and/or the board of statutory auditors, as the case may be, will be null and void and all elected members will be removed from their positions.

The Gender Parity Law also instructs Consob within six months of the enactment to issue detailed regulations<sup>7</sup> addressing such areas as gender quota breaches and implementation of and compliance with the law.<sup>8</sup>

On October 2011, just a few months after the introduction of the Gender Parity Law by the Italian Parliament, Consob published “Women on boards in Italy,” a case study investigating the state of women’s representation on Italian

1 Cerved, “Le donne al comando delle imprese: il fattore D,” Mar. 2009.

2 “More women in senior positions, key to economic stability and growth.” European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G1, 2010. For more information please see <http://ec.europa.eu/progress>.

3 Specifically, the Italian Chamber of Deputies enacted it, in its final vote, with a deliberation comprising 438 votes in its favor, 27 against it and 64 abstainers.

4 The Gender Parity Law was signed by the President on July 12, 2011 and went into effect on August 12, 2011.

5 The Gender Parity Law is not applicable to private companies nor have any other laws on gender parity been proposed with regard to private companies.

6 Commissione Nazionale per la Società e la Borsa (Consob) is the Italian equivalent of the SEC.

7 As for private companies controlled by public entities, the application of the Gender Parity Law will be set forth by a Government regulation to be adopted within two months of its enactment.

8 Under Italian law, Consob has the power to enact regulations on specific aspects when legislative measures do not entirely regulate all matters regarding public companies or when the specific knowledge of Consob on financial markets is required for a detailed regulation of the matter.

corporate boards (the “Consob Study”). The Consob Study is the first paper issued by Consob addressing the relationship between women’s representation on boards and good governance and performance results.<sup>9</sup>

According to the Consob Study, the female presence on boards “still concerns the minority of companies (mainly the smaller ones). When women are present, in most cases they are alone.”<sup>10</sup> In particular, the research shows that the participation of women in Italian boardrooms is often due to family ties with the controlling shareholder (“Family-Affiliated Women”).<sup>11</sup> Moreover, an analysis of the composition of boards revealed that:

- Family-Affiliated Women directors are more common in small public companies, with concentrated ownership and operations in the consumer sector.
- Non-Family-Affiliated Women directors generally sit on boards of larger public companies with fragmented ownership and/or partial ownership by foreign entities and operations in the information technology or telecommunications fields. Such companies also typically have younger and more independent directors.
- When considering the boards that have female directors, only a minority of the female directors are independent directors, whereas in almost half of the cases women are non-executive directors and in a third of the cases they have an executive role. Both executive and non-executive positions are generally held by Family-Affiliated Women directors, while Non-Family-Affiliated Women directors are usually independent directors.

On December 9, 2011 Consob also launched a public consultation whereby it asked interested parties to comment on a proposed regulation that would require that public company bylaws include:

- i. the criteria for the formation of the slates of candidates and ancillary criteria for identifying individual members to the board of directors and board of statutory auditors designed to create a balance between genders (recognizing that bylaws shall not require slates with fewer than three candidates in order to respect the criterion of balance between genders);<sup>12</sup>
- ii. taking into account the gender balance goal, the procedures for replacing members of the board of directors and board of statutory auditors in the event of vacancies; and
- iii. procedures for exercising of the rights of appointment in a way that does not conflict with the goal to keep balance between genders.

Consob received comments from public company associations, law firms, attorneys and other organizations.<sup>13</sup> On February 8, 2012, Consob issued a final rule that introduced a new Article 144-undecies.1 in the Consob Regulation No. 11971 of May 14, 1999 which in effect enacted the proposed rule. During the consultation procedure Consob issued guidance regarding implementation of the gender balance regulation subject to certain amendments. The most relevant amendment was the introduction of a specific exception to the gender balance requirement for slates with less than three candidates.

Consob also addressed the issue of gender balance in cases of staggered boards. Consob specified that, in the case of staggered boards, the gender balance not only has to be respected for three consecutive renewals of each

9 In particular, from the Consob Study it results that “female directorship is associated to some characteristics of firms and of women themselves, depending in particular on whether they are related (through family links) to the controlling agent. Two very different models emerge. On the one hand, family affiliated women are more present in smaller companies, with a concentrated ownership operating in the consumers sector. On the other hand, not-affiliated women are more common in widely held companies or in firms owned by a foreign shareholder, in the IT/telecommunication sector, and in companies with younger and more independent boards. In both models the presence of institutional investors and board size positively affect female representation.” See for more reference [http://www.consob.it/main/consob/pubblicazioni/studi\\_analisi/quaderni\\_finanza/qdf70.html](http://www.consob.it/main/consob/pubblicazioni/studi_analisi/quaderni_finanza/qdf70.html).

10 However, according to the Consob Study, both the number of female directors and that of companies where at least one board member is a woman are steadily (but slowly) growing.

11 It is also worth mentioning that the proportion of women with graduate degrees is much higher in companies without Family-Affiliated Women directors as compared to companies with Family-Affiliated Women directors (95 percent vs. 60 percent).

12 Under the draft rule, if, as a result the implementation of the criteria noted in (i) above, the numbers of directors or statutory auditors of the under-represented gender is not a whole number, such number shall be rounded up.

13 The respondents to the consultation were in total 10 and their observations are available at [http://www.consob.it/main/documenti/Regolamentazione/osservazioni\\_consultazione/quoterosa/osservazioni.html](http://www.consob.it/main/documenti/Regolamentazione/osservazioni_consultazione/quoterosa/osservazioni.html).

portion of the board but also in relation to the entire board. Assume, for example, that a board is composed of nine members and each year three members of the board have to be appointed or renewed for a three-year period. In this scenario, the quota requirement of 20 percent (for the first renewal) and 30 percent (for the second and third renewal) must be applied both in relation to three board members to be appointed or renewed each year and in relation to the composition of the board as a whole.

Corporate Governance Code

The issue of gender balance on corporate boards has also been addressed in the revision to the “Public Companies’ Corporate Governance Code” issued by the Italian Stock Exchange, as modified and restated on December 5, 2011 (the “Italian Corporate Governance Code”). In particular, the Italian Corporate Governance Code expressly states that, in identifying candidates for directors to be included on slates, shareholders shall consider, in light of the opinion expressed by the board and the recommendations to the board by the nominating committee, the professional competence, experience (including managerial) and gender of the candidates, considering the size of the company, the complexity and specificity of the sector in which it operates and the size of the entire board of directors.<sup>14</sup>

Boards of directors are also required to conduct self-assessments, with particular reference to the size, composition and functioning of both the entire body and its committees. In evaluating its composition, the board must verify that all different components (executive, non-executive, independent), and that the professional and managerial skills are adequately represented in relation to the activities of the company, taking into account the benefits that may result from the presence on the board of directors of different gender, age and seniority.<sup>15</sup>

Constitutionality of Quotas

Although welcome from a social and political point of view, mandatory quotas have been criticized on the grounds that they introduce a “gender requisite” above other eligibility requirements for the selection and appointment of directors, rather than other factors such as competence, experience and expertise. A rigid quota requirement may result in women being chosen over men even if male candidates have higher qualifications and experiences, according to opponents.

Moreover, there is a precedent from the Italian Constitutional Court (the “Court”) that makes it likely that mandatory quota provisions, such as the Gender Parity Law, would be attacked as unconstitutional under Article 3, paragraph 1, of the Italian Constitutional Law (“ICL”).<sup>16</sup> The Court first considered the issue of mandatory gender quotas in 1995 when a national law regulating the election of mayors, members of city halls and the provincial councils was introduced.<sup>17</sup> In Ruling 422/1995, the Court stated that the constitutional principle of equality set forth in Article 3, paragraph 1 of the ICL would vanish if provisions creating advantages for the under-represented gender were introduced in the name of establishing equality because it has the effect of discriminating against the other gender. In other words, discriminating actions cannot be used as a way to pursue equality.

Further, Article 3, paragraph 2 of the ICL<sup>18</sup> authorizes the introduction of specific legislative and non-legislative measures to remove economic and social obstacles to equality between men and women. However, according to the Court’s interpretation in Ruling 422/1995, such measures may not directly grant preferential protections and direct benefits to the under-represented gender. Therefore, Ruling 422/1995 prevented so-called “affirmative action” measures from the scope of Article 3 of the ICL.

14 Please see comment to Article 2 – Composition of the board of director.

15 Please see comment to Article 1 – Role of the board of director.

16 In particular, Article 3, paragraph 1, ICL states that: “All citizens have equal social status and are equal before the law, without regard to their sex, race, language, religion, political opinions, and personal or social conditions.”

17 See Ruling No. 422 of 12 September 1995 (422/1995).

18 Pursuant to Article 3, paragraph 2, ICL: “It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country.”

In response to this judicial interpretation of the ICL, the Italian Parliament passed Law No. 1 of 30 May 2003 (“Law No. 1”) which partially amended the ICL, allowing the introduction of affirmative action measures in public office elections (provisions regulated under Article 51 of the ICL) which was subsequently upheld as constitutional.<sup>19</sup>

However, Law No. 1 did not directly amend Article 3 of the ICL, but rather amended Article 51, paragraph 1 of the ICL<sup>20</sup> which refers to the equal right of both women and men to be elected to public offices and committees. Therefore, the Court’s interpretation in Ruling 422/1995 may still be used as precedent against the Gender Parity Law, since it does not refer to public office elections but to the governance of public companies and state-owned enterprises (“SOEs”), which are governed by another provision of the ICL (Article 41, “*Freedom of Enterprise*”).<sup>21</sup>

According to the interpretation of Article 41 of the ICL, because private economic enterprise is free, legislative and non-legislative measures limiting such freedom may be introduced only to defend liberty, security and human dignity and/or to pursue social interests. Whether the interests of the stakeholders of public companies and SOEs may fall within the definition of “social interests” and, therefore, justify affirmative action initiatives designed to achieve gender parity under the “principle of freedom,” will be a matter for future interpretation by the Court.

Concerns about the legitimacy of the Gender Parity Law were also expressed by the Italian Senate’s Justice Commission on February 22, 2011 during the approval phase of the Gender Parity Law by the Italian Parliament.<sup>22</sup> The Senate’s Justice Commission argued that it is doubtful that mandatory gender quotas for corporations and SOEs would be compliant with Article 3 of the ICL on the basis of the principles set forth by the Court in Ruling 422/1995. It also criticized mandatory quotas for boards of statutory auditors on the basis that their appointment is not an “election” process but rather result from a fiduciary relationship between the shareholders and the auditors based on their qualifications and experiences. Moreover, the Senate’s Justice Commission stated that, to justify an initiative under the “principle of freedom,” it must be a “relevant” public interest. However, in the view of the Senate’s Justice Commission, there are, in principle, no prevailing public interests that can justify limiting the freedom to appoint members of boards of directors or boards of statutory auditors of listed companies and SOEs.<sup>23</sup>

The issue raised by mandatory quota provisions was also examined by the European Court of Justice (the “European Court”) in a number of cases addressing public employment matters. In those rulings, the European Court has embraced, with time, a more permissive approach. Although the rulings of the European Court do not represent binding precedent under Italian law or for Italian courts, the positive approach of the European Court to gender quotas and the legislative initiatives being implemented at the European level may force the Italian Parliament to pursue the matter even further.

In its first ruling on national legislation permitting priority in hiring decisions in order to address gender under-representation,<sup>24</sup> the European Court argued that the national statute exceeded the European Union principle of equal opportunity and was therefore not in compliance with European legislation. However, in subsequent rulings on the issue, the European Court came to different conclusions validating the legitimacy of national quotas subject

19 See, e.g., Ruling No. 49 of 13 February 2003 and Ruling No. 4 of 14 January 2010.

20 Article 51, paragraph 1, ICL states the following: “Citizens of one or the other sex are eligible for public office and for elective positions under equal conditions, according to the rules established by law. To this end, the republic adopts specific measures in order to promote equal chances for men and women.” The last sentence was introduced with Constitutional Law No. 1/2003.

21 Such Article states the following: “Private economic enterprise is free. It may not be carried out against the common good or in a way that may harm public security, liberty, or human dignity. The law determines appropriate planning and controls so that public and private economic activities may be directed and coordinated towards social ends.”

22 In Italy, in each of the branches of the Parliament (House and Senate) there is a Justice Commission. The Justice Commission is a permanent internal commission that has the authority to express its opinion on draft bills in various areas of public interest such as the system of justice, public security, and civil and criminal law matters.

23 Please see for reference: <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=SommComm&leg=16&id=525442>. In particular, the Senate’s Justice Commission stated that the ICL does not mention the principle of gender equality in the context of “*the freedom of enterprise*” (Article 41 of the ICL). Therefore, property rights may be sacrificed only when there are other prevailing public interests.

24 In its first decision, the Kalanke’s case of 17 October 1995, the European Court ruled against the legitimacy of a regional provision of the Land of Bremen stating that, in case of equivalent qualification, female candidates should be chosen over men if the former are underrepresented in a specific public employment category, also considering compensation. The decision of the European Court was based on the grounds that the automatic and absolute preference set by the national statute exceeded the European Union equal opportunity principle set forth by Article 177 of the European Treaty and Article 2, paragraphs 1 and 4, of the European Directive on parity opportunity between women and men.

to the following prerequisites: the existence of a substantial under-representation of the gender targeted by the new policy; the impermanence of public action and legislation; and, lastly, their non-automatic enforcement.<sup>25</sup> In addition, the European Court has consistently indicated that any such quota system must comply with the principle of proportionality so that any formal discriminatory measure shall be pursued only to the extent that the case at hand strictly demands such action. Indeed, in a recent ruling, the European Court affirmed that statutes introducing national quotas are in compliance with European law so long as, in each individual case, “the candidatures are subjected to an objective assessment which takes account of the specific personal situations of all the candidates,”<sup>26</sup> including an assessment of the suitability, qualifications and professional capability of the candidates and their qualifications for the position or duties to be performed.

While these cases are instructive as to how the European Court would view the Gender Parity Law, it is debatable whether these rulings could be used in any case contesting the constitutionality of the Gender Party Law in Italy, since such rulings do not refer to matters of corporate governance of enterprises but rather to public employment law. Further, despite the arguments discussed above, the legal legitimacy of mandatory gender quotas under the Constitution are still far from conclusive.

Conclusion

Starting in 2010, the issue of gender representation in boardrooms of public companies and SOEs has been given a high priority in Italy. After the introduction of the Gender Parity Law, public companies are now obligated to comply with the first 20 percent threshold with the next renewal of the board of directors and board of statutory auditors. When the first renewal will be completed by all the companies targeted by the Gender Parity Law, the composition of the corporate bodies is expected to change dramatically. In fact, of the 261 companies listed on the Italian Stock Exchange as of October 31, 2011, 92.81 percent of the board members were men. The total number of women sitting on boards of directors and on boards of statutory auditors of companies listed in the Italian Stock Exchange is 187 and 56 respectively. Hence, in order to reach the first 20 percent threshold, the overall number of women will have to increase to 618 for boards of directors and to 276 for boards of statutory auditors, respectively.

However, such changes will not occur all at once since only around one-third of public companies are expected to renew or reappoint directors and statutory auditors in 2013, and therefore, are required to implement the 20 percent threshold. For the remaining public companies subject to the Gender Parity Law, the current board of directors and board of statutory auditors will expire either in 2013 or in 2014. Therefore, those companies will be required to implement the 20 percent threshold in 2014 and 2015, respectively. Thus, the initial results of the Gender Parity Law will be visible next year, once the 20 percent threshold is implemented by around one-third of listed companies in Italy, and which will likely generate new controversy regarding gender representation in the boardroom.

25 European Court of Justice C-409/95, European Court of Justice C-158/97 and European Court of Justice C-407/98.

26 European Court of Justice C-407/98, para. 61.



Netherlands

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As in surrounding countries in Europe, there has been a considerable public discussion in the Netherlands in recent years about the lagging degree of participation of women on corporate boards, in particular on boards of listed Dutch companies. While there is general consensus that a well-balanced participation of men and women on a corporate board can have a positive effect on the quality of the boards’ decision-making process, there is some disagreement within the business community, academia and the public on the means through which such well-balanced participation could be best achieved. As a result, a number of initiatives have been coined in recent years, which were all met with a fair degree of criticism. Nonetheless, there have been some important developments in Dutch corporate law, specifically with regard to achieving gender parity on boards of Dutch listed corporations.

As a matter of law and practice, Dutch listed corporations typically have a two-tier governance structure: a management board, which is responsible for the management of the business and the affairs of the company, and a separate supervisory board which is tasked with monitoring and advising the management board. At the moment, a legislative amendment is pending which would allow Dutch companies to opt for a unitary one-tier board structure in which the board would consist of both executive as well as non-executive board members, with the latter more or less assuming a position comparable to a current supervisory board member. Until such change is implemented, we look at how the issue is addressed in a listed Dutch company with a two-tiered board structure.

The Dutch Corporate Governance Code

In addition to the mandatory provisions of statutory corporate law, listed Dutch companies are also subject to the Dutch Corporate Governance Code (the “Code”). The Code, which was first released in 2003, contains principles and best practices on a wide range of corporate governance topics within listed companies. The provisions of the Code are non-binding in nature<sup>1</sup>: companies have an obligation to either comply with the provisions of the Code or, in case of non-compliance, include an explanation in their annual reports as to why they do not comply with those provisions of the Code. An independent monitoring committee (the “Monitoring Committee”) was charged with publishing annual reports on overall compliance in the marketplace and with assessing whether or not the Code would need to be updated.

In 2007, the Monitoring Committee commissioned a study from Groningen University on the diversity of the supervisory boards of Dutch listed companies. The study found that, although between 2001 and 2006 there had been an empirical increase in some diversity features (including gender), diversity in other features was still found to be lacking (an updated 2009 study by the same authors did not find any material improvements in this respect). In response, the Monitoring Committee proposed to include a principle and best practice relating to diversity in the 2008 updated version of the Code. Principle III.3 of the 2008 Code stipulates that a supervisory board must aim at achieving gender and age diversity, and disclose its approach and efforts in this regard. Specifically, Principle III.3.1 provides:

The supervisory board shall prepare a profile of its size and composition, taking account of the nature of the business, its activities and the desired expertise and background of the supervisory board members. The profile shall deal with the aspects of diversity in the composition of the supervisory board that are relevant to the company and shall state what specific objective is pursued by the board in relation to diversity. In so far as the existing situation differs from the intended situation, the supervisory board shall account for this in the report of the supervisory board and shall indicate how and within what period it expects to achieve this aim. The profile shall be made generally available and shall be posted on the company’s website.

As reflected in Principle III.3.1, the 2008 Code provides for a best efforts obligation (albeit a non-binding one) for supervisory boards of listed companies to aim at a diverse composition. Perhaps more importantly, the 2008 Code

requires public companies, through the supervisory board disclosures in their annual reports, to account to the investment community and the public at large as to whether or not this aim is actually met. Still, no specific quotas were included. Such quotas have been considered by the Monitoring Committee, but were eventually dismissed with a view towards retaining flexibility in the practical application of this best practice. Also, the diversity standard contained in the Code only applies to the supervisory board; the Code does not contain any diversity requirements for the management boards of Dutch listed companies.

Statutory Amendment on Gender Diversity

In addition to the Code, the issue of gender diversity was recently put on the legislative agenda through a motion with respect to imposing a gender diversity quota for both supervisory and management boards of large Dutch companies. This motion was filed by a member of the Dutch Labour Party in December 2009 during the parliamentary deliberation on a bill proposing a one-tier board structure for Dutch companies (see the introduction above). Although the motion did not have any direct connection to the purpose of the bill, it was proposed nonetheless and, with the support of a number of opposition parties, was adopted by the lower house of Dutch Parliament and subsequently approved by the Upper House of Dutch Parliament in May 2011. The bill, including the motion, is yet to be signed into law, but is expected to occur shortly with the law expected to come into force in January 2013.

Under the forthcoming statutory provision, Dutch corporations (N.V.s) and private companies with limited liability (B.V.s) that qualify as Large Companies (as defined in the bill) should endeavor to have at least 30 percent of the seats of the company’s board (one-tier) or boards (two-tier) held by men and at least 30 percent of the seats held by women. This balance is thus prescribed not only for the supervisory board, but also as regards the management board. Moreover, this diversity criterion should be taken into account both in case of specific appointments or nominations for appointments, as well in drawing up an overall profile of the supervisory board (or for the non-executive board members in a one-tier structure).

Most importantly, the new bill would impose specific quotas for the participation of women on Dutch corporate boards. In that sense, the new bill goes considerably further than the scope of the 2008 Code which does not contain such a quota. Moreover, the gender diversity provision of the bill extends to management boards (or executive board members in a one-tier structure), which also goes beyond the scope of the 2008 Code.

The obligation to provide for well-balanced participation of men and women on Dutch corporate boards is still a nonbinding one. In the case of non-compliance, the company is required to provide an explanation in its annual reports on (i) the reasons why the composition of its boards is not in compliance with the gender diversity requirement; (ii) the measures that the company has taken to achieve compliance; and (iii) the measures which the company is planning to take to ensure future compliance. Also, since the provision is something of an experiment, the statutory obligation has been purposely limited in time and is currently expected to cease to be in force on January 1, 2016.

In recent years, the subject of enhancing diversity on the corporate boards of listed Dutch companies has received increased attention. The Dutch business community, academia and public leaders have both studied and adopted measures to address the issue. While forthcoming legislation may impose a quota requirement on the corporate boards of listed companies, such an obligation appears to remain non-binding.

1 While a few provisions of the Code in fact mirror statutory obligations and thus contain norms which, as a matter of statutory law, are binding on public companies, those provisions are not relevant for this discussion.

Norway

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Norway has been a leader (along with other Nordic European countries such as Sweden, Iceland and Finland) in advocating women’s rights for many years. Norway was the second country in the world (the first being Finland) to give women the right to vote in 1913<sup>1</sup> and is one of the top 10 countries with the highest level of women represented in the national Parliament. More than one-third of the representatives elected to Parliament in each of the past seven elections have been female and the proportion of women and men in ministerial positions has reached a perfect gender balance (50-50).<sup>2</sup>

Non-legislative gender quota rules first appeared in 1975, when the Socialist Left and the Liberal Party both adopted gender quota policies for the selection of the slates of candidates to Parliament. Those policies were then emulated by the Labor Party. As a result, women’s representation in Parliament rose from 15.5 percent in 1973, the last election before the gender quota policy, to 34.4 percent in 1985.<sup>3</sup> Since then, such representation has never been below 35 percent, with a peak of 40 percent in 2011.

Much of Norway’s gender equality progress has been mandated by the Norwegian Parliament. In fact, the level of participation of women in politics and in the economic sphere has dramatically improved through the introduction of affirmative action measures such as gender quotas. According to a 2010 report by the Norwegian Ministry of Foreign Affairs and of the Norwegian Ministry of Children, Equality and Social Inclusion, “experience shows that the proportion of women in political bodies does not increase without special efforts, and quotas have proved the most effective means of achieving a more balanced representation.”<sup>4</sup>

The first affirmative action law was the Gender Equality Act of June 9, 1978 No. 45 (*likestillingsloven*), which has been amended several times, most recently in 2010 (the “Gender Equality Act”). Under Section 1 of the Gender Equality Act, public authorities, public and private enterprises, and employers have the duty to promote equality between women and men. Further, Section 3 allows affirmative action in favour of one of the sexes (generally for men in connection with education and children’s care). By express provision of the Gender Equality Act, affirmative action does not represent a contravention of the principle of gender non-discrimination but rather is an instrument to pursue equality.<sup>5</sup>

Another innovative legislation to ensure gender parity was the quota rule introduced in 2003 for the appointment of board members of all public limited companies, both listed and not listed, on the Norwegian Stock Exchange.<sup>6</sup> Specifically, the Public Limited Companies Act No. 45 of 1997, as amended by the Act of December 19, 2003 No.

120 (“PLCs Act”), gives women and men equal opportunity to be represented on company boards of public limited companies in accordance with the principle of equal treatment set forth by the Gender Equality Act.

The political process resulting in passage of the PLCs Act actually started in October 1999, when the Bondevik I Cabinet (the Conservative-Centre government coalition) sent a proposal for rules on gender representation on company boards to public hearing. The proposal was part of a major revision of the Gender Equality Act and, in particular, of Section 21, which deals with gender representation in publicly appointed members of committees, councils, and governing boards, among others.<sup>7</sup> However, due partly to the need to further evaluate the legal aspects of such quota rule and partly due to some political pressure, the motion was excluded from the wider revision of the Gender Equality Act.

The issue was again raised in March 2002, when then Minister of Trade and Industry, Mr. Ansgar Gabrielsen, proposed to the Bondevik II Cabinet the implementation of a gender quota rule for boards of directors of all public limited companies. After being approved by the Cabinet in June 2003, the new quota legislation was submitted to Parliament.

The proposal noted that only 7.3 percent of the members of the boards of public limited companies were women and proposed a requirement that at least 40 percent of both genders be represented on those boards. The PLCs Act was then approved by Parliament with a broad majority of the vote.<sup>8</sup>

Section 6-11a of the PLCs Act states that women and men shall be represented on the board of a public limited company and details the minimum representation of each gender on the board based on the size of the board, as follows:

Total Number of Directors on the Board	Minimum Representation of Each Gender
2-3 members	at least one
4-5 members	at least two
6-8 members	at least three
9+ members	at least 40 percent

This quota applies to elections of deputy members, but not for directors being elected among the employees.<sup>9</sup>

For existing companies, noncompliance with the quota rule can lead to liquidation through a court ruling. Specifically, Section 16-15 of the PLCs Act subsection 2 states, “if the Company has not notified the Register on Business Enterprises of a board of directors that meets the requirements set out in statutory provisions or pursuant thereto,” the court shall decide by order that the company is to be dissolved. In these cases, the Registry will issue up to two letters

1 See *Gender Equality in Norway*, European Commission for Democracy through Law, Strasbourg 12 June 2006.

2 According to the *Global Gender Gap Report 2011*, an annual research report introduced by the World Economic Forum (WEF) in 2006, Norway holds the second position in terms of lower gender gaps between men and women. The second rank is still held by Norway in 2011, according to the *Global Gender Gap Report 2011*. Iceland continues to hold the top spot closely followed by Norway, Finland, and Sweden. Although no country has yet achieved gender equality, all of the Nordic countries, with the exception of Denmark, have closed over 80 percent of the gender gap and thus serve as models and useful benchmarks for international comparisons. Among all figures, it is interesting to note that both in 2010 and in 2011 women have surpassed men as Cabinet Members. For more details, please see <http://www.uis.unesco.org/Library/Documents/global-gender-gap-report-education-2011-en.pdf>.

3 Those figures are described in *The Norwegian Experience of Gender Quotas*, written by Richard E. Matland, professor at the University of Houston, presented at the International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference, *The Implementation of Quotas: European Experiences*, Budapest, Hungary, 22-23 Oct. 2004.

4 See *Gender Equality – a key to democracy*, a publication of the Norwegian Ministry of Foreign Affairs and the Norwegian Ministry of Children, Equality and Social Inclusions, 06/2010.

5 In particular, Section 3 (General clause) states that “direct or indirect differential treatment of women and men is not permitted.” However, Section 3a (Affirmative action in favour of one of the sexes) provides that “differential treatment that promotes gender quality in conformity with the purposes of this Act is not a contravention of Section 3.”

6 A public liability company (plc) is a company in which none of the shareholders are personally liable for the company’s debts. This type of company usually has many shareholders and is governed by strict rules in terms of board composition and share capital. In order to be listed on the Norwegian Stock Exchange, a company must be incorporated as public limited company. However, not all public limited companies are listed.

7 For more details on the historical background refer to *Follow-up to the Package Meeting of 9 to 10 November 2005 regarding representation of both sexes on company boards* of the Royal Ministry of Children and Family Affairs, 19 December 2005; A. Storvik and M. Teigen, *Women on Board – The Norwegian Experience*, International Policy Analysis June 2010.

8 The new quota legislation received the support of the Labour Party and the Socialist Left Party whilst only the representatives of the Progress Party voted against it. In particular, in line with its liberal economic doctrine, the Progress Party argued that free market competition is the best protection against discrimination whilst a rigid quota rule may result in an unjustified discrimination of the overrepresented gender.

9 According to Section 6-11a of the PLCs Act, “where two or more board members are elected from and among employees, both sexes shall be represented. The same applies to deputy directors. The second and third sentences do not apply if one of the sexes represent less than 20 percent of the total number of employees in the company at the time of election.”

of warning, giving the company a period of one month each with a warning to change the composition of the board. If such noncompliance is not cured within the given time, the company will be dissolved.<sup>10</sup>

Further, for companies that are being formed, Section 5-2 of the Norwegian Register of Business Enterprises Act (*foretaksregisterloven*)(Refusal of Registration) states that, if a company under incorporation does not fulfill the legal requirements for board composition, and does not correct it within a given time, it can be denied registration.

Notably, according to an agreement between the Cabinet and the private business sector, the quota rules approved with the PLCs Act would not have become mandatory if companies had voluntarily achieved the required gender representation on their boards by July 1, 2005. However, a survey carried out by the Central Bureau of Statistics showed that, by such deadline, only 68 out of 519 public limited companies (approximately 13 percent) managed to voluntarily comply with the gender representation quota. Therefore, on December 2005, the government decided that the quota rule for boards of public limited companies would become mandatory as of January 1, 2006.<sup>11</sup> As a result, public limited companies registered before December 31, 2005 were given two years to comply with the requirements of the quota rule while new registered public limited companies had to comply with the 40 percent gender rule as a condition of registration.

During the two-year transitional period, most of the limited liability companies managed to achieve the 40 percent requirement. In fact, by January 2008, only 77 public limited companies had failed to comply with the gender representation rule and those companies received a letter from the Registry giving them four weeks’ notice to comply with the rules. The deadline was fixed for the middle of February 2008 and, of those 77 noncompliant companies, only 12 received a second four weeks’ notice with a public announcement. By April 2008, all public limited companies were in compliance with the 40 percent mandatory quota representation and such quota has been met ever since.

The same provisions of the PLCs Act on gender representation are also applied to all publicly owned enterprises (state-owned private limited liability companies and state-owned public limited companies, as well as private limited liability companies and public limited companies and their wholly-controlled subsidiaries). Moreover, beginning January 1, 2004, some special state-owned companies, enterprises incorporated by special legislation, and inter-municipal companies were required to comply with the gender representation rule.

Additionally, the 40 percent quota rule was extended to cooperative societies with more than 1000 members, beginning January 1, 2008, and to private limited companies where municipalities own two-thirds or more of the shares, beginning January 1, 2010, with a two-year transitional period.

However, no rules have yet been approved for privately owned limited liability companies because most of those companies are small- and medium-sized family enterprises and the shareholders are often members of the boards. However, according to the Central Bureau of Statistics in 2011, only 17 percent of the board members of private limited liability companies were women. Therefore, it is possible that the quota rule will be extended to these companies in the future.

Corporate Governance code

The Norwegian Code of Practice for Corporate Governance also has regulations regarding board composition. The code is a series of recommendations for listed public limited companies. As it is only a recommendation, the companies are not obliged to follow it, but listed companies are required to give an explanation if they are not in compliance with the code (“comply or explain”). In particular, it is recommended that “due attention should be paid to the balance between male and female members of the board.”

10 According to Section 16-16 of the PLCs Act: “When the conditions of § 16-15 (1) 1 through 4 above have been satisfied, the Register of Business Enterprises shall give the company notice thereof. In cases as mentioned in § 16-15 (1) 5, the notice is given by the Register of Company Accounts. The company shall be allowed a period of one month to remedy the matter and will be informed of the consequences of exceeding that period.”

11 “Rules regarding gender balance within boards of Public Limited Companies,” press release No. 05116 dated 8 December 2005 of the Ministry of Children, Equality and Social Inclusion, “If the company has not remedied the matter by the end of the period, the Register of Business Enterprises or the Register of Company Accounts shall repeat the notice by announcement in the Brønnøysund Register Center’s electronic bulletin for public announcements and in abbreviated form in a newspaper which is generally read at the company’s place of business. The announcement shall state that the conditions for dissolving the company are satisfied, and that the company is allowed a period of four weeks from the electronic announcement to remedy the matter. The consequences of exceeding that period shall also be stated. Wherever appropriate the notice under this provision may instead be given by the city court.”

It is important to note that, before and during the two-year transitional period, the gender representation rule was actively debated in political and public arenas. Opponents argued that there were not enough competent and experienced women to replace the experienced men already sitting on boards. In order to facilitate the identification of qualified female candidates, national, regional, and sector-specific databases were established containing the resumes of professional women from different fields. Companies could search those databases to identify suitable candidates. Moreover, specific programs to qualify women were organized by professional associations and employer organizations.<sup>12</sup>

The other two arguments raised most by opponents related to the alleged strong interference that mandatory quotas have on the owners’ right to select and appoint their candidates and to the unfairness of a selection criterion based only on gender.<sup>13</sup> There is a debate among researchers as to whether there is a connection between increasing the representation of women on boards and corporate performance and, if so, whether it is positive or negative. However, almost all researchers agree that the long-lasting effects on corporate value and performance of the mandatory quota rule should be analyzed only in future periods when statistical results for a number of years are available. Regardless, gender quotas have been demonstrated to be effective at increasing board diversity and are now emulated by several European countries such as Iceland, Sweden, Spain, France, and Italy.

Conclusion

Although Norway has made significant progress since 2008 with regard to gender parity on corporate boards and the estimated earned income for women and men has reached a perfect balance according to Global Gender Gap Report 2011,<sup>14</sup> studies show that there are still areas that need focus. In particular, the quota law has not yet changed the top management in the big companies since the majority of boards are still chaired by men; women tend to remain in non-executive positions and only two percent of the CEOs of public limited companies listed on the Norwegian Stock Exchange are women.<sup>15</sup> These areas present challenging goals for the Norwegian legislation.

12 A. Storvik and M. Teigen, *Women on Board – The Norwegian Experience*, International Policy Analysis June 2010.

13 *Id.*

14 *Global Gender Gap Report 2011, supra.*

15 A. Storvik and M. Teigen, *Women on Board – The Norwegian Experience, supra.*



Spain<sup>1</sup> - Updated for 2013

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Legislative Efforts

The right to equality was proclaimed in Spain in 1978 with the enactment of the Spanish Constitution. Specifically, Article 14 of the Spanish Constitution states that “Spaniards are equal before the Law, thus no discrimination for reasons of birth, race, sex, religion, opinion, or any other condition or circumstance may prevail.” The right to equality under the Constitution expressly recognizes the inherent equality between women and men.

A number of regulations were enacted in order to implement the Constitutional mandate articulated in Article 14 with regard to gender parity. Such regulations, although binding, proved to be ineffective, as parity in different areas, especially in labor and business related areas, had not been achieved. Therefore, on March 22, 2007, the Spanish Congress enacted Law 3/2007 on effective equality between women and men (the “Law on Equality”), with the intent to unify these disparate regulations and to establish a single norm for equality and gender parity.

The Law on Equality incorporates into the Spanish regulation several European directives, including Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 and Council Directive 2004/113/EC of 13 December 2004.

The Law on Equality introduces a provision for companies<sup>2</sup> to establish boards of directors with a “balanced presence” of women and men. A balanced presence is defined, by the Law on Equality, as a maximum presence on a board of each gender of 60 percent and a minimum presence of 40 percent.

Additionally, regional legislation in Spain, such as those in the Autonomous Regions of Galicia and Extremadura, include provisions similar to those set forth in the Law on Equality. Galicia’s<sup>3</sup> legislation includes the obligation that companies with a corporate address in that region must annually inform the regional administration of the composition of their boards of directors. Upon review of such information, the administration will issue public or private recommendations. The legislation of the Autonomous Region of Extremadura<sup>4</sup> mandates that regional administrations that hold stakes in private companies must appoint members of their boards in accordance with the “balanced presence” principle.

Companies have a period of eight years from March 24, 2007, the date when the Law on Equality entered into force, to comply with the “balanced presence” legal requirement.

According to the 2013 study of women on boards of directors and decision-making bodies of Spanish companies published by the Cesce Group (the “Cesce Report”), there have been tangible improvements as a result of the above legislation. The Cesce Report found that women represented 29.02 percent of boards of directors and decision-making bodies in 2012; however, this percentage has fallen to 25.94 percent in 2013. Further, the Cesce Report confirms that companies lacking a female presence on their boards of directors are in sectors typically considered to be more male-dominated, such as construction, energy production, and extraction industries. Additionally, according to the Cesce Report, in companies with state ownership, the presence of women on boards has consistently increased from 25.30 percent in 2008, 30.75 percent in 2012, and 32.56 percent in 2013. An interesting trend noted in the Cesce Report is that companies with more than 40 percent women on their boards of directors take on less credit than companies with

a lower representation of women directors when compared with the whole business community. In fact, companies with greater than 40 percent women directors assume a credit risk of 70.67 percent versus 84.21 percent assumed by companies with fewer women directors.

The chart below summarizes the percentage of women on boards in 2012 and 2013<sup>5</sup>:

	2012	2013
<b>Women on boards of directors and decision-making bodies (Total figures)</b>	<b>29.02%</b>	<b>25.94%</b>
<b>Women on boards of directors and decision-making bodies in companies with state ownership</b>	<b>30.75%</b>	<b>32.56%</b>

However, it is notable that only 11.23 percent of firms subject to the Law on Equality have more than 40 percent women directors, according to the Cesce Report.

Therefore, although the data mentioned above indicates that the legal requirement has not yet been achieved, companies have until 2015 to adopt the necessary measures to have a more balanced ratio of women on their boards of directors. Moreover, it seems that companies are taking some positive steps toward this goal, although at a slow pace.

The slow progress toward achieving these legal thresholds may be a result of the fact that, contrary to other jurisdictions, there is no statutory penalty for noncompliance in Spain. The Spanish legislature did not include sanctions in the event companies do not adopt the necessary measures by 2015. Currently, companies only need to disclose through their annual accounts<sup>6</sup> (or by other means imposed by sectoral and regional regulations) the gender composition of their boards of directors.

Instead of encouraging compliance through sanctions, the Law on Equality has attempted to induce companies to develop gender equality policies and plans by creating other incentives, such as an “award” for companies that implement equality policies internally. Such policies include, among others, a balanced presence of women and men on the boards of directors, as well as in the various groups and categories of company employees. In May 2012<sup>7</sup>, this award was given to 30 companies including Acciona Ingeniería, S.A., Banco Bilbao Vizcaya Argentaria, S.A., CaixaBank, S.A. and Ernst & Young, S.L. It is important to highlight that certain Autonomous Regions have also established awards for companies that comply with local equality regulations.

There may be reasons other than the lack of sanctions for the slow implementation of gender parity on corporate boards. In particular, the issue of gender parity on boards of directors, although endorsed by the Spanish legislatures (both national and regional as described above), is still debated among scholars. In general, there are two main views. One on hand, those who defend the benefits of gender parity on boards state that it provides the boards of directors with more talent, increased creativity, and innovation, and that it represents a vision of society that more accurately

1 Ms. García Guijarro and Ms. Calvo Abril have updated the information contained in previous chapters, initially prepared by former attorneys at Watson, Farley & Williams.

2 The provision only refers to companies whose assets are higher than Euro 11,400,000; whose net annual income exceeds Euro 22,800,000; and whose average employee number is over 250.

3 Law 2/2007, of 28 March, on Law on Equality of employment for women.

4 Law 8/2011, of 23 March, on Law of Equality between women and men and against gender violence.

5 Data provided based upon the Cesce Report 2013.

6 Royal Legislative Decree 1/2010, of 2 July, on Law on Capital Companies, states that the report that accompanies the annual accounts shall include information on the gender distribution of the staff of such company, breaking down the categories and levels, which shall include top executives and board members.

7 The award to be granted in year 2013 has not yet been decided.

reflects its actual composition. The main counter-arguments articulated by those who are reluctant to implement gender parity policies are that the market responds negatively to the appointment of women in high positions, that it may complicate the decision-making process, and that women tend to be more risk-adverse than men.

Corporate Governance Code

Particularly with regard to listed companies, a complementary effort to the initiatives described above has been made since May 2006 (before the enactment of Law on Equality). Specifically, the Spanish National Stock Exchange Commission (“Comisión Nacional de Mercado de Valores”) issued a good governance code (the “Good Governance Code” or the “Code”). This Code sets out recommendations in a variety of areas that listed companies can either follow voluntarily or explain why they are not following. One of those areas is the function and composition of boards of directors.

Based on the principle that boards of directors should reflect a diversity of knowledge, experience, and gender in order to pursue the social interests of a company, Recommendation 15 of the Good Governance Code focuses on the gender composition of boards of directors. The Good Governance Code sees an increased female presence on boards as an ethical, political, and corporate responsibility challenge, as well as a means for increasing efficiency in companies by not disregarding 51 percent of the Spanish population.

Therefore, the Good Governance Code invites listed companies to make an effort in the search for female candidates to cover vacancies on boards. As a consequence, there has been a gradual increase in the number of women on the boards of directors of listed companies. According to the Spanish National Stock Exchange Commission<sup>1</sup>, in 2011 the number of female directors within Spanish IBEX 35 companies amounted to 61 percent, up from 53 percent in 2010 (constituting 12.1 percent of IBEX 35 companies in 2011).

The Good Governance Code specifically recommends that such female candidates should be nominated to cover vacancies of independent directors as opposed to other types of directors. As a result of this recommendation, the annual report on corporate governance of Spanish IBEX 35 companies issued by the Spanish National Stock Exchange shows that 65.6 percent of the women directors are independent, while 27.9 percent represent “dominical” directors who serve on the board as a result of a condition required by a shareholder of the company. Only a mere 3.3 percent of women are executive directors.

Likewise, the Good Governance Code recommends that listed companies with a small number of women directors should explain the reasons for this and describe the initiatives undertaken to correct the situation. The Code places particular emphasis on the selection processes. With that in mind, the Law on Securities Exchange<sup>2</sup> has, as of March 2011, turned this recommendation into a legal obligation for listed companies by requiring them to provide information in their annual corporate governance reports on the composition of their boards of directors, as well as the degree of compliance with the recommendations of the Good Governance Code.

More recently, on 20 March 2013<sup>3</sup>, a Ministerial Order from the Ministry of Economy was passed, which specifically identifies the content and structure of the information to be included in the annual corporate governance reports. Among the content of such information, listed companies must include any effective measures adopted during the year to advance the implementation of the legal mandate for equality between men and women.

Conclusion

The information presented by the Spanish National Stock Exchange Commission shows that the participation of women on boards of directors is still below the 40 percent minimum required by the Law on Equality. Although this

requirement is not effective until 2015, the 2012 PwC España and Isotés report indicates that at the current rate it is unlikely that the minimum threshold of 40 percent female presence on boards of directors will be achieved by 2015<sup>4</sup>. If that is the case, it is likely that Spanish legislators will re-analyze the situation and take further actions that might include introducing sanctions for noncompliance by companies, similar to those already implemented in other European countries.

Although the legal requirement has not yet been achieved in Spain, there has been improvement in gender parity on boards of directors and in companies generally since the enactment of the Law on Equality, although the steps that have been taken proceed at a slow pace. More importantly, companies still have until 2015 to adopt the necessary measures to have a more balanced ratio of women on their boards of directors. This deadline may impact companies' director selection processes going forward.

1 Annual report on corporate governance of Spanish IBEX 35 companies issued by the Spanish National Stock Exchange for the year 2011.  
2 Law 24/1988, of 28 July, on Law on Securities Exchange, as amended by Law 2/2011, of 4 March.  
3 Ministerial Order ECC/461/2013, of 20 March, on the content and structure of the annual corporate governance reports, of the annual report on salaries and other means of information of listed companies, the savings banks and other entities that issue securities admitted to trading on official stock markets.

4 Report Women as Leaders in Spain. PwC España and Isotés. 2012.

Sweden - New for 2013

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The debate concerning women’s rights has been ongoing for many years in Sweden and, like other Nordic countries, it has always been in the forefront of the issue. “Equality politics” took form as an independent political field in the 1970s, tackling issues such as combining work with family life, and equal power and influence for men and women have been a focus ever since. Since the 1990s, more focused work and political efforts have been undertaken in order to increase the number of women represented in different spheres of society. Gender diversity varies within different spheres, and is greater in the political sphere than among decision makers in the business community. Looking at the Swedish parliament, almost 45 percent of the members are women. The level of female participation in politics and in the economic sphere has increased significantly during the past decades.

However, like most countries in Europe, there has in recent years been a large public debate in Sweden regarding the lack of women represented on corporate boards and in senior management positions, particularly in listed companies.

The debate on whether or not to introduce mandatory gender quotas in Sweden is highly controversial and opinions on the way forward diverge. The Swedish Minister for Gender Equality is opposed to mandatory gender quotas and recently stated that a mandatory gender quota is not the best solution to increase the number of women on company boards.<sup>1</sup> The Swedish Minister for Finance, however, does not fully agree. Believing that companies cannot solve the issue on their own, he asserts that Sweden might be forced to introduce mandatory gender quotas.<sup>2</sup>

The Swedish opposition parties such as the Social Democratic Party have also expressed a more positive attitude toward mandatory gender quotas.<sup>3</sup>

The Second AP Fund's Annual Female Representation Index

Since 2003, the Second AP Fund (one of the Swedish public pension funds) has annually published “The Female Representation Index.” The index is intended to contribute to an objective debate about ways to increase the percentage of women serving on boards and in senior management positions in Swedish listed companies. The aim is to broaden the recruiting base and the diversity of boards and senior management, which according to the Second AP Fund will create better companies and enhance their share value.<sup>4</sup> According to the 2013 index, the proportion of women on boards of listed companies declined for the second year, from 22.9 percent (2011) to 22.7 percent (2012) and 22.3 percent (2013). The proportion of women represented in the same companies’ senior management has on the other hand risen steadily, from 15.3 percent (2011) to 16.3 percent (2012) and to 17.2 percent (2013).

The index from June 2013 states that the positive trend of an increased share of female board members and women in senior management positions is still very slow. If development continues at the current rate, it will take approximately 31 years before the share of female board members reaches 50 percent and 52 years until the share of women in senior management positions reaches 50 percent.<sup>5</sup>

The Swedish Corporate Governance Code

The Swedish Corporate Governance Code (the “Code”) was first introduced in 2005 and applies to all listed Swedish

1 Article in the Swedish newspaper Dagens Industri on 19 April 2013.  
2 Article in the Swedish newspaper Dagens Industri on 20 April 2013.  
3 Article in the Swedish newspaper Dagens Industri on 19 April 2013.  
4 AP2 Corporate Governance Report 2011/2012, available at [http://www.ap2.se/Global/Agarrapporter/Agarrapport%202012%20\\_GB\\_web.pdf](http://www.ap2.se/Global/Agarrapporter/Agarrapport%202012%20_GB_web.pdf).  
5 AP 2 Index of Female representation in publicly-quoted companies: boards, executive managements and employees, available at [http://www.ap2.se/Global/Kvinnoindex/NIS%20AP2%20Kvinnoindex%202013%20130605\\_Final%20GB.pdf](http://www.ap2.se/Global/Kvinnoindex/NIS%20AP2%20Kvinnoindex%202013%20130605_Final%20GB.pdf).

companies. The aim of the Code is *inter alia* to improve confidence in Swedish listed companies by promoting positive development of corporate governance in these companies. The Code complements legislation and other regulations by specifying a norm for good corporate governance. It is based on the principle of “comply or explain” and companies may thus deviate from individual rules in the Code, provided they report each deviation, describe their own solution, and explain why.

The Code does not contain any requirements concerning the composition of male and female board members. The Code states that “*The board is to have a composition appropriate to the company’s operations, phase of development and other relevant circumstances. The board members elected by the shareholders’ meeting are collectively to exhibit diversity and breadth of qualifications, experience and background. The company is to strive for equal gender distribution on the board.*”<sup>6</sup> A similar rule can be found in NASDAQ OMX Stockholm’s Rulebook for Issuers where it states that “*the board of directors of the company shall be composed so that it sufficiently reflects the competence and expertise required to govern a listed company and to comply with the obligations of such a company.*”<sup>7</sup>

It can be noted that the Swedish Annual Reports Act requires that the annual report shall contain information regarding the gender breakdown among members of the board of directors, managing director, and other persons in the management of the company.

According to a 2008 amendment to the Code, the nomination committee has to issue a statement when the notice to the shareholders’ meeting is issued, explaining its proposals with regard to the requirements concerning the composition of the board. This new rule was introduced against the background of the debate on gender quotation and the aim was to “force” the nomination committees to address the issue of gender balance in the boards of listed companies.

In May 2012, the Swedish Corporate Governance Board (the “Board”) stated in a response to a questionnaire from the European Commission concerning gender imbalance in corporate boards in the EU that the Board shares the opinion of the European Commission that society needs to improve the gender balance, but that the Board is opposed to the introduction of any mandatory gender quotas for listed companies.<sup>8</sup> In its response, the Board presents a number of reasons why mandatory gender quotas can be counteractive for companies.

First, the Board is of the opinion that gender balance in the boardroom is not automatically good for the business. Instead, the main concern regarding the composition of the board of directors should be the professional background, experience, and competence of the individual board members.

Second, mandatory gender quotas or any legal requirements concerning the composition of the board of directors of a privately-held company would be a restriction of the owner’s propriety rights. The owners of a company must be able to freely choose the board that they believe will be the best board for the company and its shareholders.

Looking at the development of the number of female board members and the number of women in senior management positions during the past ten years, the development has not been the same. The share of female board members has increased from approximately six to approximately 27 percent, while the share of women in senior management positions has increased from approximately 11 to approximately 16 percent. The Board states that a large gap has been created between the share of female board members and women in senior management positions – the type of positions that make up the main recruitment base for board positions. Taking this development into account, the Board is of the opinion that attention should be directed toward measures aimed at increasing female representation at the highest management levels, which also should lead to higher female board representation.

The Board concludes by stating that Swedish listed companies have come a long way and a reasonable gender balance may be attainable within a not very distant future without mandatory gender quotas.

6 The Swedish Corporate Governance Code, rule 4.1.  
7 NASDAQ OMX Stockholm Rulebook for Issuers, rule 2.4.1.  
8 The Swedish Corporate Governance Board’s answer to the consultation on gender imbalance in corporate boards in the EU, available at <http://www.corporategovernanceboard.se/media/60401/swedish%20corporate%20governance%20board%20-%20gender%20imbalance%202012-05-28%20pdf.pdf>.



The Confederation of Swedish Enterprise

The Board's view on gender quotas was supported by the Confederation of Swedish Enterprise (the "Confederation"). The Confederation is a non-profit association of member organisations including industry or employer associations, and other business organisations. The Confederation is strongly against mandatory gender quotas and believes that quotas are contradictory to equality since, in their view, special treatment and different rules have never created fairness but rather the opposite.<sup>1</sup> In the Confederation's answer to the same questionnaire on gender imbalance that the Board answered, the Confederation *inter alia* stated that "*the issue of size and composition of the board should exclusively be an issue of the owners of the company*" and "*statutory quotas for women on corporate boards are an unacceptable intervention in ownership rights.*" The Confederation further stated that quotas are not a sustainable solution for getting more women into leadership positions and interferes with the shareholders' right to choose the team they need to lead the company.<sup>2</sup>

The Swedish Government

In its response to the European Parliament's proposal for a directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures that was presented in November 2012,<sup>3</sup> the Ministry of Justice stated that Sweden supports the general aim of the proposal to improve gender balance in company boards, but that the proposed actions were too extensive. The proposal *inter alia* included a suggestion to formalise and harmonise the appointment/selection procedure for boards in listed companies.

The Swedish Ministry of Justice expressed *inter alia* that the election of board members at the shareholders' meeting is "free" and that any shareholder has the right to propose a board candidate at the general meeting.

Further, the strong element of trust and the emphasis on individual qualities of board members would not be possible to maintain if the process is to be formalised. Trust, knowledge, and personal qualities are the very essence of the relationship between the owners and the board, and regulating this relationship is a delicate task. Owners appointing a person as their trustee should not be overruled by an authority, in the opinion of the Swedish Ministry of Justice.

The Swedish Ministry of Justice also expressed concerns that the directive in its current draft runs the risk of interfering with the trade unions' right to freely choose and appoint employee representatives.

Conclusion

The Swedish Government has expressed support to improve gender balance on both boards and in senior management of listed companies, but there is presently no legislative proposal concerning the introduction of mandatory gender quotas. Additionally, there is no clear consensus of whether or not mandatory gender quotas should be introduced in the future. The political opposition has expressed a positive attitude, while the ruling politicians seem to be somewhat divided on the issue.

The business community, represented by the Board and the Confederation, is very clear on their opinion and is opposed to the introduction of any mandatory gender quotas for listed companies. As stated above, the Board is of the opinion that a reasonable gender balance may be attainable in Sweden in the near future without the introduction of mandatory gender quotas. This opinion, however, is not completely shared by the Second AP Fund and its Female Representation Index, which states that it will take decades before an even gender balance is reached in Swedish corporate boards and in senior management positions.

Despite diverging opinions, there is a consensus that active measures need to be taken.

1 Information is available on the Confederation of Swedish Enterprise's website, [http://www.svensktnaringsliv.se/fragor/kvotering/kvotering-mot-verkar-jamstalldhet\\_15050.html](http://www.svensktnaringsliv.se/fragor/kvotering/kvotering-mot-verkar-jamstalldhet_15050.html).  
2 The Confederation of Swedish Enterprise's answer to the consultation on gender imbalance in corporate boards in the EU, available at [http://ec.europa.eu/justice/newsroom/gender-equality/opinion/files/120528/all/201/243\\_en.pdf](http://ec.europa.eu/justice/newsroom/gender-equality/opinion/files/120528/all/201/243_en.pdf).  
3 The European Commission's proposal is available at [http://ec.europa.eu/justice/gender-equality/files/womenonboards/directive\\_quotas\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/womenonboards/directive_quotas_en.pdf).

United Kingdom

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Women are notably underrepresented in UK boardrooms, but FTSE companies have made progress in the last two years toward alleviating the degree of the disparity in representation. According to the Female FSTE Report 2012 issued by the Cranfield School of Management (“Cranfield Report”), as of 2010, only 12.5 percent of directors and 5.5 percent of executive directors of FTSE 100 companies were women. Twenty-one percent of FTSE 100 companies had exclusively male boards. The statistics set out in the table below illustrate the scale of the problem and evidence that FTSE 100 companies have made slow progress in recent years.

Female FTSE 100	2011-January 2012	2010	2009
Female held directorships	163 (15%)	135 (12.5%)	131 (12.2%)
Female executive directorships	20 (6.6%)	18 (5.5%)	17 (5.2%)
Female non-executive directorships	143 (22.4%)	117 (15.6%)	114 (15.2%)
Women holding FTSE directorships	141	116	113
Companies with female executive directors	17	16	15
Companies with at least one female director	89	79	75
Companies with multiple female directors	50	39	37
Companies with multiple female directors	50	39	37
Companies with no female directors	11	21	25

(Female FTSE Report 2012)

The reasons behind underrepresentation of women on boards are complex. Women are successful at university and in their early careers. Male and female graduate entry into the workplace is fairly equal. This equality is maintained in junior management positions but not at the senior management level. There is currently a drive in the UK to address this imbalance and encourage more women into executive and non-executive board positions. The motivations for this are manifold but include:

- improving performance – there is a great body of research showing that companies do better when there is a proportionate representation of women on their boards;<sup>1</sup>
- making full use of the widest talent pool;
- being more responsive to the market; and
- achieving better corporate governance – studies indicate that the better the gender balance on a company’s board, the more likely that company is to practice good corporate governance.<sup>2</sup>

As a statement of its intention to address this issue, in May 2010 the current government in its Coalition Government Agreement pledged to, “look to promote gender equality on the boards of listed companies.” In September 2010, the Business Minister, Edward Davey, and the Minister for Women, Lynn Featherstone, invited Lord Davies of Abersoch to undertake a review of the current situation with regard to women on corporate boards, to identify barriers to women entering these positions, and to make recommendations as to what government and business can do to increase the percentage of women on corporate boards. The subsequent report, the 2011 Davies Report, found that there was a huge imbalance in the representation of men and women on corporate boards. It cited the statistic that, unless the rate of change increased, it would take 70 years to achieve equality. The same report is clear in its intention to provide “practical recommendations to address this imbalance.”

Lord Davies’ key recommendations were as follows:

- By September 2011, chairmen of FTSE 350 companies to 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 percent female representation by 2015.
- Quoted companies should be required to disclose each year the proportion of women on their boards and in senior executive positions, as well as female employees in the whole organization.
- The Financial Reporting Council should amend the UK Corporate Governance Code to require listed companies to establish a policy concerning boardroom diversity.
- Companies should report on the matters detailed in paragraph 2 above in their 2012 Corporate Governance Statement.
- Chairmen should disclose meaningful information about the company’s appointment process and how it addresses diversity in their company’s annual report.
- Investors are encouraged to recognize their critical role in engaging with company boards.

<sup>1</sup> See, e.g., Fondas, N. and S. Salsalos (2000), “A Different Voice in the Boardroom: How the Presence of Women Directors Affects Board Influence Over Management,” *Global Focus*, 12: 13-22; Izraeli, D. (2000), “Women Directors in Israel,” in *Burke, R. and Mattis, M. (eds.), Women On Corporate Boards of Directors: International Challenges and Opportunities*, 75–96 (Kluwer Academic Publishers, Dordrecht, The Netherlands); Huse, M., and Solberg, A.G. (2006), “Gender-Related Boardroom Dynamics: How Scandinavian Women Make and Can Make Contributions on Corporate Boards,” *Women in Management Review*, 21(2): 113–30; Maznevski, M.L. (1994), “Understanding Our Differences: Performing in Decision-Making Groups with Diverse Members,” *Human Relations*, 47(5): 531–52; Zelechowski, D. and Bilimoria, D. (2004), “Characteristics of Women and Men Corporate Inside Directors in the US,” *Corporate Governance: An International Review*, 12(3): 337–42; McKinsey & Company, *Women Matter: Gender Diversity, A Corporate Performance Driver* (2007); Bhogaita, M. (2011), “Companies With A Better Track Record of Promoting Women Deliver Superior Investment Performance,” *New Model Advisor*; The Co-operative Asset Management (TCAM) (2009), “Diversity and Gender Balance in Britain plc,” *The Observer*; Ahuja, A., “Women in the Boardroom Help Companies Succeed,” *The Times* (Mar. 19, 2009); Wilson N. and Altanlar, A. (2009), “Director Characteristics, Gender Balance and Insolvency Risk: An Empirical Study,” available at <http://ssrn.com/abstract=1414224>.

<sup>2</sup> *United Kingdom Department for Business, Innovation and Skills, Women on Boards* (2011), available at <http://www.bis.gov.uk/assets/biscore/businesslaw/docs/w/11-745-women-on-boards.pdf> (hereinafter “2011 Davies Report”).

- 7. Companies are encouraged to periodically advertise non-executive board positions to encourage greater diversity in applications.
- 8. Executive search firms should draw up a voluntary code of conduct addressing gender diversity.
- 9. The following two groups of women need to come together to consolidate and improve training and development of potential board members:
  - 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 fewer opportunities to take up corporate board positions.
- 10. The steering board which authored the report to meet every six months to consider progress and report annually.

Lord Davies did not recommend mandatory quotas. However, his report notes that, if the business-led approach does not work, then “more prescriptive alternatives” may be required. For a business-led approach to succeed, it will require the cooperation of investors, chairmen and chief executives, as well as executive search firms, with governments to have more of a “supporting role.” This approach was echoed in a speech made by the Home Secretary on July 4, 2011, stating that “change has more of an impact and is more long lasting if it comes from positive action, not positive discrimination.”

There have already been positive developments since Lord Davies’ report was published in 2011, and an updated report from March 2012<sup>3</sup> reflects partial compliance by FTSE 350 companies and a few dramatic improvements. For example, in the FTSE 100, women now account for 15.6 percent of all directorships, up from 12.5 percent. There have been 47 female appointments to the boards of FTSE 100 companies, and 27 percent of all new board appointments to FTSE 100 company boards were women, up from 13 percent in 2011. The number of all male boards dropped from 21 to 11. In the FTSE 250, for the first time ever, all-male boards are in the minority.

Voluntary Code of Executive Search Firms

In response to the Davies Report, the headhunting industry in the UK responded by agreeing to a voluntary code on diversity. <sup>4</sup> Specifically, on July 22, 2011, twenty leading executive search firms in the UK announced a new Voluntary Code of Conduct with regard to how such firms will assist companies with boardroom appointments.<sup>5</sup> The code sets out the following key principles of best practices:

- Succession Planning: assist in developing medium-term (rather than short term or immediate) succession plans that identify the mix of skills and experience needed to maximize board effectiveness; with a two to three year time horizon, the nomination committees can focus on a broader view, permitting flexibility in candidate specifications
- Diversity Goals: within the diversity goals established by each individual board, “explore” with the chairman if recruiting women directors is a current priority
- Defining Beliefs: work with boards to “ensure that significant weight is given to relevant skills and intrinsic personal qualities and not just proven career experience” in order to broaden the pool of candidates

3 United Kingdom Department for Business, Innovation and Skills, *Women on Boards* (2012), available at <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/12-p135-women-on-boards-2012.pdf> (hereinafter “2012 Davies Report”).

4 See, Voluntary Code of Conduct for Executive Search Firms, issued July 22, 2011 (for more information, contact MWM Consulting: Tim Burt/Robert Morgan, Stockwell Group, 0203-370-0013).

5 The list of executive search firms that signed onto the Voluntary Code are: Associated Executive Search Consultants; Augmentum Consulting; Boyden Global Executive Search; GWF Search & Mentoring; Egon Zender International; JCA Group; Heidrick & Struggles; Korn/Ferry Whitehead Mann; Lygon Group; The Miles Partnership LLC; MWM Consulting; Odgers Berndtson; Ridgeway Partners; Robinson Hambro; Rowley Williams Limited; Russell Reynolds Associates; Sciteb; Sapphire Partners; Spencer Stuart; The Zygos Partnership.

- Long Lists: ensure that, when presenting their long lists of potential board candidates, at least 30 percent are women
- Supporting Selection: provide support to candidates, particularly first time candidates, to prepare them and guide them through the process
- Emphasizing Intrinsic: provide appropriate weight to key qualities rather than “over-valuing” certain kinds of experience, inferentially referencing traditional corporate experience which would disadvantage many otherwise qualified women candidates
- Induction: advise client on best practices in the on-boarding process to help new board members

While the Voluntary Code is viewed as a positive step in the right direction, there have been recent concerns expressed by some groups that additional steps are needed. According to a report from the Equality and Human Rights Commission (EHRC) in response to the findings of the Cranfield Report, despite the steps taken by executive search firms, barriers remain, particularly in the final stages of the recruitment process.<sup>6</sup> In response to the Voluntary Code, more women are being included on the long lists of candidates for board seats. However, women candidates do not appear as frequently on the short-lists, ostensibly because these women were not viewed as “fitting in” with the culture and values of existing board members, who were mostly men. Several groups have emphasized the challenges of such subjective considerations and are pushing for more focus on core competencies.

In response to these findings, EHRC recommended more transparency in the search and evaluation process. It has also recommended that executive search firms:

- set clear definitions as to what is sought from board candidates, beyond their experience;
- with chairmen and nomination committees, review the interview process to make it more transparent, rigorous and professional;
- invest in developing the pipeline of women who could become executive or non-executive directors later in their careers; and
- regularly assess the effectiveness of the voluntary code of conduct.

Corporate Governance Code

A revised UK Corporate Governance Code was published in June 2010, which included a new supporting principal stating that, “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.”<sup>7</sup> Following the publication of the 2011 Davies Report, the Financial Reporting Council (FRC) published a consultation paper seeking views on whether the UK Corporate Governance Code should be further revised to require listed companies to establish a policy on boardroom diversity. The consultation closed on June 29, 2011 and the results were announced in October 2011.<sup>8</sup> The FRC adopted two proposed changes to the Code with minimal revisions and announced an effective date of October 1, 2012. However, the FRC declined to provide further guidance on how boards might develop diversity policies.

In addition to developments in connection with 2011 Davies Report, the Equality Act of 2010 makes it unlawful to discriminate against people who are or wish to become office holders. This would cover the situation where a woman was not appointed because of her gender (or because she was pregnant).

In May 2010, in response to the Cranfield Report and the reality that very few women were making it into top positions

6 See, Gender Diversity on Boards: The Appointment Process and and the Role of Executive Search Firms, Equality and Human Rights Commission, Research Report 85, by Elena Dolder, Susan Vinnicombe, Mary Gaughan, and Ruth Sealy, International Centre for Women Leaders, Cranfield School of Management, Cranfield University (Spring 2012).

7 Supporting Principle B2 Revised UK Corporate Governance Code June 2010.

8 Financial Reporting Council, Feedback Statement: Gender Diversity on Boards, October 2011, available at: <http://www.frc.org.uk/images/uploaded/documents/Feedback%20Statement%20on%20Boardroom%20Diversity%20October%202011.pdf> (hereinafter “FRC Feedback Statement”).

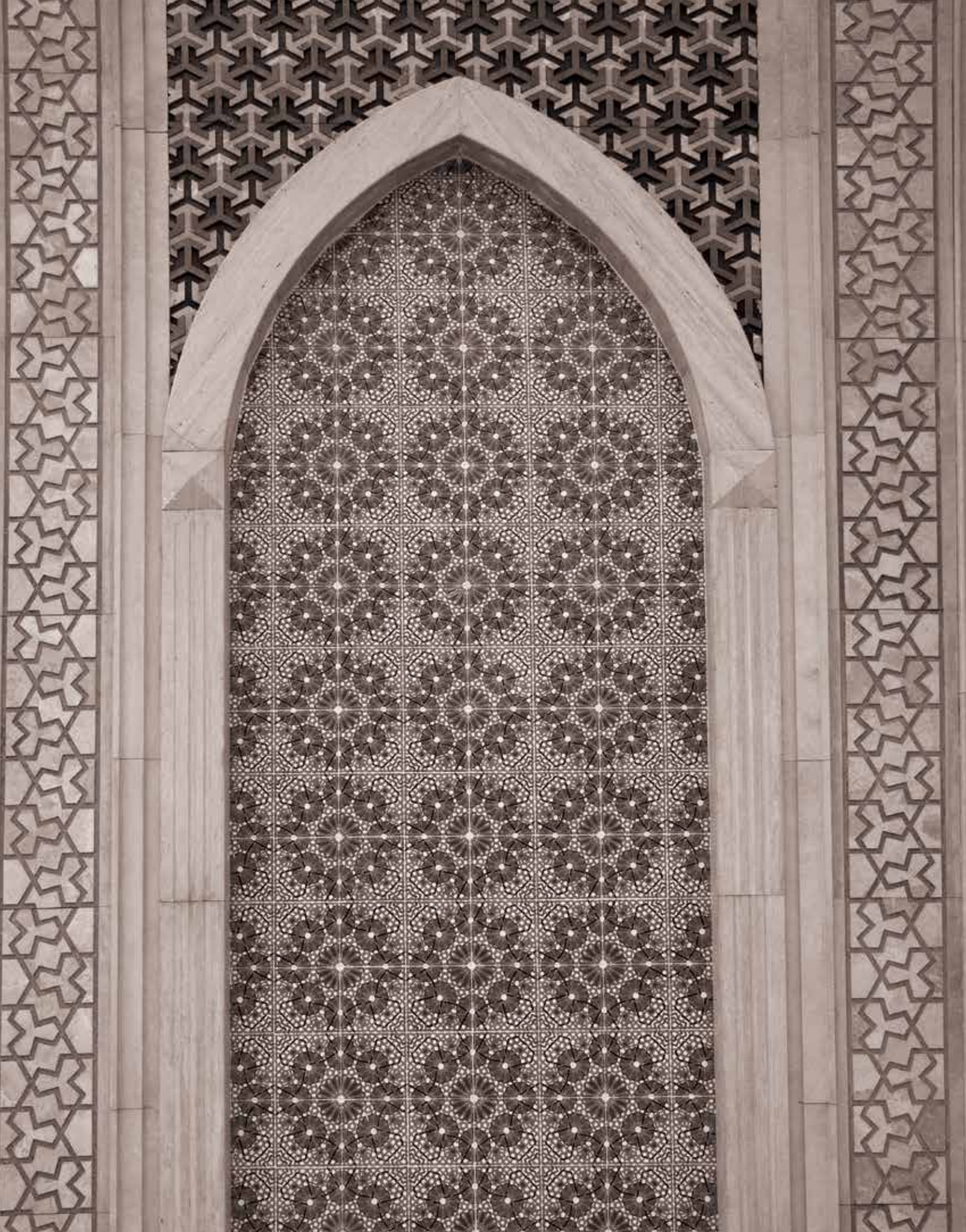


at UK corporations, Helena Morrissey (CEO, Newton Investment Management) and Labour peer Mary Goudie formed the 30 Percent Club to galvanize the business community into action. The 30 Percent Club and its member corporations work with company chairmen to appoint more women to their boards; assist companies in trying to improve their diversity and with women seeking board appointments; liaise with related groups, including executive search firms, to improve boardroom diversity; influence the political agenda and garner increased media coverage; and track progress toward the 30 percent goal.<sup>9</sup>

In the absence of prescribed legislation, the UK Government, business groups, and other pressure groups are working to insure that the issue of women on corporate boards remains at the center of national debate. Since the issuance of 2011 Davies Report, there have been positive developments in the number of women appointed to board positions as well as voluntary action within the headhunting industry. It remains to be seen, however, what the long term results of the debate will be and whether this year's trend will continue and lead to a significant increase in the representation of women on corporate boards, and, if not, whether there will be renewed discussion of implementing mandatory requirements such as quotas.

<sup>9</sup> See [www.30percentclub.org.uk](http://www.30percentclub.org.uk).





## BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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MIDDLE EAST



Middle East

**Mona Al-Sharmani, Associate  
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In the Middle East, the social structure is one that is primarily built around the family unit. Therefore, family-owned companies and businesses are common and dominant in the region. This has created a web of strong relationships between various family-led companies and government-owned entities. This, in turn, has resulted in a business culture that sustains interlocking board memberships across major private and public companies. Corporate boards are commonly filled from within or through this strong network of existing directors of major family-owned and government-owned companies. This naturally reduces the professional prospects of women and men who are outside this strong network of interlocking interests and positions.

In many of the Middle East countries, *wasta*, which means “connections,” is very important for both men and women in seeking senior positions, particularly in the private sector. Against this backdrop there are also the persistent social and cultural barriers against women in the region. As a result, the subject of parity among men and women on corporate boards has yet to gain any considerable focus or interest among the political and economic elites, with the exception of Israel. Although gender equality in education has been widely supported in many Middle Eastern countries, there has been less support for equality for women in employment. In fact, explicit legal gender differentiation is common in some Arab countries, both in accessing public or private institutions and in using property.<sup>1</sup> A comparative study of the percentages of women directors in Europe, the Americas, Asia-Pacific, and the Middle East found that the Middle East scored the lowest percentage at 3.2 percent.<sup>2</sup>

In the past few years, many of the countries in the region have embraced the international efforts led by the World Bank, the International Finance Corporation, and the Organization for Economic Cooperation and Development to enhance the corporate governance standards in the region as a means of attracting foreign capital and enhancing capital market development. Many of these countries have adopted, or are in the process of adopting, corporate governance codes to attain higher standards and strengthen listing rules to promote disclosure and transparency. However, as described in the chapters examining legislative, regulatory, or voluntary initiatives in Egypt, Jordan, and Israel, there are differences in how Arab countries have chosen to address the issue of women's participation on corporate boards.

1 Women, Business and the Law (2010), *Removing barriers to economic inclusion*, Washington, DC, The World Bank.  
2 Women Directors International (2010), *Accelerating Board Diversity*.



Egypt

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Egypt is the most populous country in the region with a population of approximately 82.1 million<sup>3</sup> of which approximately 41.3 million<sup>4</sup> are women. Egypt has historically played an important political role within the Arab world, and Cairo, its capital, has been the headquarters for the League of Arab States since its creation in 1945. Furthermore, the post of the Secretary-General of the Arab League has traditionally been held by an Egyptian national. Unlike many of the oil-rich Arab countries, Egypt is a lower-middle income country. Although education has been largely accessible to Egyptian women, women’s participation in the labor force is only 24 percent.<sup>5</sup> The majority of urban women hold public sector jobs with higher job retention found in the public sector than the private sector.<sup>6</sup>

Corporate Governance Code

Despite the lack of a robust legal and social structure that promotes gender equality in business in general, and on corporate boards in particular, women’s participation on corporate boards is noteworthy, particularly compared to other countries in the region. A recent survey found that the aggregate percentage of women on corporate boards in Egypt was 7.0 percent, 7.6 percent and 6.7 percent in 2009, 2010, and 2011 respectively. Even more interesting perhaps, the percentage of companies with a female chair was 12.5 percent, 14.3 percent, and 12.5 percent in 2009, 2010, and 2011 respectively, and the percentage of female committee membership was 6.3 percent in audit committees, 12.5 percent in governance/nomination committees, and 7.7 percent in compensation committees in 2011.<sup>7</sup> These positive indicators may be partly explained by the overall support that the previous regime provided in enhancing women’s rights in Egypt. In fact, the previous government of the deposed President Hosni Mubarak adopted legislation mandating at least 64 out of a total of 508 seats in the lower house of Parliament be reserved for women.<sup>8</sup> While this was an important milestone for women’s participation in the political arena, one needs to caution that, according to numerous social sciences studies on Egypt in the past thirty years,<sup>9</sup> the commitment of deposed President Mubarak to realizing gender equality and justice through legal reform and policy making was selective, non-substantive and, for the most part, self-serving. One should also add that Egyptian civil society, and in particular a wide range of women’s rights organizations, advocated tirelessly (despite serious government restrictions on their activities) for expanding and strengthening Egyptian women’s rights, although most of their effort was concentrated on reforming family laws.

The Egyptian Exchange, one of the oldest stock exchanges in the region, traces its origins to 1883 when the Alexandria Stock Exchange was established, followed by the Cairo Stock Exchange in 1903. Both exchanges merged in 1907 and are commonly known as the Cairo and Alexandria Stock Exchange (CASE). CASE is a quasi-governmental body under the supervision of the Capital Market Authority, the securities market regulator.

The Egyptian corporate legal framework has its origins in French civil law. The Capital Market Law 95 of 1992 regulates the capital market and provides the legal framework and supervision of CASE and financial institutions including brokerage firms. Egypt adopted a Code of Corporate Governance in 2005 which was modified in March

3 The World Factbook, Central Intelligence Agency. Available at:www.cia.gov/library/publications/the-world-factbook.  
4 Women, Business and the Law (2010), *Removing barriers to economic inclusion*, Washington, DC, The World Bank.  
5 Women Directors International (2010), *Accelerating Board Diversity*.  
6 World Development Report (2012).  
7 GovernanceMetrics International (March 8, 2011), *2011 Women on Boards Report*.  
8 International Foundation for Electoral Systems, *Elections in Egypt: Analysis of the 2011 Parliamentary Electoral System*, IFES Briefing Paper, November 2011.  
9 See Mervat Hatem. “Economic and Political Liberation in Egypt and the Demise of State Feminism,” in: *International Journal of Middle East Studies*, 1992; Mervat Hatem. “Egyptian Discourses on Gender and Political Liberalization: Do Secularist and Islamist Views Really Differ?” in: *Middle East Journal*, 1994; Sherifa Zuhur. “The Mixed Impact of Feminist Struggles in Egypt during the 90s,”in: *Middle East Review of International Affairs*, Volume 5, No. 1, 2001.

2011 (Code).<sup>10</sup> The Code applies to all companies listed on CASE and all non-listed financial institutions. The Code sets forth governing principles to create more transparent and disclosure-oriented corporate boards, emphasizing the importance of establishing risk management committees and adopting rules on avoiding conflicts of interest. The Code does not contain any rules mandating diversity on corporate boards. Although all listed companies on CASE are required to adhere to the Code it is, in practice, toothless. There are no meaningful consequences for noncompliance other than requiring companies that fail to adhere to these principles to disclose the reasons for such failure in their annual reports.

Conclusion

Given the recent political changes in Egypt and the overwhelming success of the Muslim Brotherhood party in the recent parliamentary elections that took place in late 2011, it is unclear whether Egyptian women will continue to have a meaningful presence in politics and the economy. In the most recent May 2012 elections, Islamist Parties (with a majority from the Muslim Brotherhood Party, namely the Justice and Freedom Party) were the winners of most of the Parliamentary seats in the first free parliamentary elections after the January 25, 2011 revolution. The first round of presidential elections resulted in the winning of two candidates reflecting two opposite views: Ahmed Shafiq (a former military general who served as the last prime minister of the deposed President Mubarak), was an independent candidate advocating for a secular based government. The second – and prevailing – candidate was Mohamed Morsy, the candidate of the Freedom and Justice Party advocating for a government based on Islamic tenants. On the issue of women’s rights, Shafiq stated his commitment to protecting and enhancing women’s rights in addition to appointing women to senior positions in his government.<sup>11</sup> Although Morsy also stated his commitment to promoting women’s rights, some skepticism remains among some in Egypt as to the Islamist Party’s willingness to uphold some of the existing legal and political accomplishments gained by women in Egypt, let alone agree to further political and economic rights of women.

While it remains unclear whether women will find a strong ally in Morsy’s government, it would be simplistic and misleading to attribute this uncertainty about how Egyptian women will fare after the revolution to the fact that religiously-oriented political forces are the key factors in the new public sphere of Egypt. Rather, this uncertainty is also due to the lack of commitment on the part of almost all current political forces in the country (whether liberal or otherwise) to incorporate gender equality as a key component of the agenda for establishing a new Egypt. In fact, it was the Supreme Council of the Armed Forces (SCAF), which governed Egypt during the transitional period and was dominated by generals appointed by the deposed President Mubarak, that was responsible for making things worse by repealing the parliamentary quota that ensured 64 seats in the Parliament are held by women.<sup>12</sup> The results of the parliamentary elections earlier this year provide an example of this failure: none of the running parties made any serious effort to create a real space or opportunity for female candidates to run, with the result that only eight women won Parliamentary seats out of a total 508 seats.<sup>13</sup>

There are several prominent non-governmental organizations (NGOs) in Egypt focusing on advancing women’s rights such as the Center for Egyptian Women’s Legal Assistance, Nazra, Egyptian Center for Women’s Rights, Arab Alliance for Women’s Rights, and the Association for Development and Enhancement of Women. By and large, the common theme reflected in the primary objectives of the above-mentioned NGOs are to seek legislative reforms in the area of family law, advocate for broader women’s representation in government and judiciary systems, and promote economic empowerment of women.

10 Ministry of Investment (March 2011), *Egypt Code of Corporate Governance*, Available at: www.eiod.org.  
11 Khairy Ramadan interceiw with Ahmed Shafiq on “Momkin” aired on CBS on June 1, 2012.  
12 International Foundation for Electoral Systems, *Elections in Egypt: Analysis f the 2011 Parliamentary Electoral System*, IFES Briefing Paper, November 2011.  
13 Ziad Baha El Din, *The Scandal of Women’s Representation in the Parliament: Are we in the 21st Century?*, Al-Shorouk, 10 January, 2012 (Arabic publication).

Israel - Updated for 2013

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In 1951, a mere three years after the establishment of the State of Israel, the Israeli Parliament (the “Knesset”) enacted the Women’s Equal Rights Law whose mission was to ensure full and complete equality between men and women and to uproot any legal discrimination against women.<sup>1</sup>

In 1988, the Equal Employment Opportunities Law was enacted, which prohibits employers from discriminating between their employees or those seeking employment based on a number of characteristics, among which are gender, sexual orientation, family status, pregnancy, and age.<sup>2</sup>

Government Companies

Although the issue of gender parity in general, and on corporate boards in particular, was not specifically addressed in the above legislation, it has been the subject of public debate in Israel over the last two decades. In 1993, an amendment to the Government Companies Law was adopted, which required that the board of directors of a government company must have “adequate representation” of both genders and that, until such adequate representation is reached, the government ministers will appoint, to the extent possible under the circumstances, directors from the gender that is underrepresented.<sup>3</sup> A government company is defined as a company in which the State holds more than 50% of the voting rights in the general assembly or has the right to appoint more than half of the directors. Each government company is under the responsibility of a specific minister and under the supervision of the Government Companies Authority (GCA).

While “adequate representation” was not defined in the 1993 amendment, a 2007 government resolution clarified that adequate representation means 50% (the “Resolution”).<sup>4</sup> It further stated that if the appointing minister demonstrated to the satisfaction of the GCA and the Authority for the Advancement of the Status of Women (the “Authority”) that no suitable woman was identified to serve as a director of a government company following an active search, then the GCA can approve the appointment of a man to the position even though women comprise less than 50% of the directors on the board of that company. The Authority, which was established in 1998 as part of the Prime Minister’s Office, was set up to advance the status of women in Israel, to promote gender parity, and to coordinate between governmental and non-governmental bodies acting to promote the status of women. Among other things, the Authority assists the ministers in locating suitable women candidates to serve as directors of government companies.

According to a procedure formulated by the GCA and the Authority in July 2007, when reviewing the questionnaire of a candidate for a director’s position in a government company, the GCA review committee needs to check the percentage of women on the relevant board. If such percentage is below 50%, then the GCA review committee must draw the minister’s attention to that fact and to the legal requirement, and must delay review of the candidate application until either the minister puts forward another candidate from the opposite gender or the minister provides a written statement to the satisfaction of the GCA and the Authority as to why a candidate from the other gender cannot be put forward.

Based on a report prepared by the Knesset’s research and information center (the “Report”)<sup>5</sup>, since passage of the 1993 amendment to the Government Companies Law, there has been a sharp increase in the representation of women

1 Women’s Equal Rights Law 5711-1951.  
2 Equal Employment Opportunity Act 5748-1988, Section 2.  
3 Government Companies Law 5735-1975, Section 18A.  
4 Government Resolution No. 1362 dated March 11, 2007.  
5 Adequate Representation of Women on the Boards of Government and Public Companies (May 16, 2010)

on the boards of government companies (as a percentage of total directors), from 7% in 1993, to 29% in 1997, to 37.8% in 2000, and to 44% in 2010.

As of May 2010, 72% of the 106 government companies surveyed in the Report met the adequate representation standard, and another 6% of the companies were about to meet the standard after completing pending appointment procedures. Moreover, in nearly a quarter of the companies, there were more women directors than men. Of the remaining companies, half were missing just one woman on the board to meet the legal requirement.

Clearly, the Resolution has had a positive impact on gender parity on the boards of government-held companies. In addition, according to the Report, since the government resolution was passed, no minister has asked the Authority to grant a waiver from the requirement to appoint a female director. The Report stated, however, that only 3 of the 36 government companies’ chairpersons were women, and that only two women were serving as CEOs of government companies.

In April 2010, the Authority established a database of female candidates for director positions in government companies, which is aimed to assist ministers, CEOs, and the Authority in locating suitable candidates.

Public Companies

Unlike government companies, there is no legal requirement in Israel for gender parity on the boards of public companies, although the issue of diversity and inclusion has received heightened attention in recent years. However, the Companies Law requires a public company to appoint at least two outside directors and, where all the board members are of one gender, the appointed outside director must be of the opposite gender.<sup>6</sup> Outside directors are appointed by the general assembly, and it is required that at least a majority of the disinterested shareholders attending the meeting vote in their favor of, and no more than 2% of the total number of disinterested shareholders vote against, their appointment.

There have been recent, unsuccessful efforts to address this disparity. In 2010, a legislative proposal was submitted that sought to require public companies to provide adequate gender representation on their boards in accordance with the Norwegian model (generally, between 40-50% depending on the size of the board). However, that proposal did not win the endorsement of the government.

According to the Report, quoting information provided by the Israeli Securities Authority, in April 2010 approximately 82% of public companies that are registered only in Israel have at least one woman director, with 42% of public companies having up to 19% of their directors women. In 25% of public companies, women comprise 20-29% of their directors, and in 15% of public companies women represent more than 30% of the directors (although in only 4% of public companies did women comprise at least half of the directors). The Report notes that 16.9% of directors in public companies are women, a slight increase from 15.7% in 2007. Of those female directors, 41% were outside directors (compared to 21% amongst men). In most public companies where there are outside female directors, there are no other women on the board.

The Tel Aviv 100 Public Companies

A 2013 report by Catalyst, which is published annually, provided information on the representation of women on the boards and in management of the 100 largest publicly listed companies on the Tel Aviv Stock Exchange (the “Tel Aviv 100”).<sup>7</sup> According to that report, only 3% of the companies have a woman as chairperson of the board (compared to 5% in the previous year) and just 7.9% of the CEOs were women (a significant increase compared to 4.5% in 2011). Overall, women comprised 16.6% of the total number of board members, a very slight increase over the 16.5% in the previous year.

6 The Companies Law 5759-1999, Section 239(d)  
7 Catalyst Israel, Leading Women in Business: The 2012 Israeli Census Report for Women Representation in the Tel Aviv 100 Index (March 2013)

Of the Tel Aviv 100, 85% of the companies had at least one woman in management (compared to 82% in 2011), and in one-third of the Tel Aviv 100 women comprise at least a quarter of the management. There was at least one woman director in 91% of the boards of the Tel Aviv 100. The number of boards where at least two women serve as directors remained essentially the same – 31% in 2012 compared to 32% in 2011.

While there was a decrease of 77 seats in the overall number of directors in the Tel Aviv 100, only 12 of those seats were occupied by women. The report further noted that 36% of the women serving as directors act as outside directors compared to 20% of the men, which may be a result of the above-mentioned legislation relating to outside directors. The report noted that Israel ranked 4<sup>th</sup> in the world in terms of the representation of women on boards of public companies, behind Norway, Sweden, and Finland, all of which have specific legislation mandating the representation of women on boards of public companies.

Private Companies

No legislation has yet been approved for privately-owned companies with respect to gender representation on their board of directors.

Enforcement

In terms of enforcing the legal requirements of female representation on boards of public companies, a March 2011 amendment to the Companies Law entitles the Israeli Securities Authority to impose a financial sanction on a public company that has not appointed an outside director of the other gender in accordance with the legal requirement stated above.<sup>1</sup>

In addition, legal proceedings can also be initiated by individuals or organizations to compel government companies or the State to comply with the above-stated legal requirements. Such was the case in 1994, before the adoption of the Resolution, when the Supreme Court of Israel, sitting as the High Court of Justice, ordered the annulment of the appointment of three male directors to the board of a government company in which no women were represented.<sup>2</sup>

Conclusion

Over the past two decades, there has been remarkable progress in the representation of women on boards of public companies, and government companies in particular, in Israel. This is the result not only of legislation and regulations, but also of advocacy by various non-governmental organizations, which resulted in the issue receiving heightened scrutiny and profile in media coverage. While there is still considerable improvement to be achieved, it is important to note, as stated by the Catalyst report, that Israel is ranked 4<sup>th</sup> in the world in terms of the representation of women on boards, indicating the great strides that have already been made.

1 The Companies Law, Section 363A(b)(11)  
2 H.C. 453/94 *Shdulat Nashim v. the State of Israel*, 48 (5) P.D. 501



Jordan

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Jordan has a population of approximately 7 million<sup>14</sup> of which approximately 3.1 million are women, with women comprising about 25 percent of the work force.<sup>15</sup> Similar to many other Arab countries, Jordan is a patriarchal society where cultural traditions and social norms continue to impede women’s wider participation in the political and economic life of the country.<sup>16</sup> The Jordanian government adopted several policy and legislative measures to improve the status of women in Jordan. In fact, the Jordanian government established a quota system reserving a fraction (currently six) of the seats in the lower house of Parliament to women.<sup>17</sup> Certain members of the current Jordanian monarchy, in particular Queen Rania, have been at the forefront in advocating for wider participation of women in politics and the economy.

Corporate Governance Code

Similar to Egypt, the corporate legal framework in Jordan has its origins in French civil law. The Jordan Securities Commission (JSC) is the securities market regulator and the Amman Stock Exchange (ASE), established in March 1999, is Jordan’s only stock exchange. The JSC adopted a Corporate Governance Code for companies listed on the ASE (the “Code”) in 2009. The Code promotes international standards that require more transparency, disclosure and call for independent directors on public company boards, in addition to the creation of risk management committees. Similar to the Egyptian Corporate Governance Code, the Code does not set any standards in promoting diversity on the boards of listed companies. The Code is binding to the extent that it contains rules that are based on binding legal provisions contained in other laws such as Jordanian Securities Law or Jordanian Companies Law, otherwise the Code is nonbinding. As in Egypt, companies that fail to comply with the Code are required to provide explanation as to the reasons for non-compliance in the company’s annual report.<sup>18</sup>

Conclusion

A study of the top 50 listed companies in Jordan found that 14 percent have female directors and are primarily concentrated in the banking and services industries.<sup>19</sup> As in the case of some other Arab countries, strong connections to powerful families was found to be a key factor in the appointment of women to director positions. Although the Code is significant in enhancing awareness of the importance of corporate governance, it does not provide the appropriate impetus for transforming the corporate culture in Jordan to being more diverse and transparent.

As in Egypt, most of the non-governmental organizations (NGOs) in Jordan promote equality between men and women in society at large with a particular focus on obtaining adequate political representation in the government. The Jordan Forum for Business and Professional Women<sup>20</sup> is one of the NGOs that focuses on empowering women in the business sector by offering training, legal guidance and advocating for laws and regulations that are friendly to women in the public space.

14 The World Factbook, Central Intelligence Agency. Available at:www.cia.gov/library/publications/the-world-factbook.  
15 Women, Business and the Law (2010), *Removing barriers to economic inclusion*. The World Bank.  
16 Jordan ranks 21 (out of 33 Asian countries) with a score of 55.6 in Asia with respect to women’s legal and social status. All scores 0- 100 where 100 = most favorable. See “Women’s economic opportunity: A new global index and ranking,” *The Economist* (2010).  
17 Rohini Pande & Deanna Ford, *Gender Quotas and Female Leadership: A Review*, Background Paper for the World Development Report on Gender, April 7, 2011.  
18 Corporate Governance Code for Shareholding Companies Listed on the Amman Stock Exchange. Available at: www.jsc.gov.jo.  
19 Women Directors International (2010), *Accelerating Board Diversity*.  
20 See www.bpwa.org.jo.

Tunisia

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Tunisia has a population of approximately 11 million<sup>21</sup> of which approximately 5.2 million are women, with women constituting 28 percent of the labor force.<sup>22</sup> Straddling both Arab and North African worlds, Tunisia has long outperformed many Arab countries in attaining equality between men and women. In fact, Tunisia is the top ranking country with a score of 89.6 (a score of 100 percent being the most favorable) among 25 African countries that were surveyed and rated for women’s legal and social status in these countries.<sup>23</sup> Furthermore, Tunisia has long had the most progressive personal status code in the Arab world, prohibiting polygamy and giving women equal rights with regards to marriage and divorce. In April 2011, Tunisia’s electoral commission adopted a gender parity law that requires each political party to run an equal number of male and female candidates in the Constituent Assembly elections that took place on October 23, 2011.<sup>24</sup> Moreover, on August 16, 2011, the Tunisian Council of Ministers removed all key reservations placed by the previous government fully adhering to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>25</sup> CEDAW prohibits gender discrimination in all spheres of life and defines a national action plan for governments to end all forms of discrimination against women.

Corporate Governance Code

The Tunis Stock Exchange was established in 1969. There is no official code of corporate governance in Tunisia. The Center for Corporate Governance, a joint project of the Center for International Private Enterprise (CIPE) and L’Institut Arabe des Chefs d’Enterprises (IACE), was launched to provide corporate governance awareness in the public and private sectors. In June 2008, CIPE and IACE developed and released “Guidelines of Corporate Governance Best Practices.” However, the principle of ensuring diversity on corporate boards is not included in the guidelines.<sup>26</sup>

Conclusion

Despite the absence of an official corporate governance code in Tunisia, women are represented on the boards of companies. In fact, a study that surveyed 30 companies found that 37 percent of these companies have women directors. The overall percentage of women directors was 5.3 percent.<sup>27</sup>

As in Egypt and Jordan, the discourse on women in Tunisia is primarily framed in the broader political and economic context. The Center for Arab Women for Training and Research,<sup>28</sup> a regional institution based in Tunis, promotes the role of Arab women in the economic and political sectors through advocacy-based research, training, networking, and publications.

21 The World Factbook, Central Intelligence Agency. Available at:www.cia.gov/library/publications/the-world-factbook.  
22 Women, Business and the Law (2010), *Removing barriers to economic inclusion*. The World Bank.  
23 See “Women’s economic opportunity: A new global index and ranking”, *The Economist*, 2010.  
24 Human Rights Watch (September 22, 2011), *Tunisia on Board with Women’s Right*.  
25 Human Rights Watch (September 22, 2011), *Tunisia on Board with Women’s Right*.  
26 Guidelines of Corporate Governance Best Practices (2008). Available at: www.cipe.org/regional/menacg/index.php.  
27 Women Directors International (2010), *Accelerating Board Diversity*.  
28 See www.cawtar.org.



# BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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ASIA



China

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In China it is often said that “women hold up half the sky.” This proverb was coined by Chairman Mao about forty years ago to encourage equal treatment of the sexes. While women have enjoyed tremendous gains in gender equality in China since then, there is still substantial room for improvement regarding participation by women on corporate boards of directors.

According to a recent survey of nearly 100 Chinese companies conducted by GovernanceMetrics International, on average only 8.5 percent of board seats are held by women in China (only about a 1 percent increase over 2010), while approximately 40 percent of companies in China have no female board members.<sup>1</sup> A 2011 survey of the top 100 largest Chinese companies conducted by The Korn/Ferry Institute found that the biggest enterprises fair no better, with only 8.1 percent female representation on those boards.<sup>2</sup>

These surveys did not specify whether the companies analyzed were publicly listed. However, a 2010 survey focused solely on publicly traded Chinese firms showed that more than 90 percent had female directors and that women accounted for 16.7 percent of the board seats of these companies.<sup>3</sup> While the survey did not offer an explanation as to why the percentage of women directors is so much higher for publicly listed companies, one reason could be that many such firms are outgrowths of closely held operations where family relationships trump gender.

Thus far, none of the studies have compared the board composition of Chinese foreign-invested enterprises (or FIEs) to those without international involvement. However, as few FIEs are listed in China, little information is publicly available. Anecdotally, examples can be found of female general counsels and compliance officers of FIEs also serving as board members of these FIEs. The consensus seems to be that, while FIEs generally encourage women who hold senior management positions to move into the boardroom, the variation from company to company makes it difficult to draw any comparison with their domestically funded counterparts.

The presence of female directors on the boards of foreign companies where representation tends to be higher has not gone unnoticed in China. However, compared with other countries in East Asia and South Asia, China seems like less of an outlier. While the Philippines and Thailand, with 11.6 percent and 8.7 percent female board representation, respectively, come out ahead in the region, Singapore (7.3 percent), Malaysia (6.3 percent), and India (4.8 percent) all fare worse. And alongside South Korea (1.9 percent) and Japan (0.9 percent), China appears almost progressive.<sup>4</sup>

Legislative Efforts

In contrast to the United States and the European Union, gender parity on company boards has never been a particularly hot topic in China. Unsurprisingly, legislative efforts to increase representation are still in preliminary stages. Currently, there is no specific law in China setting a gender quota for women on boards of state-owned or privately held companies. However, China’s State Council, the country’s chief administrative authority, has formulated certain goals for women. As early as 1995, the State Council articulated its Programs for the Development of Chinese Women (the “1995 Programs”), outlining major goals for women’s development over the ensuing five years, including measures relating to women’s participation in decision-making processes and administrative bodies. Because the 1995 Programs delegate responsibility for articulating and implementing specific plans to individual government agencies and lack the force of law, they are more aspirational than legislative in nature.

A further set of initiatives adopted in 2001 (the “2001 Programs”) stipulate that, from 2001 to 2010, state-owned enterprises (“SOEs”) shall increase the representation of women on their boards, and that the relevant governmental organs (i.e., the State-owned Assets Supervision and Administration Commission) shall endeavor to promote gender parity. These goals were reiterated in amendments to the 2001 Programs passed in 2011 (the “2011 Programs”). As one notable example, in its draft implementation plan for the 2011 Programs, the government of Jiujiang City (in the southern province of Jiangxi) set a 10 percent target for female directors on SOE boards. If passed, this program would represent the first time that a specific target for female membership was proposed for the boards of Chinese companies.

The 2011 Programs exceed the scope of the prior programs by calling for an increase in the participation by women on boards of *all* enterprises, public or private, by 2020. However, in their local policies, municipal and provincial administrations in Beijing, Shanghai, and many other jurisdictions still limit the goal of increasing women’s presence on boards to SOEs. This may be due to the relative ease of implementing such mandates in SOEs whose managers and board members are commonly government-appointed or recommended.

Despite these positive developments, given the absence of any governmental enforcement mechanism pushing for their adoption, the 2011 Programs, like their predecessors, remain advisory. Moreover, the tightly constrained nature of China’s non-governmental organization sector means that there are no private organizations to take up the slack as they might in other countries. In the current political climate and general economic slowdown, the likelihood that the Communist Party leadership will expend significant resources promoting women’s issues is uncertain at best. With the local governments slow to take up the task of implementing the 2011 Programs in the SOE context and the lack of impetus to apply them in the private sector, significant government-led initiatives to increase women’s board representation in the coming decade are unlikely.

Conclusion

While the current picture of Chinese women in the boardroom is not exactly hopeful, in the long term Chinese women have numbers, if not the laws, on their side. One bellwether is the Graduate Management Admission Test (GMAT). In 2011, women made up 64 percent of all GMAT test takers in China, up from 62 percent in 2010.<sup>5</sup> Many of those women pursue MBAs at prestigious western institutions with the ultimate goal of taking leadership positions in Chinese companies.<sup>6</sup> Whether or not legislation mandates it, as more women graduate from business school programs and rise through the ranks of their organizations, gaining the solid business experience and corporate leadership skills that are foundations of board membership, the pressure to appoint women as directors will likely build.

1 GovernanceMetrics International, Women on Boards Report (Mar. 2011), *available at* <http://www2.gmiratings.com/reports.php?reportid=377> (hereinafter, the “GMI Report”).

2 Korn/Ferry Institute, Mind the gap: Half of Asia’s boards have no women, a risky position for governance and growth (2011), *available at* [http://www.kornferryinstitute.com/about\\_us/thought\\_leadership\\_library/publication/2956/Mind\\_the\\_gap](http://www.kornferryinstitute.com/about_us/thought_leadership_library/publication/2956/Mind_the_gap).

3 Ren Ting and Wang Zheng, “Female Participation in TMT and Firm Performance: Evidence from Chinese Private Enterprises,” *Nankai Bus. Rev.*, 2010, Vol. 13, No. 5, pp. 81-91.

4 GMI Report, *supra* note 1.

5 Damast, Alison, “Asia Women Taking GMAT on the Rise,” *Bloomberg Businessweek*, February 29, 2012, *available at* <http://www.businessweek.com/articles/2012-02-29/asian-women-taking-gmat-on-the-rise>.

6 Damast, Alison, “For Chinese Women, U.S. MBAs Are All the Rage,” *Bloomberg Businessweek*, May 05, 2011, *available at* [http://www.businessweek.com/bschools/content/may2011/bs2011054\\_151720.htm](http://www.businessweek.com/bschools/content/may2011/bs2011054_151720.htm).



Hong Kong

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Although Hong Kong was under British colonial rule for decades, women’s rights and gender equality had only been enshrined in the Hong Kong legal system for less than 20 years when, in 1996, the United Nations Convention on the Elimination of All Forms of Discrimination against Women was extended to Hong Kong. Today, there are a number of laws that address gender inequality and women’s rights in Hong Kong.<sup>1</sup> However, given the very traditional view of women in Hong Kong culture, there has been only recent, and very preliminary, treatment of the issue of women’s participation in business and even less attention to the representation of women in the boardroom.

The Law and the Equal Opportunities Commission

Fundamental human rights espoused in the International Covenant on Civil and Political Rights are incorporated in the Hong Kong Bill of Rights Ordinance (“BORO”) and specifically in the Bill of Rights.<sup>2</sup> According to Article 22 of the Bill of Rights, all persons are equal before the law, are entitled without any discrimination to the equal protection of the law, and are protected against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.<sup>3</sup> Furthermore, men and women have equal rights to the enjoyment of all civil and political rights set forth in the BORO.<sup>4</sup>

While the BORO binds only the government, all public authorities, and any person acting on behalf of the government or public authority,<sup>5</sup> the Sex Discrimination Ordinance (“SDO”) is an anti-discrimination law passed in 1995 that applies to all employers in Hong Kong (including the government). Discrimination on the basis of sex, marital status<sup>6</sup> and pregnancy, and sexual harassment is unlawful under the SDO.<sup>7</sup> In addition to rendering certain discriminatory acts unlawful, the SDO also provides for the establishment of the Equal Opportunities Commission (“EOC”) to work towards the elimination of discrimination and harassment as well as to promote equal opportunity between men and women.<sup>8</sup>

The EOC was established for the purpose of implementing the anti-discrimination ordinances in Hong Kong and helping affected employees, their colleagues, employers, and other concerned parties to understand their responsibilities under the anti-discrimination regulations in Hong Kong. The EOC provides guidance on the procedures and systems that can help to prevent discrimination and to deal with unlawful acts in employment. However, failure on the part of a person to observe any of the recommendations set out therein does not automatically render him or her liable to any proceedings as these are merely guidelines lacking the force of law.<sup>9</sup>

1 Currently, gender equality and women’s rights in Hong Kong are broadly dealt with in the Bill of Rights Ordinance (Chapter 383 of the Laws of Hong Kong), Sex Discrimination Ordinance (Chapter 480 of the Laws of Hong Kong) and Family Status Discrimination Ordinance (Chapter 527 of the Laws of Hong Kong).

2 See Section 8 of the Bills of Rights Ordinance which provides for basic human rights protection in Hong Kong.

3 Bills of Rights Ordinance, Chapter 383 of the Laws of Hong Kong, Article 22, Section 8.

4 Bills of Rights Ordinance, Chapter 383 of the Laws of Hong Kong, Article 1(2), Section 8.

5 Bills of Rights Ordinance, Chapter 383 of the Laws of Hong Kong, Section 7.

6 The Family Status Discrimination Ordinance (Chapter 527 of the Laws of Hong Kong), which was passed in 1997, also makes it unlawful for anyone or any organization to discriminate against a person, male or female, on the basis of family status.

7 Sex Discrimination Ordinance, Chapter 480 of the Laws of Hong Kong, Sections 5, 7, 8 and 11; and Equal Opportunities Commission, Discrimination and I, <http://www.eoc.org.hk/eoc/GraphicsFolder/showcontent.aspx?content=Sex%20Discrimination%20Ordinance%20and%20I>. Both direct discrimination (when a person is treated less favorably than another person of the opposite sex) and indirect discrimination (when a condition or requirement, which is not justifiable, is applied to everyone but in practice adversely affects persons of a particular sex or marital status, or those who are pregnant) on the grounds of sex, marital status and pregnancy are recognized as unlawful acts under the SDO. Sex Discrimination Ordinance, Chapter 480 of the Laws of Hong Kong, Section 5.

8 Sex Discrimination Ordinance, Chapter 480 of the Laws of Hong Kong, Sections 63 and 64.

9 Equal Opportunities Commission, Code of Practice on Employment under the Sex Discrimination Ordinance, [http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs on Employment\(SDO\)&fld=content](http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs on Employment(SDO)&fld=content).

The Facts and Statistics

Notwithstanding the extensive legislative protections afforded to women and emphasis on gender equality, statistics show that Hong Kong still lags behind many countries with respect to representation of women in the boardroom.

According to the data collected by GovernanceMetrics International, Inc., the aggregate percentage<sup>10</sup> of board seats held by women in Hong Kong among the 74 companies it surveyed is only 9.4 percent, which is below the global average aggregate percentage of 9.8 percent and the average aggregate percentage among the industrialized economies of 11.8 percent.<sup>11</sup> According to Webb-site.com, a website established by David Webb, a retired investment banker and an equity market analyst who collects extensive data on Hong Kong-listed companies, there are currently approximately 1,521 listed companies in Hong Kong and the average number of female directors per listed company is less than one.<sup>12</sup> In addition, over 40 percent of the listed companies in Hong Kong have no female representation on their boards.<sup>13</sup> The following table summarizes the number of female directors on the board of companies with a current primary listing in Hong Kong:<sup>14</sup>

Number of female directors	Number of companies	Total seats	Cumulative companies	Cumulative seats
5	7	35	7	35
4	35	140	42	175
3	58	174	100	349
2	236	472	336	821
1	568	568	904	1389
0	617	0	1521	1389

Corporate Governance Code

The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (collectively, the “Listing Rules”) and the Code on Corporate Governance Practices (the “Code”) were developed by The Stock Exchange of Hong Kong Limited (the “HKSE”) with a view to provide a fair, orderly, and efficient market for the trading of securities. The Listing Rules comprise both requirements which have to be met before securities may be listed and also continuing obligations with which a listed issuer must comply. The Code sets out the principles of good corporate governance, code provisions (“CPs”), and recommended best practices (“RBPs”) with which listed issuers are encouraged to comply.

10 Aggregate percentage is calculated by dividing the total number of current female board members for given category by the number of total available board seats. 2011 GovernanceMetrics International, Inc., 2011 Women on Boards Report, 8 March 2011, page 3, [http://info.thecorporatelibrary.com/Default.aspx?app=LeadgenDownload&shortpath=docs%2fWOB2011\\_06172011.pdf](http://info.thecorporatelibrary.com/Default.aspx?app=LeadgenDownload&shortpath=docs%2fWOB2011_06172011.pdf).

11 2011 GovernanceMetrics International, Inc., 2011 Women on Boards Report, 8 March 2011, [http://info.thecorporatelibrary.com/Default.aspx?app=LeadgenDownload&shortpath=docs%2fWOB2011\\_06172011.pdf](http://info.thecorporatelibrary.com/Default.aspx?app=LeadgenDownload&shortpath=docs%2fWOB2011_06172011.pdf).

12 Webb-site.com, Distribution of female directors per HK-listed company, <http://webb-site.com/dbpub/FDirPerListcoHKdstn.asp>, retrieved on 17 July 2012.

13 *Ibid.*

14 *Ibid.*

On December 17, 2010, the HKSE launched a consultation paper seeking comments on the Code and amendments to the Listing Rules which aim to encourage better accountability of issuers and directors (the “Consultation Paper”).<sup>15</sup> In the Consultation Paper, the HKSE proposed certain changes to the Code and the Listing Rules that could indirectly help to increase the number of female representatives on boards of listed companies by providing more opportunities for new candidates to join boards. For example, the HKSE sought market views on whether to introduce a cap on the number of independent non-executive director (“INED”) positions an individual may hold, and if so, what the limit should be.<sup>16</sup> In addition, the HKSE proposed to upgrade the RBP (a mere recommendation) that at least one-third of an issuer’s board be comprised of INEDs to a Listing Rule. It also proposed to upgrade the recommendation for a shareholder’s vote in order to retain an INED who has served on the board for more than nine years from an RBP to a CP, whereby failure to comply will render additional disclosure obligations on the issuers in their corporate governance report.<sup>17</sup> Each of these proposed changes has the effect of increasing the turnover and the number of vacancies available, and hence providing opportunities for women to join boards.

The HKSE received 118 responses from issuers, market practitioners, professional and industry associations, institutional investors, and individuals.<sup>18</sup> In response to the proposed changes to the Code and Listing Rules, an overwhelming majority of respondents opposed a cap on the number of INED positions an individual may hold in listed companies and hence the HKSE agreed not to pursue this issue any further.<sup>19</sup> On the other hand, the other two proposals (i.e., upgrading the RBP that at least one-third of an issuer’s board be comprised of INEDs to a Listing Rule and upgrading the recommendation for a shareholder’s vote in order to retain an INED who has served on the board for more than nine years from an RBP to a CP), received support from the respondents, and the Listing Rules and the Code have been amended to reflect these proposals.<sup>20</sup> Notwithstanding the above, only three out of the 118 respondents touched upon the issue of gender diversity in the boardrooms directly.<sup>21</sup>

In its submissions to the HKSE in response to the Consultation Paper, the Hong Kong Institute of Chartered Secretaries, a branch of the International Institute of Chartered Secretaries and Administrators, suggested that Hong Kong adopt a “business-led approach,” meaning that corporate governance should not be a burden to business. In particular, it endorsed a report by Lord Davies of Abersoch issued in February 2011<sup>22</sup> which argued that increasing the number of women on boards by way of quotas is not the preferred option.<sup>23</sup>

In addition, the Women’s Commission, established by the Hong Kong government in January 2001, took a less conservative approach. It proposed that the HKSE adopt a policy of gender diversity in order to increase the number of women on corporate boards. The Women’s Commission made the following three specific recommendations to the HKSE:

- (1) introduce a new RBP providing that 25 percent of corporate boards seats of publicly listed companies be held by women, which is in line with the Hong Kong government’s initial quotas for its advisory and statutory bodies,<sup>24</sup> and with an aim of gradually increasing this percentage;

15 HKSE, Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules, <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124.pdf>, December 2010.

16 Ibid para 58.

17 Ibid para 68 to 74 and 75 to 77.

18 HKSE, Consultation Conclusions on Review of the Corporate Governance Code and Associated Listing Rules, Hong Kong Exchanges and Clearing Limited, <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124cc.pdf>, October 2011.

19 Ibid para 74 to 76.

20 Ibid para 86 to 94 and 95 to 99; Rule 3.10A of the Listing Rules and Code A.4.3, Appendix 14 of Listing Rules.

21 The three responses are from Women’s Commission, The Hong Kong Institute of Chartered Secretaries and Standard Chartered PLC.

22 United Kingdom Department for Business, Innovation and Skills, Women on boards, <http://www.bis.gov.uk/assets/biscore/business-law/docs/w/11-745-women-on-boards.pdf>, Lord Davies of Abersoch, February 2011.

23 HKSE, Responses from The Hong Kong Institute of Chartered Secretaries dated 17 March 2011, page 1, [http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/documents/cp2010124r\\_in67.pdf](http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/documents/cp2010124r_in67.pdf).

24 In February 2004, the Home Affairs Bureau published its Progress Report on the Review of Advisory and Statutory Bodies pursuant to which the Home Affairs Bureau sets the “25% gender benchmark” as an initial working target, meaning at least 25% of appointed non-official members of advisory and statutory bodies (“ASB”) should be of male or female. This working target was achieved in December 2005 in overall terms for all ASBs and the Home Affairs Bureau raised the target from 25% to 30% with effect from June 2010. This new target was achieved in May 2011 in overall terms for all ASBs. Website of Home Affairs Bureau, [http://www.hab.gov.hk/en/policy\\_responsibilities/District\\_Community\\_and\\_Public\\_Relations/advisory.htm](http://www.hab.gov.hk/en/policy_responsibilities/District_Community_and_Public_Relations/advisory.htm).

- (2) introduce a new CP requiring issuers to establish a policy concerning gender diversity in the boardroom, including measurable objectives for implementing the policy, as well as disclosing the policy and the progress made in the company’s annual report; and
- (3) require listed companies to disclose in their annual reports the proportion of women on the board, the number of women in senior executive positions, and the total number of female employees.<sup>25</sup>

As only three out of the 118 responses mentioned gender diversity with the Women’s Commission being the only respondent providing specific recommendations, it is not surprising that the HKSE has not incorporated any of the above recommendations into the revised Code or Listing Rules.

Conclusion

The issue of gender diversity on corporate boards is yet to receive attention from the general public, legislature, government, and regulatory bodies in Hong Kong. There has not been any vigorous debate or discussion on adopting proactive measures to increase female representation on the corporate boards of Hong Kong companies. This may be due to the fact that Hong Kong already has the highest representation of women in corporate boards among the Asian industrialized economies<sup>26</sup> and legislation promoting gender equality and protection of women’s rights that are comparable to international standards. In addition, social attitudes in Hong Kong remain traditional. Gender stereotyping is still common and women are expected to look after the children and the elderly. Therefore, it may take some time before Hong Kong follows in the footsteps of Norway, Spain, and France,<sup>27</sup> each of which has adopted quota requirements as a means of increasing female representation in boardrooms.

25 HKSE, Responses from the Women’s Commission dated 18 March 2011, <http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp2010124r.htm>.

26 Other industrialized economies are Japan (0.9%) and Singapore (7.3%), 2011 GovernanceMetrics International, Inc., 2011 Women on Boards Report, 8 March 2011, [http://info.thecorporatelibrary.com/Default.aspx?app=LeadgenDownload&shortpath=docs%2fWOB2011\\_06172011.pdf](http://info.thecorporatelibrary.com/Default.aspx?app=LeadgenDownload&shortpath=docs%2fWOB2011_06172011.pdf).

27 Ibid 11 above.

India - New for 2013

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Women form a significant part of the workforce in India and yet, like other Asian countries, their representation in executive positions in the corporate sector, especially at the boardroom level, is abysmal. Despite a growing consciousness on gender equality, this issue has yet to catch the public eye in India. There is very little political or social discourse on providing impetus to women’s participation in corporate governance and the issue is not a priority item on the national governance agenda.

Studies suggest that the number of women on corporate boards in India is around 5.3 percent.<sup>1</sup> Of the 1,112 directorships of companies listed on the Bombay Stock Exchange, a mere 59 are held by women.<sup>2</sup> Further, many of them occupy their positions by virtue of their kinship, owing to the predominance of family-owned businesses in India, and not by virtue of their professional capabilities. Therefore, these women directors have little say in the shaping of the board’s decision making or in the management of the company.

The reasons for this disparity are manifold, but they predominantly revolve around cultural perceptions and social norms prevalent in India. Women have historically been associated with the roles of domiciliary support while men are the bread winners. With time, these gender roles have subtly evolved into stereotypes, resulting in clear prejudice against women looking to rise up the corporate ladder. Gender disparity in boardrooms is also, to a large extent, attributable to the current sex ratio and the low female literacy rate,<sup>3</sup> both of which have their roots in the stereotypical perception of women in Indian society. These gender roles also account for women losing out mid-career due to marital and maternal obligations. The perceptions and norms do not merely impact the mindset of the society at large, but also have a trickle-down effect on institutions that are relatively insulated from them. For instance, most multinational companies bringing international practices to India face challenges due to the small pool of talented women candidates to choose from for boardroom and senior managerial positions.

While this ‘glass ceiling effect’ seems like a global phenomenon, the rigid cultural perceptions and social norms in the Indian society make this more of an impediment here than elsewhere.

Constitutional and Legal Framework

The Indian Constitution has been more progressive in the treatment of women than many other national constitutions, including providing an equal right to vote for women long before the right was available in some developed countries. It also enshrines principles of gender equality and makes it incumbent on the State to adopt affirmative measures to ensure equality of status and opportunity of women. Ever since the adoption of the Indian Constitution, the Indian government has taken various measures toward empowering women and providing impetus to the representation of women in public life. These measures include a quota for women in local governing bodies, legislative reform of the personal laws, etc.

India has also demonstrated its earnestness in fulfilling its international obligations regarding women’s rights. India was one of the first countries to sign the Convention on Eliminating All Forms of Discrimination Against Women (known as CEDAW), following which a number of policy and legislative reforms have been adopted by the government for the emancipation of women. However, the implementation of these policy and legislative measures continues to remain a challenge. In pursuit of its obligations under CEDAW, the government is currently considering enacting an exhaustive legislation providing for remedy, redressal, and penal action against discriminatory practices.<sup>4</sup>

With a male dominated workplace and increasing numbers of women joining the workforce, workplace sexual harassment has emerged as a major problem encountered by women in India. The Supreme Court of India took note of this issue as early as 1997, when a landmark judgment<sup>5</sup> laid down the policy to be adopted by employers to combat this issue. However, the directions of the Supreme Court received an apathetic response from employers, including the public sector enterprises, and the level of compliance with these guidelines was disappointing. In view of the growing demand from civil society organizations and social media for detailed legislation on the subject, the Indian Parliament recently passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The legislation seeks to prevent and redress grievances pertaining to sexual harassment in the workplace. Despite the fact that the introduction of the legislation has received criticism from various quarters for being too little and too late, it is definitely a positive step that will go a long way in improving work conditions and ensuring a safe and healthy work environment for women.

With the view to reform various provisions of the existing law, especially relating to corporate governance, the lower house of the Indian Parliament has recently passed the Companies Bill, 2012 (Companies Bill) and it is soon expected to become law. As part of the measures to improve corporate governance, a provision regarding mandatory appointment of women directors was introduced in the Companies Bill. The provision requires certain prescribed classes of companies (which are yet to be identified by the government) to have at least one woman director on their board of directors. While the Parliamentary Standing Committee on Finance expressed its concern regarding practicality of the provision, especially due to the limited talent pool, the Securities and Exchange Board of India (the Indian capital markets regulator) has lauded the government’s effort in introducing a quota for women on corporate boards. The government’s response has so far been progressive and the government has made it clear that provisions such as these “*will make the companies more alive to giving salience to the female gender in the realm of corporate governance.*”<sup>6</sup> While it remains to be seen what classes of companies are brought within the ambit of this provision, it is expected that the majority of listed companies will be covered. A possible challenge then would be to identify a sufficient number of women capable of occupying boardroom positions allocated for women directors.

Apart from the proposed provisions in the Companies Bill, there is hardly any requirement under the Indian regulatory framework providing impetus to the participation of women in corporate governance. However, certain measures in the current law, such as the restriction on the number of boards an individual can be appointed to, go a long way in attracting a fresh talent pool, thus providing greater access and opportunity for women directors.

Conclusion

Recent cases of sexual violence against women have provoked nationwide protests and have prompted the government to introduce legislative and policy reforms on a spectrum of issues relating to the safety of women, especially in the work environment. However, the implementation and enforcement of these reforms continue to be the primary challenge in improving the living and working conditions of women in the society.

In the Indian context, quotas for women in employment appear to be the most effective way to overcome the cultural and social barriers. While the mandatory quota for women on corporate boards will compel corporate houses to look out for potential women candidates for their boardroom positions, it is imperative that they realize the need to harness the economic productivity of women and ensure that implementation of the policy is not reduced to mere lip service. In spite of a strong glass ceiling effect, in recent years, India has seen considerable growth in the emergence of women entrepreneurs. According to a study by EMI Partners International, 11 percent of large Indian corporations have women CEOs as compared to 3 percent in Fortune 500 companies in the US.<sup>7</sup> Statistics in the emerging sectors, such as banking and finance, have been particularly remarkable presumably because of the stable and favorable working conditions for women offered by these sectors. Success stories of women occupying top positions in the corporate sector will certainly inspire women seeking to break the glass ceiling and reach the apex of the corporate pyramid.

1 GMI Ratings’ 2013 Women on Boards Survey available at [http://www.fortefoundation.org/site/DocServer/GMIRatings\\_WOB\\_042013.pdf?docID=19201](http://www.fortefoundation.org/site/DocServer/GMIRatings_WOB_042013.pdf?docID=19201).

2 Standard Chartered Bank: Women on Corporate Boards in India available at [http://www.communitybusiness.org/images/cb/publications/2010/WOB\\_India.pdf](http://www.communitybusiness.org/images/cb/publications/2010/WOB_India.pdf)

3 Sex ratio in India in accordance with Census of India, 2011 is 943 females for every 1000 males and the female literacy rate is around 55.97% available at [http://www.censusindia.gov.in/2011census/hlo/PCA\\_Highlights/pca\\_highlights\\_file/India/5Figures\\_at\\_glance.pdf](http://www.censusindia.gov.in/2011census/hlo/PCA_Highlights/pca_highlights_file/India/5Figures_at_glance.pdf).

4 Combined second and third periodic report of India on CEDAW available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/572/16/PDF/N0557216.pdf?OpenElement>.

5 Vishaka v. State of Rajasthan AIR 1997 SC 3011

6 Parliamentary Standing Committee Report on Companies Bill, 2011 available at [http://www.taxmann.com/TaxmannFlashes/flashst29-6-12\\_CPT\\_3.htm?aa=](http://www.taxmann.com/TaxmannFlashes/flashst29-6-12_CPT_3.htm?aa=).

7 EMA Partners International, Gender Splits available at <http://www.ema-partners.com/articles/gender-split>



Indonesia

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While there is little publicly available information regarding gender diversity on boards of Indonesian-listed firms, a global survey by Governance Metrics International (“GMI”) on the percentage of women on the boards of listed companies in 45 countries indicates that women hold 4.6 percent of boardroom positions in Indonesia.<sup>1</sup> Despite Indonesia’s poor showing, the study shows some improvement in the number of women directors: between the years 2009 and 2012, the percentage of female directorships rose from 3.7 percent to 4.6 percent.

Gender Equality in Indonesia

Under Article 27 of the Indonesian Constitution, all citizens must have equal status before the law. Further, an amendment in 2000 expressly made the right to be free from discrimination a constitutional right. However, despite the constitutional mandate, in reality the traditional perception and typical stereotypes of women as mothers and housewives still prevail in rural areas, and inequality in the labor force remains evident in Indonesia. According to the World Bank,<sup>2</sup> over 50 percent of the labor force is women,<sup>3</sup> yet women earn significantly less than men in all sectors (agricultural, industry, services, and government).<sup>4</sup>

According to the Global Gender Gap Report<sup>5</sup> issued by the World Economic Forum, although the 53 percent of Indonesian women participate in the labor force, women constitute only 32 percent of salaried employees outside the agricultural sector.<sup>6</sup> Women constitute only 22 percent of legislators, senior officials, and managers, according to the same report.<sup>7</sup> However, it is quite notable that women make up a large portion of Indonesia’s 2.7 million migrant work force. According to a report by the International Organization for Migration, more than 78 percent of Indonesian labor migrants are women, with a great majority of those women working in the domestic and manufacturing sectors.<sup>8</sup>

Regional Perspective

The underrepresentation of women on corporate boards of directors appears to be consistent across the region. According to the GMI Report, in 2011 women held 7.3 percent of boardroom positions surveyed in Malaysia, and the figure was 8.7 percent in Thailand, 5.8 percent in Taiwan, and a mere 1.9 percent in South Korea.<sup>9</sup>

1 GMI Ratings’ 2012 Women on Boards Survey, at p. 4 (March 2012), available for download at [www.gmiratings.com](http://www.gmiratings.com) (accessed on July 16, 2012). In its 2012 report, GMI Ratings includes data on 4,321 companies in 45 countries including data on 688 companies from 21 emerging markets, specifically MSCI Emerging Markets Index companies with a free-float market capitalization of at least \$1 billion. See GMI Ratings’ Survey at p. 17.

2 Toward Gender Equality in East Asia and the Pacific, A Companion to the World Bank Development Report. The World Bank (2012) (“World Bank Report”), available for download at [www.worldbank.org](http://www.worldbank.org) (accessed on July 16, 2012).

3 World Bank Report at Fig. 1.17, p. 14.

4 World Bank Report at Fig. 3.4, p. 69.

5 The Global Gender Gap Report. World Economic Forum (2012) (“Global Gender Gap Report”), available for download at [http://www3.weforum.org/docs/WEF\\_GenderGap\\_Report\\_2011.pdf](http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf) (accessed on July 18, 2012). In its 2011 report, the World Economic Forum includes data from 135 countries.

6 Global Gender Gap Report, pp. 200 and 201.

7 *Ibid.*

8 Labour Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East. The International Organization for Migration (2010). The report is available for download at <http://bit.ly/wtoL3x> (accessed on July 18, 2012).

9 See note 1.

High Profile Women on Boards

Despite the underrepresentation of women in positions of influence and power in Indonesia, there are certain notable exceptions: PT Pertamina, the largest state-owned company and the world’s largest seller of LNG is headed by a woman, Karen Agustiawan. The largest publicly-listed pharmaceutical company in Southeast Asia, PT Kalbe Farma Tbk., is headed by Bernadette Ruth Irawati Setiady. Atik Nur Wahyuni is the force behind Indonesian television giants Trans TV and Trans7.<sup>10</sup>

Additionally, there appears to be considerable female representation on the boards of companies in banking. Felia Salim is vice president director of PT Bank Negara Indonesia (Persero), Tbk., a major state-owned bank. PT Bank OCBC NISP, Tbk. is led by Parwati Surdaudaja, while Catherinawati Hadiman is vice president director of PT Bank CIMB Niaga, Tbk. Reports indicate that in a number of leading publicly listed national banks, women hold up to one-third of the companies’ directorship.<sup>11</sup>

Gender Parity Under Indonesian Law

In addition to the constitutional mandate for gender parity, the government of Indonesia has passed several laws and promulgated a number of regulations relating to gender equality and the rights of women and women’s participation in Parliament and political parties. Set forth in Appendix A is a list of the primary statutes that address the issue of women’s rights in Indonesia. Below, we review the primary laws relevant to the issue of women in the boardroom.

Representation of Women in Political Parties

Under Law No.2/2008 (as amended) and Law No.10/2008 (as amended) there must be at least 30 percent female representation in a political party and each party must have at least 30 percent female candidates for Parliament. However, since the rate of women’s participation has not yet reached the 30 percent requirement, continued election education for women and for female candidates is needed. This is a goal of the National Mid-Term Development Plan 2010-2014<sup>12</sup> which is an elaboration of the vision, mission, and program of the president elected in the 2009 general election to be implemented during his term of office. The plan is comprised of three books:

- Book I consists of the vision, mission, target, macro blueprint, and national priorities.
- Book II contains an elaboration of the national development strategy in respect of nine sectors, including gender parity. One of the primary goals is to increase women’s life quality and role especially in the fields of health, education, economy, and politics.
- Book III covers strategic/important issues and a regional development strategy.

Under the Law on Political Parties / Law on General Election of Members of Parliament, at least 30 percent of the following should consist of women:

- members of and/or candidates for parliament (DPR) and regional parliaments (DPRD); and
- members (commissioners) of the Election Committee (KPU).

However, compliance with these laws remains a challenge. According to the Minister of Women’s Empowerment and Child Protection, women account for only 18 percent of the members of parliament (DPR). While well below the required quota, this figure is an increase from the previous rate of only 11.3 percent. The Minister, a woman, added

10 The Jakarta Globe, 99 Most Powerful Women, October 1, 2011, <http://www.thejakartaglobe.com/globeasialist/99-most-powerful-women-edition/468958> (accessed on February 6, 2012).

11 *Kartini-Kartini* in National Banking, April 21, 2011, <http://www.infobanknews.com/2011/04/kartini-kartini-di-perbankan-nasional/> (accessed on February 14, 2012), e.g. Lauren Sulistiawati (director of PT Bank Permata, Tbk.), Dhalia Mansor Ariotedjo (director of PT Bank Central Asia, Tbk.), and Vera Lim, Michellina Triwardhany and Fransiska Oei (directors of PT Bank Danamon Indonesia, Tbk.).

12 Country Gender Profile: Indonesia, Japan International Cooperation Agency, January 2011, available for download at [www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf](http://www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf) (accessed on February 3, 2012).

that this was in part because no sanction applies to political parties that did not meet the 30 percent target.<sup>13</sup> Female representation at the KPU is also currently below the 30 percent target; consisting of seven members, the KPU has only one female representative.<sup>14</sup>

Law on Human Rights

Articles 45 – 51 of Law 39/1999 provide specific protection for women’s rights. Article 45 emphasizes the protection and acknowledgement of women’s rights by categorizing women’s rights as human rights. Other women’s rights under the law include:

- minimum representation of women in the general election system, political parties, and elected members of legislative and executive bodies;
- the right to maintain, replace, or re-obtain their Indonesian citizenship for those who are married to foreigners;
- the right to an education;
- equal rights to vote, be elected, or appointed to any job, post, or profession;
- the right to special protection while performing duties which could threaten their safety or health in relation to their reproductive health; and
- equal rights in marriage in relation to their children, and ownership and management of joint assets.

A number of entities tasked with the protection of women’s right have also been established. For example, the National Commission on Women (*Komisi Nasional (Komnas) Perempuan*) was formed through Presidential Decree No.181 of 1998 to develop a situation more conducive for the elimination of all kinds of abuse of women, and to protect and enforce women’s rights in Indonesia.

Ministry for Women’s Empowerment

In 1978, the Indonesian government established the State Ministry for Women’s Empowerment as the entity responsible for the national implementation of gender equality and women’s empowerment. The ministry has since been renamed State Ministry for Women’s Empowerment and Child Protection (“SMWC”), but it continues to work on gender parity issues. The functions of the SMWC include policy formulation on women’s empowerment and welfare and child protection issues; implementation of such programs at the local level; coordination of monitoring and evaluation; and collaboration with other ministries, the private sector, and community organizations on issues relating to gender equality and child protection. SMWC has more than 300 officers working under five main work units (gender mainstreaming, the improvement of women’s lives, women’s protection, child protection, and community empowerment).<sup>15</sup>

Gender Parity Law

In addition to the above, the Indonesian government is reportedly actively working on a specific gender equality law. The law is expected to include affirmative action initiatives in education, economic participation, politics and labor. The law is also intended to include public participation in the monitoring of gender parity programs.<sup>16</sup> The law is expected

to be promulgated this year. To date, gender equality and empowerment of women are promoted through, among others, President Instruction No.9/2000 and a number of regional regulations.<sup>17</sup> Presidential Instruction No.9/2000 instructs and provides guidelines to the executive branch of the government (including ministers, governors, regents, and mayors) to promote the implementation of gender parity in formulating and implementing development programs in national and regional levels. The regional regulations are passed by governors, as the head of regional governments, to implement the Presidential Instruction in the regional government levels, e.g., the Regulation of the Regional Government of South Kalimantan No.5/2009 on Gender Parity in Regional Development passed by the Governor of South Kalimantan.

Conclusion

Greater gender equality can enhance productivity, improve development outcomes for the next generation, and make institutions more representative. In comparison with other emerging countries in the region, Indonesia has passed significant legislation promoting gender parity and women’s rights. However, more progress is needed to fully implement the goals of such legislation.

13 <http://www.politikindonesia.com/index.php?k=wawancara&i=32900>.  
14 <http://kpu.gemaweb.com/berita/446-presiden-sby-resmikan-anggota-kpu-periode-2012-2017->.  
15 Country Gender Profile: Indonesia, Japan International Cooperation Agency, January 2011, available for download at [www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf](http://www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf) (accessed on February 3, 2012).  
16 Country Gender Profile: Indonesia, Japan International Cooperation Agency, January 2011, available for download at [www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf](http://www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf) (accessed on February 3, 2012) and People’s Daily Online, “Indonesia to Introduce Gender Equality Law: Minister,” March 9, 2011 <http://english.peopledaily.com.cn/90001/90777/90851/7312871.html> (accessed on February 6, 2012).

17 PedomanNEWS.com, “2012, Skala Prioritas RUU Soal Gender” (2012, *Priority Scale Draft Law On Gender*), January 17, 2012, <http://pedomannews.com/nasional/berita-nasional/politik-a-hukum/10079-2012-skala-prioritas-ruu-soal-gender-> (accessed on February 13, 2012).

Appendix A

Set forth below is an overview of Indonesia’s gender parity related laws:

Law or Regulation	Year	Gender Parity / Women’s Rights Provisions
Indonesian Constitution, as amended	1945, 1999, 2000, 2001, 2002	All citizens have equal status before the law and the right to be free from discrimination.
Marriage law	1974	Women and men have an equal duty to maintain the household and care for children.
Labour Law (Law No.13/2003) and related regulations	2003	Equal opportunity to secure work, equal treatment by employers, maternal leave, menstrual leave.
Law on Elimination of Domestic Violence (Law No.23/2004) and related regulations	2004	Establishment of women and children’s service units in police stations and hospitals.
Law on Protection of International Migrant Workers (Law No.39/2004)	2004	Rights of a migrant worker, placement procedure, dispute settlement.
Citizenship Law (Law No.12/2006)	2006	Citizenship of international migrant workers and civil rights of children with parents of different nationalities.
Law on Political Parties (Law No.2/2008, as amended by Law No.2/2011)	2008, 2011	Every political party should have at least 30 percent female representation on its management board and recruitment of candidates.
Law on General Elections of Members of Parliament (Law No.8/2012)	2012	In an election of the Parliament members, there should be at least 30 percent female candidates. This is in line with the requirement set out in the above Law on Political Parties.
Compilation of Islamic Law	1991	Women’s right to custody of their children in the event of divorce, similar to Marriage Law.
Law on Human Rights (Law No. 39/1999)	1999	The right to equal work opportunities, fair terms and conditions of work and salaries. Women’s rights are specifically regulated (in Articles 45-51), e.g., the right to education at all levels and to choose, be chosen, and be appointed to any job, position, or profession.
Indonesian Criminal Code and Law on Elimination of Human Trafficking (Law No. 21/2007)	2007	Women’s right to protection from human trafficking.
Law on the Implementation of General Elections (Law No. 15/2011)	2011	At least 30 percent of the Election Committee should be female.



Japan

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Gender equality in Japan falls short compared to other advanced nations and remains a work in progress. A white paper published by the Japanese government indicates that women occupied only 1.2 percent of officer positions in Japan (e.g., director, outside director, company auditor, and corporate adviser) of 3,608 listed companies in 2011.<sup>1</sup> According to the OECD, women occupy less than five percent of board seats in Japanese-listed companies.<sup>2</sup> In contrast, the Japanese Ministry of Health, Labor, and Welfare (“MHLW”) reported that women accounted for 42.6 percent of the total number of employees in 2010.

Legislative Initiatives

Overall, government legislation has improved the work environment for women in Japan. The Japanese government has undertaken various initiatives towards the formation of a gender-equal society. Since the enactment of the Equal Employment Opportunity Act in 1986, the number of women workers in Japan has increased. The Equal Employment Opportunity Act prohibits discrimination against women workers in terms of recruitment, hiring, assignment, promotion, training, fringe benefits, mandatory retirement age, retirement, resignation, and dismissal.<sup>3</sup> The MHLW promotes gender equality in the private sector by recognizing companies for gender equality and work-life balance.

In 1994, the Headquarters for the Promotion of Gender Equality was established within the Prime Minister’s cabinet for the purpose of promoting gender equality. Five years later, the Basic Act for a Gender-Equal Society (the “Act”) was enacted in 1999. In addition, a Council for Gender Equality was established within the Prime Minister’s cabinet (1) to study and deliberate on basic policies and measures, (2) monitor the implementation of government measures, and (3) survey the effect of government measures. In particular, the Gender Equality Bureau was charged with promoting gender equality policies and measures across all areas.

Article 13, Paragraph 1 of the Act stipulates that the government shall establish a basic plan to comprehensively and systematically implement policies to promote a gender-equal society<sup>4</sup> (the “Basic Plan for Gender Equality”). Pursuant to this provision, the government prepared an initial Basic Plan for Gender Equality in 2000, which set aggressive measures to promote women’s participation in society, including in governmental decision making processes, and access to equal employment, particularly in the private sector. In 2005, the government issued a second Basic Plan for Gender Equality with the goal of “increasing the share of women in leadership positions<sup>5</sup> to at least 30 percent by 2020 in all fields of society.”<sup>6</sup>

In 2009, the United Nations Committee on the Elimination of Discrimination against Women requested that the Japanese government adopt temporary special measures with clear numerical goals and timetables to increase representation of women in decision making positions at all levels.<sup>7</sup> The government released the Third Basic Plan for Gender Equality in 2010, which attempted to clearly establish specific numerical targets and deadlines and to regularly

1 “White Paper on Gender Equality Society” published in June 2011.

2 OECD Week 2012: Gender Equality in Education, Employment and Entrepreneurship: Final Report to the MCM 2012, C/MIN(2012)5 (May 2012), available at <http://www.oecd.org>.

3 Each Prefectural Labor Bureau has an equal employment office to promote the equal employment policies, including consultation with employees with problems of discriminatory treatments.

4 Formation of a Gender-Equal Society (Article 2, Item 1 of the Act): Formation of a society where both women and men shall be given equal opportunities to participate voluntarily in activities in all fields as equal partners in society, and shall be able to enjoy political, economic, social, and cultural benefits equally as well as to share responsibilities.

5 The leadership positions are (1) congressional deputies, (2) women whose titles are equivalent to or higher than section-manager level in private corporations or other bodies, and (3) women who engage in highly professional jobs among special or technical jobs.

6 This target was decided by the Headquarters for the Promotion of Gender Equality in 2003.

7 Concluding observations of the Committee on the Elimination of Discrimination against Women /Japan <http://www2.ohchr.org/english/bodies/cedaw/docs/co/cedaw.c.jpn.co.6.pdf>.

monitor progress in order to meet the “30 percent by 2020” target. However, the government has been hesitant to encourage the adoption of this target in the private sector.

The government has set specific numerical targets and deadlines for each field, including politics, national and local civil services, private sector, education and research as follows:<sup>8</sup>

Proportion of Women for Each Item		Recently	Target (Deadline)
Politics	Election candidates of members of the House of Representatives	16.7% (2009)	30% (2020)
	Election candidates of members of the House of Councilors	22.9% (2010)	30% (2020)
National	National public employees through the recruitment examination	26.1% (fiscal 2010)	Approx. 30% (end of fiscal 2015)
	Managers (positions equivalent to or higher than the director of the division and the office in central government ministries)	2.2% (fiscal 2008) (*as of January 2009)	Approx. 5% (end of fiscal 2015)
	Members of national advisory councils and committees	33.8% (2010)	40% - 60% (2020)
Local	Local public employees through recruitment examinations (advanced level examination) for prefectural governments	21.3% (2008)	Approx. 30% (end of fiscal 2015)
	Managers in prefectural governments (positions equivalent to or higher than the director of the division in local governments)	5.7% (2010)	Approx. 10% (end of fiscal 2015)
	Members of prefectural advisory councils and committees	28.4% (2009)	30% (2015)
Private Sector	Section manager or higher in private companies	6.5% (2009)	Approx. 10% (2015)
Education and Research	Managerial positions in primary and secondary educational organizations (assistant principal or higher)	19.9% (2009)	30% (2020)
	University professors (presidents, vice presidents, professors, associate professors, and lecturers)	16.7% (2009)	30% (2020)

8 Excerpted from the website of the Gender Equality Bureau. [http://www.gender.go.jp/english\\_contents/mge/process/index.html](http://www.gender.go.jp/english_contents/mge/process/index.html).

In the Third Basic Plan, the government announced that it would promote a variety of effective affirmative action measures including quota systems and other incentives to increase representation of women in decision making positions. However, since the Act does not impose penalties and the aforesaid targets are nonbinding, these measures are voluntary and it is unclear how effective they will be.

Private Sector Initiatives

Thus far, there are minimal private sector initiatives in Japan to increase the representation of women on corporate boards. Japan does not have highly visible non-governmental organizations seeking to raise awareness inequitable representation of women on boards, which is more commonly seen in some Western states. A small number of listed companies have a few women directors, however this appears to be based on the listed companies' own diversity policies.

Corporate Governance Code

The Tokyo Stock Exchange issued Regulations for Listing, which became effective as of May 2012. The Regulations for Listing require listed companies to have at least one independent officer (an outside director or auditor).<sup>9</sup> However, the Tokyo Stock Exchange regulations do not include requirements that would directly or indirectly increase opportunities for women directors, including gender or diversity recommendations for board composition. There are also no government issued corporate governance codes that require diverse representation on boards. The Companies Act of Japan regulates the required number of directors and auditors on corporate boards, but does not have requirements regarding director independence, gender, or diversity generally.<sup>10</sup>

Conclusion

Unfortunately, efforts to increase the representation of women in the boardroom in Japan have not yet developed. Although the government has implemented certain initiatives to promote gender equality, these initiatives have not focused on increasing the number of women in corporate boardrooms in particular. Moreover, there is a dearth of non-governmental organizations and associations promoting increased gender equality in business. More awareness of the importance and benefits of increased representation of women as directors and among senior management is essential for progress in promoting gender equality in Japan.

9 Article 436-2 of Regulations for Listing of the Tokyo Stock Exchange revised as of December 30, 2009 and effective from May 10, 2012.  
10 English translation of the Companies Act of Japan <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&co=01&x=55&y=24&ky=companies+act&page=6>.

Philippines

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The Philippines is among the countries with the highest percentage of women sitting on corporate boards. In a 2011 report published by Grant Thornton, the Philippines ranked 4<sup>th</sup> (together with Hong Kong) across the world in terms of percentage of senior management positions occupied by women.<sup>1</sup> According to that report, 35 percent of senior management positions were held by women in Hong Kong and Philippines, while Thailand, Georgia, and Russia had 45 percent, 40 percent, and 36 percent, respectively.

In another report dated September 9, 2011 published by the Corporate Women Directors International, a nonprofit organization which has conducted research on women directors in different countries, regions, and industries globally for the past 15 years, the top 10 women-led companies included three Philippine companies, with at least 30 percent of the board seats held by women.<sup>2</sup>

In the World Economic Forum's Global Gender Gap Report 2010, the Philippines ranked 9<sup>th</sup> out of 134 countries, making it the only Asian country to enter in the top 10 since 2006.

2010 Rank	Country	2009 Rank
1	Iceland	1
2	Norway	2
3	Finland	3
4	Sweden	4
5	New Zealand	5
6	Ireland	8
7	Denmark	7
8	Lesotho	10
9	Philippines	9
10	Switzerland	13

1 "CWDI 2011 Report on Women CEOs Opening Doors to Board Rooms and C-Suites", September 9, 2011, [http://www.globewomen.org/cedi/cwdi\\_2011\\_Women%20CEOs%20Press%20Release.html](http://www.globewomen.org/cedi/cwdi_2011_Women%20CEOs%20Press%20Release.html) (accessed on February 6, 2012).

2 *Ibid.*

The Global Gender Gap Report assesses 134 countries on how well they divide resources and opportunities among men and women, without regard to the overall levels of such resources. The report effectively measures the gender inequality gap in the following areas: economic participation and opportunity, educational attainment, political empowerment, and health and survival.<sup>3</sup>

In the Women's Economic Opportunity 2010 rankings issued by the Economist Intelligence Unit, the Philippines ranked 63 out of 113 countries. The Women's Economic Opportunity rankings are based on an assessment of specific attributes of the environment for women employees and entrepreneurs in 113 countries. In this context, women's economic opportunity is defined as "a set of laws, regulations, practices, customs, and attitudes that allow women to participate in the workforce under conditions roughly equal to those of men, whether as wage-earning employees or as owners of a business."<sup>4</sup>

Philippine Legislation on Women

In August 1981, the Philippines ratified the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), which is one of the core international human rights treaties of the United Nations treaty system.

In the Declaration of Principles and State Policies laid out in Article II of the 1987 Philippine Constitution, the role of women in nation-building is explicitly recognized, and the State is duty-bound to ensure the fundamental equality of women and men before the law. In addition, the Philippine Constitution, which embodies the fundamental laws of the Philippines, mandates that "[t]he State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

In 2009, the Philippine legislature passed into law the Magna Carta of Women.<sup>5</sup> Under the law, the State will:

- ensure the substantive equality of women and men, i.e., de jure and de facto equality and also equality in outcomes;<sup>6</sup>
- promote the empowerment of women and pursue equal opportunities for women and men and ensure equal access to resources and to development results and outcome; and
- pursue by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with CEDAW and other international instruments consistent with Philippine law.

In particular, the Magna Carta mandates the following affirmative mechanisms to accelerate the participation and representation of women in the decision making and policy making processes in government:

- the number of women in third level positions in government will be increased to achieve a fifty-fifty gender balance by 2014; and
- at least 40 percent of the membership of all development councils at the regional, provincial, city, municipal, and barangay<sup>7</sup> levels is required to be composed of women.

Moreover, under the law, the State is mandated to take measures to encourage women leadership in the private sector in the form of incentives.

The Philippine Commission on Women (hereinafter, the "Commission") is charged with the duty to submit a report to the Philippine Congress every three years on the outcome of the implementation of the Magna Carta. To enable the Commission to prepare a meaningful and useful report, all government agencies and local government units are

3 "Philippines in the Global Arena", PhilGAD Portal, Philippine Commission on Women, <http://www.pcw.gov.ph/index.php/statistics-on-filipino-women-men/14-factsheets-on-filipino-women-men/579-statistics-fs-philippines-global-arena> (accessed on February 6, 2012).

4 *Ibid.*

5 Republic Act No. 9710 (signed on August 14, 2009 and became effective on September 15, 2009).

6 Section 4(e), Republic Act No. 9710 (2009).

7 Barangay is the most basic local government unit in the Philippines.



required to conduct their own monitoring of the effectiveness of the programs implemented pursuant to the Magna Carta and submit to the Commission annual progress reports on the implementation of the law.

The year 2012 is a milestone for the implementation of the Magna Carta. The law specifically directs the State to take steps to review and, when necessary, to amend and/or repeal any existing law that is discriminatory to women by this year. In addition, the Commission is expected to issue this year its first report to the Philippine Congress on the implementation of the Magna Carta and its impact on the status and human rights of women in the Philippines.

Other significant legislation strengthening the position of women in the Philippines include the Women in Development and Nation Building Act<sup>8</sup> which, among others, expressly provides for equal rights in entering into contracts and loan agreements and in joining social and cultural clubs. In 1989, the Labor Code of the Philippines was also amended to further strengthen the prohibition of discrimination against women in employment and promotion, as well as promote additional training opportunities. The following were expressly declared as acts of discrimination which may give rise to criminal liability:

- payment of a lesser compensation to a female employee as against a male employee for work of equal value; and
- favoring a male employee over a female employee with respect to promotion, training opportunities, and study and scholarship grants solely based on gender.<sup>9</sup>

Corporate Governance Code

Other than the afore cited affirmative mechanisms and mandates contained in the Magna Carta, the Philippines does not have corporate governance codes that specifically promote women’s participation and representation on corporate boards in private institutions. The Philippines Securities and Exchange Commission issued a Code of Corporate Governance (the “Code”), which places the primary responsibility for corporate governance upon the board of directors of each corporation.<sup>10</sup> As such, the Code requires that boards of directors be structured so to provide independent checks on management. In particular, boards of directors of public companies are required to have a minimum of two independent directors or at least twenty percent (20%) of the board, whichever is the lesser. Non-public companies are merely encouraged, but not required, to have independent directors.<sup>11</sup> Apart from the directors’ fees and shareholdings, an independent director should be independent of management and free from any business or other relationship which could materially interfere with the exercise of his independent judgment.<sup>12</sup>

Non-Governmental Organizations

Notwithstanding the high percentage of Filipino women representation in corporate boards, together with the increasing number of women entering public service and the fact that the Philippines has had two female presidents, there is a greater number of Filipino women who have no access to employment opportunities due to more fundamental issues pervading Philippine society. Deep poverty remains widespread in the Philippines. Trafficking in women continues to thrive and poverty aggravates such situation. Violence against women is prevalent.

Consequently, non-governmental initiatives for women are centered on these fundamental human rights issues. Overall, female representation in various institutions in the Philippine society remains low and women are still generally underrepresented in the workforce.<sup>13</sup>

8 Republic Act No. 7192 (1992).

9 Republic Act No. 6725, “An Act Strengthening the Prohibition on Discrimination Against Women with respect to Terms and Conditions of Employment, Amending for the Purpose Article One Hundred Thirty-Five of the Labor Code, as amended” (May 12, 1989).

10 SEC Memorandum Circular No. 02, series of 2002.

11 Public companies are corporations with a class of equity securities listed in a stock exchange or with assets in excess of fifty million pesos (P50,000,000.00) and having two hundred (200) or more stockholders each holding at least one hundred (100) shares of a class of its securities.

12 The Code defines an independent director as a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having any relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

13 See <http://cedaw-seasia.org/philippines.html> (accessed on July 26, 2012).

“Population, Families and Household,” Philippine Commission on Women, <http://www.pcw.gov.ph/index.php/statistics-on-filipino-women-men/14-factsheets-on-filipino-women-men/69-statistics-fs-population-families-household> (accessed on February 6, 2012).

Conclusion

The Philippines is among the most populous countries in the world, ranking 12<sup>th</sup> globally, 7<sup>th</sup> in Asia, and 2<sup>nd</sup> in the Southeast Asia. The annual growth rate of its population is 2.04 percent. As of 2007, the Census of Population conducted by the National Statistics Office placed the population at 88,304,615 persons of which 49.5 percent were females and 50.5 percent were males.<sup>14</sup>

The number of employed and unemployed Filipinos as of October 2010 was estimated at 36.5 million and 2.8 million respectively. Of the employed, it was estimated that there were 14.2 million females compared to 22.3 million males. The female unemployment rate, however, was relatively low at 6.7 percent (or 1.03 million) compared to male unemployment rate of 7.4 percent (estimated at 1.8 million). As of October 2008, among employed women, 33.7 percent attended or finished university, which is higher compared to employed men at 22.8 percent.<sup>15</sup>

In the Philippines, which is a developing country, the macroeconomic situation has a great, if not overriding, influence on the creation or availability of economic opportunities for women than the issue of gender. Consequently, despite strong legislation protecting and promoting women’s position in society, economic conditions remain an important factor in providing Filipino women with the opportunity to participate more actively in business and nation-building. Macroeconomic conditions aside, with the Philippines being historically a matriarchal society and with strong legislation recognizing the vital role that women play in society, it would not be surprising to see more corporate seats in the Philippines taken by women in the future.

14 “Population, Families and Household,” Philippine Commission on Women, <http://www.pcw.gov.ph/index.php/statistics-on-filipino-women-men/14-factsheets-on-filipino-women-men/69-statistics-fs-population-families-household> (accessed on February 6, 2012).

15 “Labor and Employment,” Philippine Commission on Women, <http://pcw.gov.ph/index.php/statistics-on-filipino-women-men/14-factsheets-on-filipino-women-men/70-statistics-fs-filipino-women-labor-employment> (accessed on February 15, 2012).

Singapore

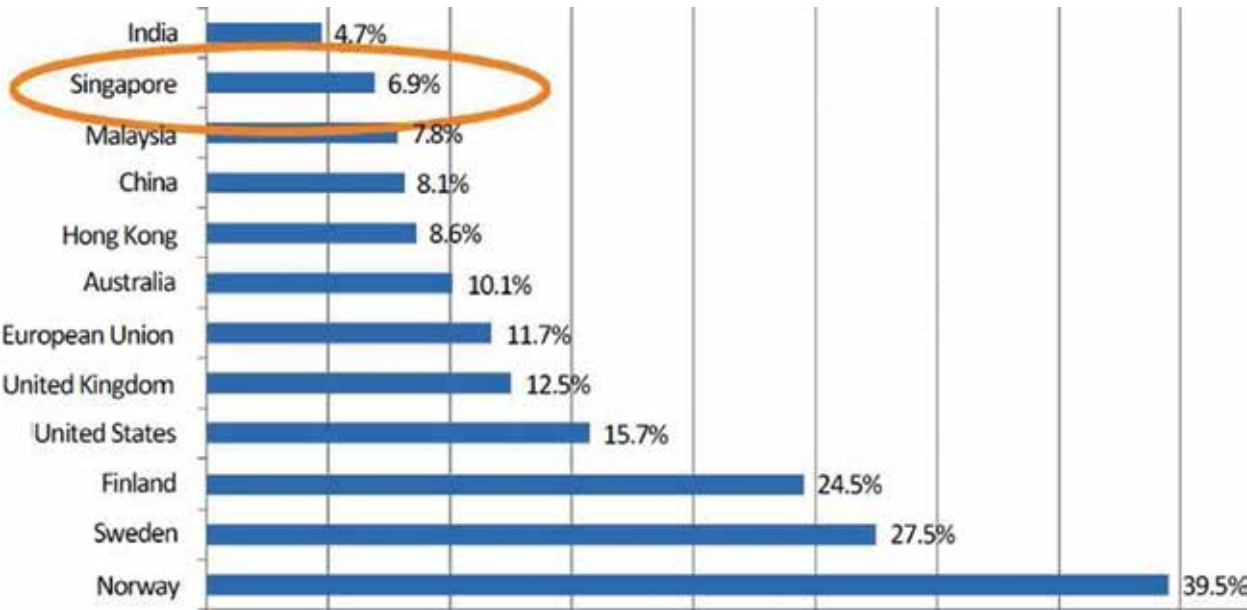
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Gender diversity on the boards of Singapore-listed firms has been the subject of much study and analysis in recent years. The results of the studies, however, have not been encouraging. Women hold less than seven percent of all boardroom positions of SGX-listed companies, and over 60 percent of SGX-listed firms did not have a single woman on their board. These results are based on a recent, three-year study by the Centre for Governance, Institutions and Organizations of the National University of Singapore Business School (“CGIO”) and BoardAgender, an outreach arm of the Singapore Council of Women’s Organizations.<sup>1</sup>

The underrepresentation of women on the boards of Singapore-listed firms is more concerning against the backdrop of the general demographics of the Singapore workforce:

- 51 percent of Singapore’s population is female<sup>2</sup>
- 42 percent of the nonagricultural workforce is female<sup>3</sup>
- 44 percent of those classified as “employed degree holders” is female<sup>4</sup>

These figures put Singapore well behind other developed nations. The CGIO report presents the following global snapshot:



1 “Singapore Board Diversity Report, Gender Diversity in SGX-listed Companies”, published by BoardAgender and CGIO (October 25, 2011), <http://www.boardagender.org/stats-reports/singapore>. (accessed July 16, 2012). (“BoardAgender Report”) The Board Agender Report was based on a comprehensive study of all SGX-listed firms between 2008 and 2010, involving over 730 companies and over 5,000 directorships. It is available for download at <http://www.boardagender.org/stats-reports/singapore/> (accessed on July 16, 2012).

2 *The Directors’ Bulletin*, the official newsletter of Singapore Institute of Directors, Issue 1, 2011, citing statistics compiled by BoardAgender.

3 “United Nations Millennium Development Goal Indicators”, <http://mdgs.un.org/unsd/mdg/Data.aspx> (accessed on January 27, 2012).

4 See note 4.

In addition, the underrepresentation of women on corporate boards of directors appears to be consistent across the region. According to a 2011 report by Korn/Ferry Institute covering the largest 100 domestic companies in seven industrialized and emerging Asia Pacific economies, the percentage of board directorships held by women was 4.7 percent in India, 6.4 percent in Singapore, 7.8 percent in Malaysia, 8.1 percent in China, and 8.6 percent in Hong Kong.<sup>5</sup>

More encouraging is the representation of women on the boards of statutory companies, also known as state-owned enterprises (“SOEs”). In March 2012, BoardAgender and NUS released the results of further research showing that, as of February 2012, women held 19.8 percent of board seats in SOEs, a stark contrast to the 6.9 percent on listed companies in Singapore. Women were also more chairpersons of SOEs at 16.9 percent, in contrast to the 2.7 percent in listed companies. While some SOEs had no women on their boards, 83.1 percent had at least one woman director.<sup>6</sup>

Demographic Profile of Singapore Female Directors

The CGIO Report indicates that women directors in Singapore are, on average, younger than their male counterparts. In 2010, the average age of female directors was 47.9 years, while the average age for male directors was 53.2 years: an average difference of over five years. There seems also to be a difference in respect of educational attainment, according to the CGIO Report. In 2010, 53.8 percent of female directors held bachelor’s degrees, compared with 45.9 percent of male directors. However, more male directors held advanced degrees: 31.8 percent of male directors held a master’s degree and 7.8 percent held a Ph.D. Comparatively, 26.1 percent of women directors held master’s degrees and 4.2 percent held a Ph.D.<sup>7</sup>

The Korn/Ferry Institute survey also found that female directors are typically younger than their male counterparts. According to that study, female directors are, on average, three years younger than male directors. Male and female directors hold business degrees at about equal rates, although female directors are more likely to have an accounting or law background.<sup>8</sup>

Gender Equality Under Singapore Law

Singapore Constitution

Article XII of the Singapore Constitution guarantees the equal protection of all people under the law. During meetings of the United Nations’ Committee on Elimination of Discrimination against Women, delegates of Singapore interpreted Article XII to prevent discrimination based on gender, marital status, age, disability, or other such grounds. While no cases have been brought before the Singapore courts on these grounds, cases filed under similar common law jurisdictions showed that it is possible to assert a right against discrimination based on equal protection principles.<sup>9</sup>

Women’s Charter

Very early in its history Singapore adopted legislation for the protection of women and children. In 1961, the Women’s Charter was passed, intended to improve and protect the rights of females in Singapore and to guarantee greater legal equality for married women. The Singapore Council of Women’s Organizations provides the following highlights of the Women’s Charter:

- gives equal rights and duties to both husbands and wives in the management of the home and children;
- recognizes the wife’s right to a different domicile from her husband;

5 Alicia Yi, Korn/Ferry Institute, *Mind the Gap: Half of Asia’s boards have no women, a risky position for governance and growth*, (2011) available for download at, <http://www.kornferryasia.com/leadership/Asia's%20boardroom%20gender%20gap.pdf> (accessed on January 30, 2012).

6 See, Press Release, “Statutory boards lead the way in boardroom gender diversity” (March 5, 2012).

7 See note 1.

8 See note 2.

9 “Minutes of the 993rd & 994th Meetings of the Committee on Elimination of Discrimination against Women held on July 22, 2011”, <http://www.un.org/News/Press/docs/2011/wom1875.doc.htm> (accessed on January 30, 2012).

- makes it obligatory for a husband to maintain his wife and children during marriage and after divorce;
- makes polygamy illegal;
- entitles the divorced husband or wife to a share of matrimonial assets;
- enables a battered spouse to gain legal protection from the perpetrator; and
- provides the punishment for offenses against women and girls.

Amendments to the Women’s Charter

The Women’s Charter Amendment Bill, which was passed by the Singapore Parliament on August 27, 1996 and came into force on May 1, 1997, gives greater legal protection to women and children and aims to keep the family unit intact wherever possible. Major amendments to Women’s Charter Act include:

- harmonious resolution of family disputes to help family members maintain amiable relations;
- more equitable distribution of matrimonial assets;
- application for the maintenance of a child to be made by any person appointed by the Minister if a parent, guardian, or elder sibling above 21 years old cannot be found or is unwilling to apply on behalf of the child;
- issue of protection order on the balance of probabilities to make it less difficult for a complainant to secure protection;
- extension of the protection order to cover other family members besides the spouse and children of the perpetrator;
- order for a perpetrator/victim or both, or their children to attend mandatory counseling by such body as the Minister may approve or as directed by the court; and
- recognition of marriages of persons who have undergone sex reassignment procedures.<sup>10</sup>

Despite Singapore’s early passage of the Women’s Charter, it appears that the country has lagged in gender parity issues in the workplace.

Non-Governmental Initiatives

In Singapore, the two leading non-governmental organizations (“NGOs”) are the Association of Women for Action and Research (“AWARE”)<sup>11</sup> and BoardAgender.<sup>12</sup> AWARE is Singapore’s leading gender equality advocacy group and promotes a wide spectrum of women’s rights issues. BoardAgender, an outreach arm of the Singapore Council of Women’s Organizations has a more focused mission: to facilitate discussions and activities on the topic of gender diversity in the workplace and in the boardroom, and to promote economic and commercial advantage for companies in Singapore. The 100 BoardAgender Champions campaign cites 100 leaders in the Singapore business community and their organizations that recognize the contributions of women in the workplace, and the advancement of women into the ranks of senior management and into the boardroom.

10 Singapore Council of Women’s Organizations, <http://www.scwo.org.sg/index.php/resources> (accessed on January 27, 2012).  
11 <http://www.aware.org.sg> (accessed July 16, 2012).  
12 <http://www.boardagender.org> (accessed July 16, 2012).

AWARE and the National University of Singapore sponsored a conference on the rights of women. The following key recommendations were proposed by the conference delegates:<sup>13</sup>

- Establish a quota of 30 percent for women in Parliament as recommended by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified by Singapore in 1995.
- Amend the Singapore Constitution to prohibit gender discrimination.
- Review and remove all gender discriminatory laws, policies, and practices, and replace them with laws, policies, and practices that promote an equitable and sustainable work-life balance for both women and men.
- Add gender studies to the core curriculum for all students, as well as in the civil service.
- Increase budgetary allocations to health care significantly so as to ensure the good health of older people.
- Recognize care-giving (of the young and the elderly) as a gender-neutral skill, and improve the quality of, and access to, care facilities and services for children, elderly, and the disabled.

Although the recommendations did not relate directly to increasing board diversity, they indicate a general trend toward creating greater access for women to participate and take on leadership roles in society.

Conclusion

While SOEs in Singapore reflect much stronger representation of women on their boards, the disparity between representation of men and women in positions of leadership in the private sector has been the subject of much debate and discussion. Although there has been no institutionalized action or formal proposal undertaken by the Singapore government, various nonprofit organizations and interest groups such as AWARE and BoardAgender have successfully raised this issue to the general public for a broader discussion on gender diversity in Singapore’s boardrooms. As stated by Magnus Bocker, CEO of Singapore Exchange Ltd. (“SGX”), “It is imperative for boards to comprise an appropriate mix of skills and mindsets. Our listed companies are encouraged to review their Board’s composition and balance of gender diversity, to meet the increasing demands from investors on good governance and corporate sustainability. An effective board allows independence and diversity of thought.”<sup>14</sup>

13 The Online Citizen, AWARE: Prohibit gender discrimination and set quota for women in Parliament posted March 9, 2011, <http://theonlinecitizen.com/2011/03/aware-prohibit-gender-discrimination-and-set-quota-for-women-in-parliament/> (accessed on February 3, 2012).  
14 See the BoardAgender Report on page 2.





## BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

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AUSTRALIA AND NEW ZEALAND

Australia

Michelle Duncan, Partner  
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The percentage of women on boards of companies listed on the Australian Stock Exchange (ASX) 200 increased significantly in 2010 and 2011. Figures for women on ASX 200 boards are currently at a historic high. As of May 23, 2012 the percentage of women on ASX 200 boards was 14.2 percent. In 2011 and 2012, women comprised 28 percent and 24 percent, respectively, of new appointments to ASX 200 boards.<sup>1</sup>

However, there is still a significant way to go. A total of 60 boards in the ASX 200 do not have any women directors, which compares badly with nonprofit boards, which boast a far higher proportion of female directors.<sup>2</sup>

Corporate Governance Code

On June 30, 2010, the ASX Corporate Governance Council introduced a number of changes to its Corporate Governance Principles & Recommendations (2nd edition) relating to diversity. These requirements include:

- Establishing a diversity policy and disclosing that policy
- Disclosure of gender diversity objectives and progress
- Disclosure of the proportion of: (a) women employees in the whole organization; (b) women in senior executive positions; and (c) women on the company’s board
- Disclosure of board selection processes

The changes apply to all entities listed on the ASX and came into effect for the financial year commencing January 1, 2011. All ASX-listed entities are required to either comply with the new recommendations and amendments, or explain in their annual report why they have not done so.

In addition to the above governance initiatives, various schemes have been set up to help foster the increased presence of women in corporate board rooms in Australia:

- Published Guidance

The Australian Institute of Company Directors has published guidance explaining the changes to the ASX Corporate Governance Principles and Recommendations, which includes a sample diversity policy and strategy document.

- Mentoring programs

The Australian Institute of Company Directors has launched mentoring programs such as the Chairmen’s Mentoring Program, first launched in April 2010. Under these programs, leading chairmen and senior directors of ASX 200 companies, as well as public sector and nonprofit boards, mentor qualified women over a 12-month period. Under a separate program run by the Business Council of Australia, Chief Executive Officers mentor leading female executives for more senior roles and board positions.

- Scholarship programs

The Australian Institute of Company Directors offers scholarships for women who wish to undertake training to support their directorship careers.

- Training and development programs

Various training and development programs have been implemented. One such training program is “Board Ready”, a skills-building and development program established by the Australian Institute of Company Directors, which

sets out to build board-level capability among senior executives in the application of boardroom behaviors and practices. Companies that have participated in Board Ready include Westpac, Insurance Australia Group and PriceWaterhouseCoopers.

Legislative Developments

In 2012, the Australian Government introduced the Equal Opportunity for Women in the Workplace Amendment Bill 2012 that would amend the Equal Opportunity for Women in the Workplace Act 1999 (the “Act”) and the Equal Opportunity for Women in the Workplace Agency (the “Agency”). If passed, the Act will be expanded to men and the Act will be renamed the Workplace Gender Equality Act 2012. The Agency will be known as the Workplace Gender Equality Agency. The Act and Agency are important components of the Australian Government’s efforts to support and improve women’s workforce participation, and to increase equality in the workplace. The new legislation was introduced to Parliament and read a first time in March 2012.

Under the Act, employers with 100 or more employees will be required to report annually against a set of gender equality indicators, focussing on outcomes. Noncompliant organizations will be named in Parliament and more widely. Organisations with fewer than 100 employees are not required to report, but they are able to access the Agency’s education and incentive activities.

Conclusion

Significant progress has been made in Australia to date, and many other countries look to successes in Australia as an example of what they would like to achieve. However, as Claire Braund, a director for Women on Boards<sup>3</sup> commented in an interview with the Sustainability Report, there are still many challenges ahead:

“I think what’s happened is that all the easy gains have been made and it’s going to get tougher,” she said. “If you look at the ASX50, it’s at 20 percent representation. It’s the ASX100-plus where things get harder. It means broadening their definition of what a good director can be. In the listed mining sector, for example, you get small listed companies that think you have got to have mining experience to be a good mining company director. Often, they still haven’t moved on from the people who were on the board at IPO.”<sup>4</sup>

1 Australian Institute of Company Directors.

2 Australian Institute of Company Directors.

3 <http://www.womenonboards.org.au/about/>.

4 Rachel Alembakis “Women make gains on corporate boards” June 22, 2012, The Sustainability report.



New Zealand

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As the first country to give women the vote, New Zealand has historically had a strong record of gender equality in high profile public positions and recently had all its top constitutional roles filled by women. However, this progress and approach has not been reflected at the highest levels of corporations in New Zealand.

As reported in the New Zealand Census of Women's Participation 2010, women hold 9.32 percent of board directorships of the top 100 New Zealand companies by market capitalisation. This comprises 58 directorships held by 45 women in 43 companies out of a total of 622 directorships. This represents no increase since 2008.

Ralph Chivers, Head of New Zealand's Institute of Directors, highlighted the lack of female representation at the highest level of New Zealand's corporations: "There is no shortage of women who aspire to work at that level, or potentially suitable candidates. Women have told us they have difficulty getting noticed for opportunities to be promoted."<sup>5</sup>

To counter this situation, in 2012 New Zealand's Institute of Directors implemented an annual mentoring program, called "Mentoring for Diversity", offering 30 experienced women directors the chance to hone their governance skills and improve their visibility through mentoring by chairmen and senior directors. The long term aim of the scheme is to help mentees achieve board membership of NXZ Top 100 and large company boards through the advice, guidance and support of their mentors.

Corporate Governance Code

Further, in May 2012, interested parties made submissions to the New Zealand Stock Exchange on a proposed amendment to the NZSX/NZDX Listing Rules that would require listed companies to disclose in annual reports the gender composition of their boards, subsidiary boards and senior management, similar to rules established in Australia.

The consultation document on the proposed rule change states, "There is credible research based evidence which suggests that diversity in a variety of forms, and gender diversity in particular, contributes to improved performance at both Board and senior management level. It promotes diversity of thought which stimulates more innovative problem solving and may promote identification and better management of risk."<sup>6</sup>

The consultation document also asks respondents to consider alternative approaches to the issue of diversity on corporate boards. Specific alternatives that are discussed include those that would:

- require companies to measure and report on the composition of their boards, senior management team and subsidiary boards in respect of other aspects of diversity;
- require companies to disclose whether or not they maintain a diversity policy, and if so to describe the content of that policy;
- require companies to maintain a diversity policy that includes measurable objectives and to include in their Annual Report a description on progress against such objectives;
- prescribe mandatory quotas for board composition in relation to gender; and
- not require Issuers to measure or report on any aspect of gender diversity (i.e. no diversity reporting Rule at all).

5 Sue Moroney "Women on Boards – NZ's dismal record" February 9 2012.  
6 NZX Limited – Main Board/Debt Market Consultation Memorandum - March 2012.

Conclusion

New Zealand still lags behind Australia in tackling the problem of getting more women into corporate boardrooms. The 2011 Annual Report of New Zealand's Ministry of Women's Affairs points to the work done in the year 2010-2011 to encourage more women on boards of New Zealand companies, which included:<sup>7</sup>

- implementation of new web-based resource, "Women on Boards", which provides extensive information and advice for current and prospective women directors. The site includes 'My Board Strengths', an interactive self-assessment tool that gives tailored feedback and advice to women on developing their governance competencies and targeting board roles that fit their skills and experience;
- presentations on women in leadership to groups of women lawyers, accountants and other aspiring women directors. The presentations included advice on how to create a personal strategy to develop governance experience;
- provision of individualised governance career advice to over 50 women directors; and
- work with stakeholder organisations to stimulate a range of complementary programmes to encourage stakeholders to influence change within their networks. During the year Chartered Secretaries New Zealand, the Institute of Directors and the Trans-Tasman Business Circle implemented new initiatives to promote and encourage women into leadership positions.

However, the proposed amendment to the NZSX/NZDX Listing Rules represents a positive step forward and is indicative of an increased determination on the part of campaigners in New Zealand to make positive progress.

This determination is exemplified in the 25 Percent Group, which was established in June 2012 and comprises chairs and CEOs from a selection of private, publicly-listed and multi-national companies committed to achieving diversity in New Zealand boardrooms. It has set a voluntary target of at least 25 percent women overall on New Zealand's boards by 2015. The aim is that this will be done through initiatives within member organisations, transforming corporate culture and sharing information.

7 Annual Report 2011 Ministry of Women's Affairs – For the year ended 30 June 2011.





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