BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM

PAUL HASTINGS

Navigating New Paths to Growth

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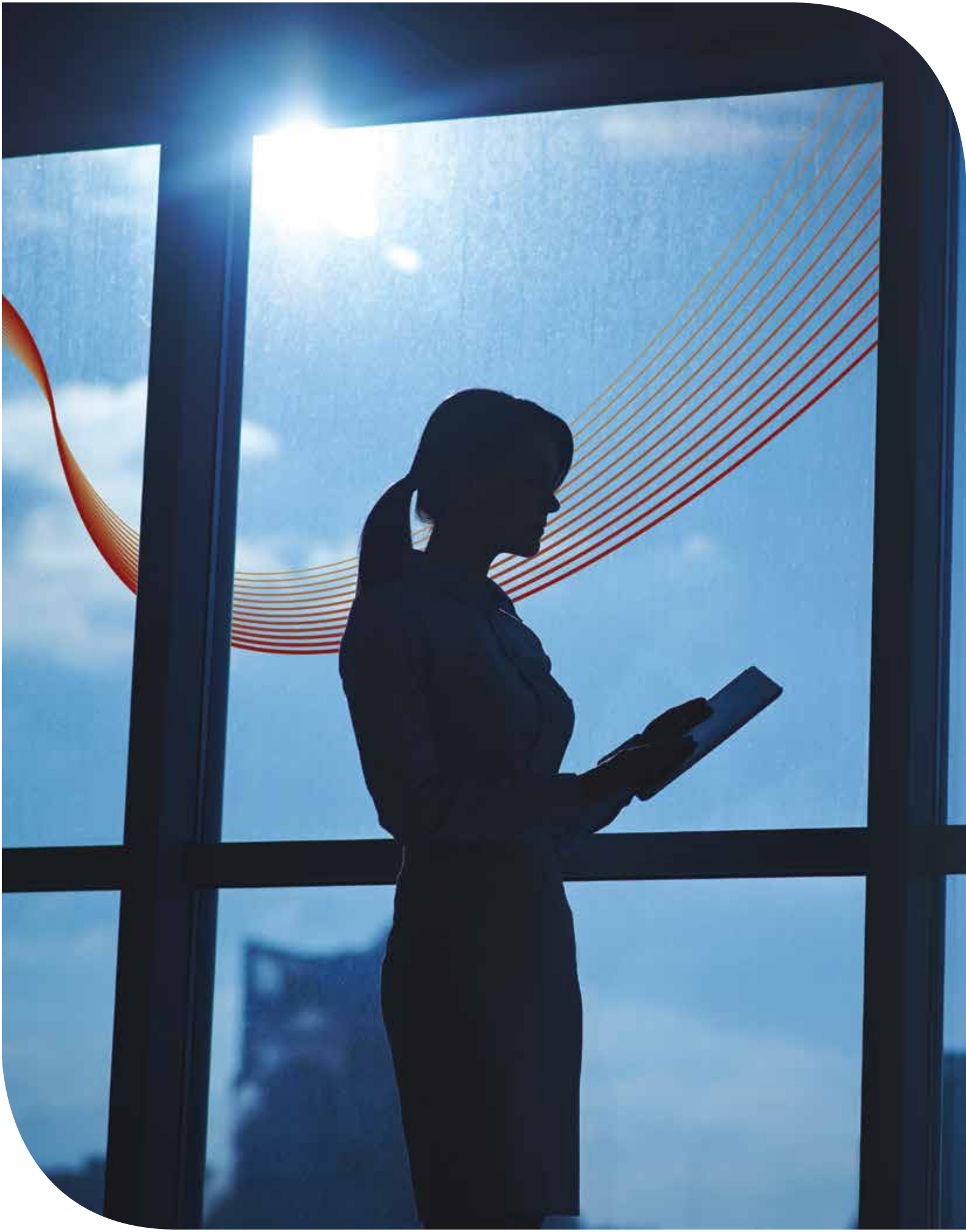

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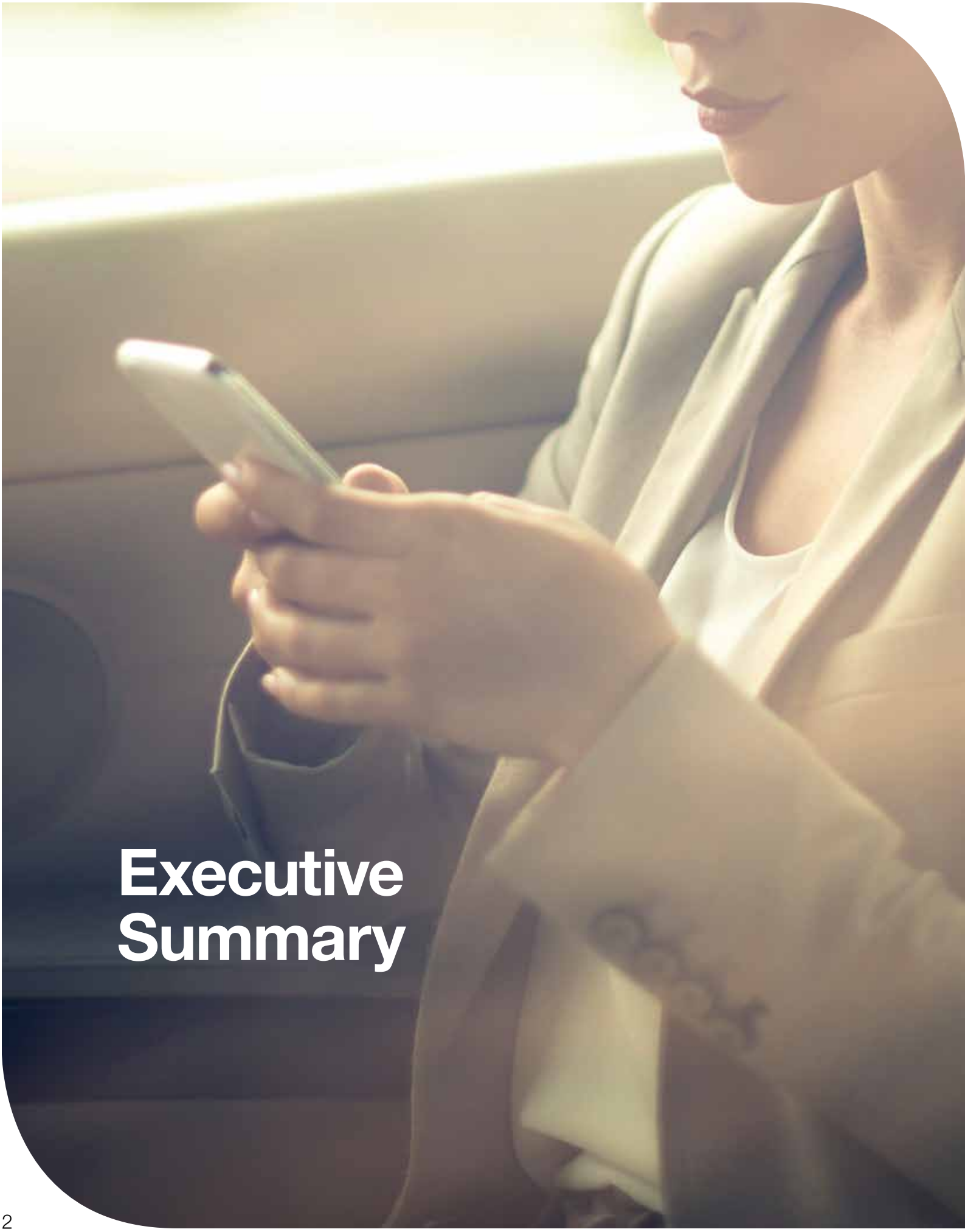


Executive Summary

Breaking the Glass Ceiling: Our Comprehensive Gender Parity Report

The issue of gender inequality is multifaceted, without one clear roadmap to progress. Paul Hastings' ongoing series, *Breaking the Glass Ceiling: Women in the Boardroom,* takes a closer look at the initiatives and movement underway in countries around the world to help close the gender gap on corporate boards. It is our hope that, by continued dialogue and an examination of global initiatives that have spurred progress, we can bring to light strategies that are making a difference and helping to drive change.

This report, *Breaking the Glass Ceiling: Women in the Boardroom,* is the latest update to our comprehensive study of the developments impacting the representation of women on corporate boards across the globe. In this edition, not only do we take a deeper look at jurisdictions in Asia and Africa, we also provide updates from the United States and Japan. Our full report includes developments from more than 40 jurisdictions. Please visit our website at www.paulhastings.com/genderparity to view our complete report. We encourage you to share your thoughts.

Our Findings

While there is little debate over the value of diversity on corporate boards of directors, real change appears elusive in a number of markets, including the United States. While we found signs of progress (to varying degrees) in countries such as Thailand, Kenya, and the GCC, there seemed to be little substantial change in Pakistan, Taiwan, the Republic of Korea, Nigeria, Japan, and the United States. Following is a snapshot of the status in each of the markets covered in this report.

Kenya Leads in Africa

With women holding nearly 20% of board seats, Kenya not only leads the way in Africa, but surpasses most countries worldwide—including the United States, France, and the Netherlands. Several factors contribute to this, including a constitutional mandate. However, the lack of a proper mechanism for compliance raises into question the promise of future progress.

Nigeria, meanwhile, falls just below the average among African nations, but has undertaken a unique approach of tackling this issue—viewing it through the lens of the banking sector. Though the regulatory directive is not currently enforced, a shift toward parity within financial firms could set the course for a change in the private sector as well.

Mixed Results in Asia

The countries of Asia show mixed results. Thailand has a relatively high percentage of women serving on boards and continues to make strides in promoting gender equality in the boardroom and beyond. In fact, as of July 2014, Thailand was the highest-ranking Asian country in terms of women's participation on corporate boards.

In Taiwan, general workplace advances have occurred. However, the change in the composition of corporate boards has yet to receive the same level of legislative attention. While efforts are primarily supported by non-governmental organizations, it seems likely that, without legislative backing, these recommendations will remain just that, recommendations.

Japan's new Corporate Governance Code, published in March 2015, included a provision specifically encouraging diversity and the promotion of women. The new Code requires an increase in the number of outside directors serving on Japanese boards to at least two. In June, the Tokyo Stock Exchange amended its listing rules to require all companies listed on the TSE 1st and 2nd sections to fully adopt the new Code. Interim measures extended the deadline for companies to submit their Corporate Governance Report, with comply-or-explain disclosures for each Code requirement, until December 2015. Although Japan continues to transform its stance on gender equality in the

workplace, societal and cultural change continues to lag governmental support. Without removing these barriers, coupled with a strong commitment from the private sector, it doesn't seem likely that the country will reach its ambitious "30% by 2020" goal.

Similarly, change in Korea is dependent on shifting long-held societal and cultural norms. Women continue to feel restricted in their career choices due to their gender. Perception on this scale is not easy to change. Recent progress includes revising the country's Framework Act on Women's Development. The revised Act, renamed the Framework Act on Gender Equality, took effect in July 2015 and focuses on realizing gender equality in practical and measurable ways. It institutes a quota for women in executive and senior positions aimed at enhancing female representation. The obstacles women face in management stem more from cultural and familial pressures than from a lack of legislative support.

In Malaysia, actions have been put in place to raise awareness of the issue; however, the country is still far from reaching its target of 30% representation of female leaders on boards of directors in the private sector. Although not a mandatory quota, companies were encouraged to meet this target by 2016. As of May 2015, women only made up 16% of public company boards.

Slow Ramp Up in the Middle East

For the GCC member states, however, there was a much more measured advancement. Efforts to close the gap increased over the past year, particularly around an increase in board level discussions and professional training. However, the member states still fall short, particularly when compared to advanced nations. In Pakistan, although companies and regulators seem to appreciate the business case for gender diversity, and the SEC revised the Corporate Governance Code to encourage change, it's too soon to gauge the effect of these changes.

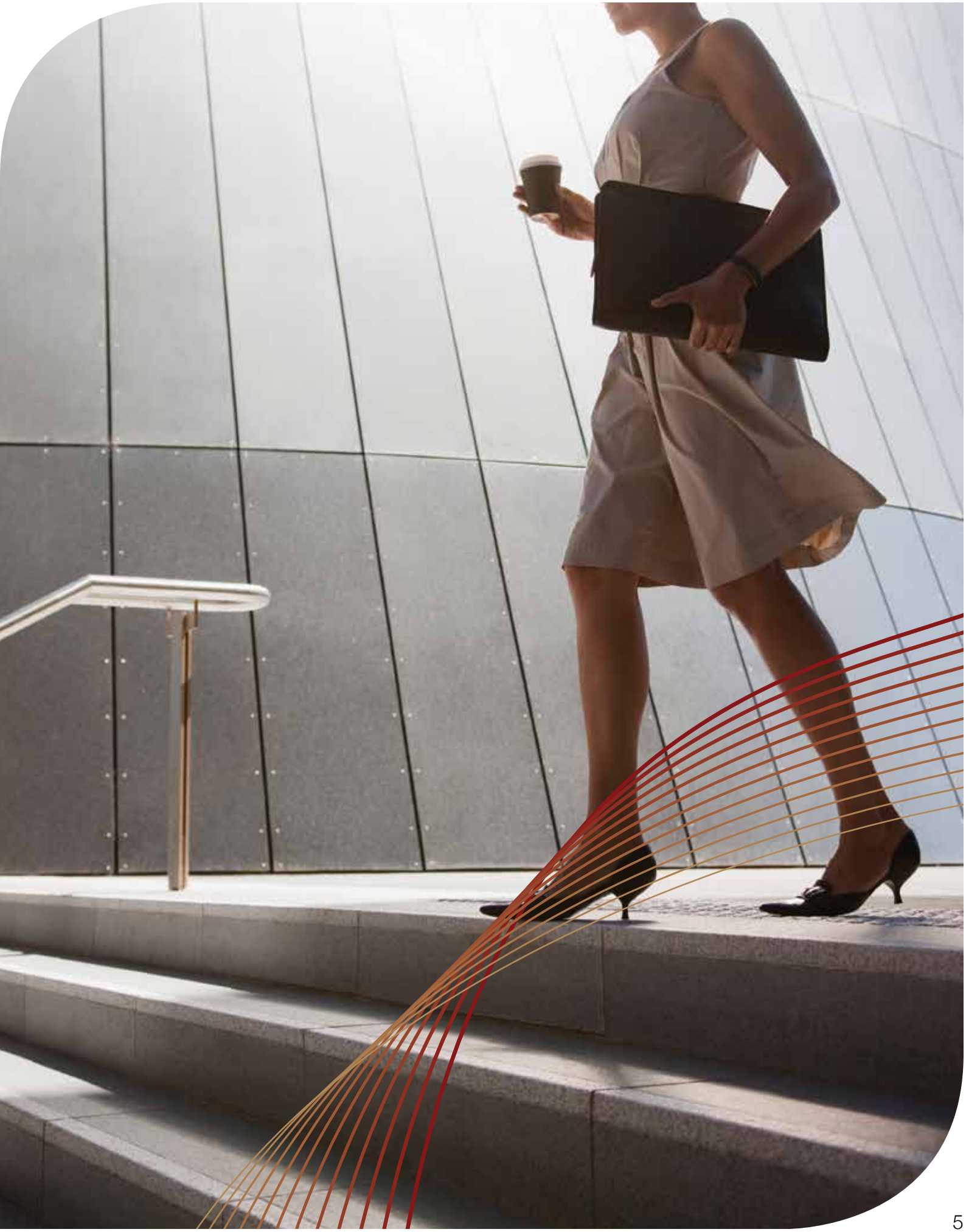
United States Shows Little Change

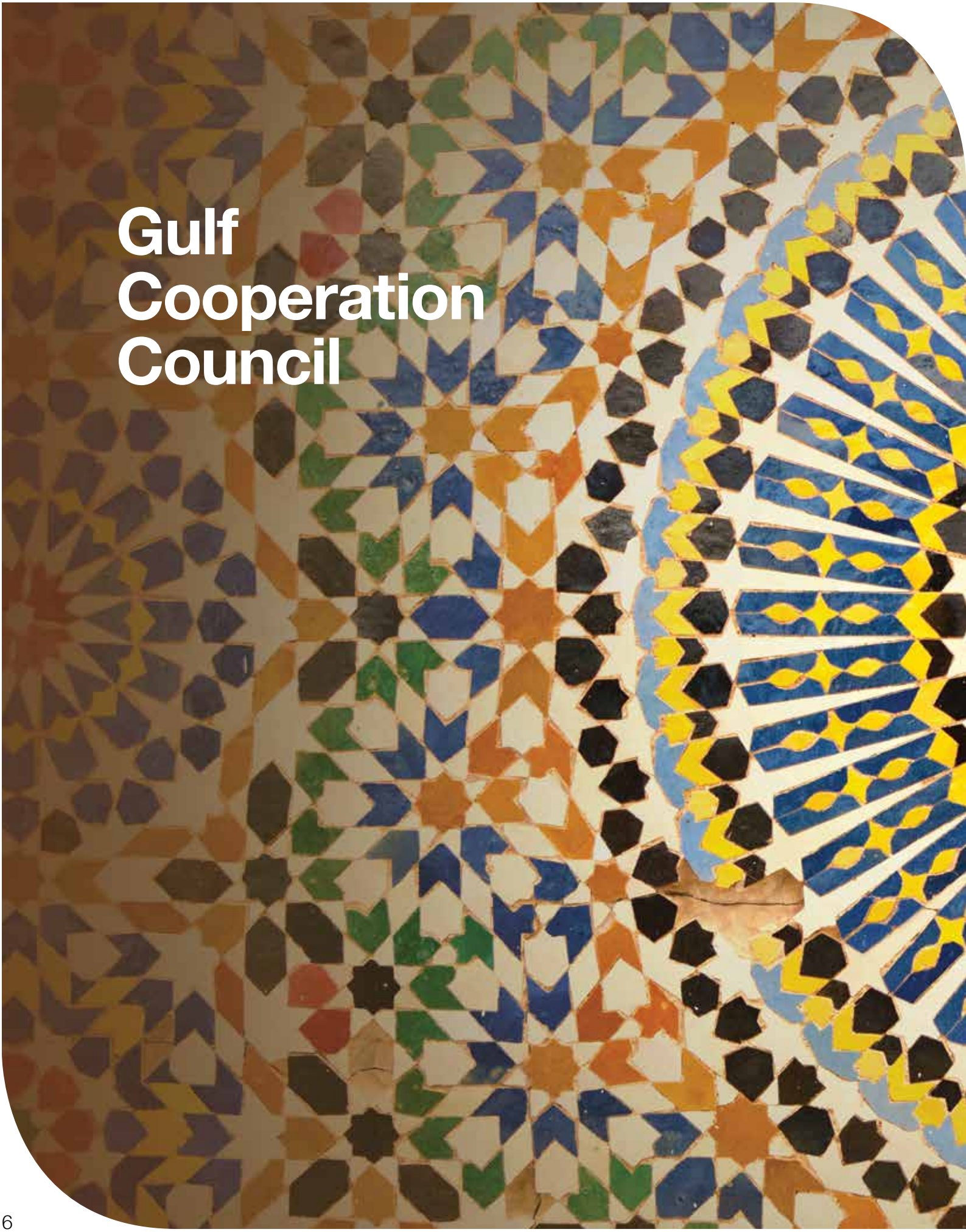
The needle has yet to move in the United States. While the issue of gender parity remains in the headlines, there seems to be hesitation to set clear directives that go beyond voluntary approaches. Without a firm push in that direction, we will not likely see appreciable results.

Conclusion

The countries' strategies and efforts to address gender parity are as diverse as the countries themselves. In some countries, particularly those in Asia, further work must be done to challenge and remove cultural barriers before meaningful progress can be made. Other countries that have been more effective can attribute the high number of women on corporate boards to a confluence of factors—including changes in legislation and governance codes, and private sector initiatives. While there is clearly no single solution to this complex issue, one thing however does seem universal: there is interest from both the public and private sectors to build a strong pipeline of future women directors.

While the debate over the best way to close the gap will continue, we hope that our study will help continue the dialogue, spark new ideas and strategies, and help us collectively make strides in closing the distance. We look forward to reporting on future efforts to increase women's participation on corporate boards globally in the upcoming year.





Gulf Cooperation Council

Cooperation Council for the Arab States of the Gulf

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Although the percentage of director positions held by women are among the lowest in the world in this region, the issue of gender diversity on corporate boards of directors has received increasing attention in the Cooperation Council for the Arab States of the Gulf. Known as the Gulf Cooperation Council (GCC), this organization is an intergovernmental union consisting of countries located in the vicinity of the Persian Gulf. The GCC member states are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

In 2008, Hawkamah, the Institute for Corporate Governance, a Dubai-based corporate governance institute, conducted a study to estimate the number of women holding director seats in the GCC region. The study found that 60 board seats were held by women, which represented approximately 1.5% of the total population of directors. Follow-up reports issued in 2012 indicated there had been a decrease in female board representation and that, as of 2011, women held only 43 board seats in the GCC.[1] Within the GCC, reports indicate that women hold a greater percentage of board seats in Kuwait (2.7%) and Oman (2.3%) in comparison with Saudi Arabia (0.1%), with the remaining GCC countries falling somewhere in between.[2]

A 2015 report issued by McKinsey & Company identified several challenges and barriers to women's participation on corporate boards. Within the region, intangible traditions and biases operate as "powerful constraints." Examples include the expectation that women will not work outside the home and that there is a lack of access to networking environments resulting from norms that make it difficult for men and women to socialize outside of professional environments. Tangible barriers to participation also constrain women's ability to enter the workforce and take on senior leadership roles. For example, in Saudi Arabia legal provisions require companies to build separate work areas for male and female employees. As the McKinsey report observed, "Although there is some ambiguity about what is actually required by law, many local executives believe that requirements extend to relatively costly infrastructure, such as separate entrances and elevator banks."[3]

Reason for Optimism

Despite such obstacles, there is reason for optimism. In 2012, the Prime Minister of the UAE, Sheikh Mohamed bin Rashid Al Maktoum, issued a law that required all governmental departments and related companies to have at least one woman on their boards of directors. The law, however, has no deadline for companies to achieve compliance.[4] Nevertheless, it is the first of its kind in the GCC and provides important symbolic support for increasing gender diversity on corporate boards in a region where directorship positions are overwhelmingly held by men.

First-of-its-kind law provides important symbolic support for increasing gender diversity on corporate boards

1 *UAE Woman Board of Directors: Careers, Board Experiences and Recommendations for Change*, Hawkamah, The Institute for Corporate Governance (2013), p. 136, *available at* http://hawkamah.org/wp-content/uploads/2015/01/UAE_Women_Board_Directors-Research_Report.pdf.

2 *Id.* at 17.

3 Tari Ellis et al., *Promoting Gender Diversity in the Gulf*, McKinsey & Company (February 2015), *available at* http://www.mckinsey.com/insights/organization/promoting_gender_diversity_in_the_gulf.

4 Mirna Sleiman, *Women Edge into Gulf Boardrooms As Economies, Societies Shift*, Reuters (Apr. 18, 2014), *available at* http://www.reuters.com/article/2014/04/18/us-middleeast-women-business-idUSBREA3G17920140418.

Greater opportunities to increase women's participation on corporate boards of directors also appear to be available among family-owned companies within the GCC. Family-owned companies are central to the economies of GCC countries and are estimated to contribute approximately 80% of the GCC's non-oil GDP.[5] A 2012 study conducted by The Pearl Initiative, a non-profit organization established to improve transparency and accountability in Arab countries, interviewed more than 100 family-owned companies and found that approximately 32% had at least one woman director.[6] Other commentators have observed that cultural changes and efforts to increase the participation of women in the labor force have motivated family-owned companies to rely on women relatives to take on more senior leadership roles.[7] Those surveyed, however, have indicated that women who do take on senior leadership roles are primarily taking positions in human resources and marketing, which are viewed as having less impact on business operations.[8]

The results of a biennial survey conducted by the GCC Board Directors Institute (BDI) show that the issue of gender diversity on corporate boards may also be gaining traction outside of family-owned companies. Board directors from each of the GCC member states were polled to assess the effectiveness of board and director performance and improvements in corporate governance practices. The survey results, which were released in January 2015, show that 56% of respondents acknowledge the value that gender diversity brings to a boardroom.[9] Survey respondents further indicated that the issue of women in leadership was on their company's strategic agenda, and approximately 41% said the issue had appeared on their agendas within the past 10 years.[10]

Associations that promote training, networking, and mentoring opportunities among businesswomen also appear to be on the rise. Commentators have observed that the Qatari Businesswomen Association was established to enhance women's contribution to economic activity and has launched several initiatives, such as the Qatar International Businesswomen Forum, and organized activities, conferences, and programs to support Qatari women.[11] In addition, Hawkamah has organized a Women Directors Program that targets female entrepreneurs, business and political leaders, and academics to serve as directors and provides a series of training programs to train board-ready women.[12]

Gender diversity is gaining traction outside family-owned companies

Conclusion

Efforts to increase the representation of women in the boardrooms of GCC member states appear to be on the rise. Although gender equality within the GCC falls short compared to other advanced nations and remains a work in progress, the recent BDI survey indicates that companies increasingly acknowledge the value of gender diversity on their boards of directors and that the issue is being considered at board meetings. In addition, networking and professional development programs are providing training to help women ensure they are ready for board service. The results of these efforts should be closely monitored to gauge their effectiveness in increasing the number of women in senior leadership positions within the GCC.

5 *Leveraging an Untapped Talent Pool: How to Advance Women's Role in GCC Family Businesses*, Strategy & and PricewaterhouseCoopers (2014), p. 4, *available at* http://www.strategyand.pwc.com/global/home/what-we-think/reports-white-papers/article-display/leveraging-untapped-talent-pool.

6 Gillian Duncan, *Almost a Third of Family Firms in Gulf Have Female Board Members*, The National (Dec. 16, 2012).

7 *Leveraging an Untapped Talent Pool*, p. 11.

8 *Id.*

9 Mutlaq Hamad Al-Morished, *BDI Survey Reveals Barriers to Board Effectiveness*, Dubai Arab News (Jan. 19, 2015), *available at* http://www.arabnews.com/news/691546.

10 Ellis, *Promoting Gender Diversity in the Gulf*.

11 *Leveraging an Untapped Talent Pool*, p. 17.

12 Hawkamah, Events, Women Directors Program (last accessed July 31, 2015), http://hawkamah.net/index.html.

Japan

Japan

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Gender equality has moved to the forefront in Japan in recent years, in large part due to the efforts of Prime Minister Shinzo Abe. Abe has proclaimed support for working women as one part of his multidimensional growth strategy, and set forth a variety of initiatives aimed at encouraging the recruitment, retention, and promotion of women in the workforce.[1]

As is the case with a number of Asian countries, however, governmental support often precedes societal and cultural change. In Japan, traditionalism and conservatism still dominate the workplace environment, which tends to favor male managers and encourages many women to leave the workforce after starting a family.[2]

The Statistics

Japan ranked 104th out of 142 countries in the World Economic Forum's 2014 Gender Gap Index, rising one notch from 105th in 2013.[3] According to a 2014 study by Deloitte, the percentage of women serving on boards increased to 2.1% in 2014 from 1.6% in 2013, while the total board seats held by women increased to 1.2%.[4]

In 2014, data published by OECD showed Japan as having the third-highest gender wage gap out of the 34 countries studied, at 26.59%.[5] The average gender wage gap across the 34 countries, for comparison, was 15.46%.[6]

The Legal Framework

The current version of the Japanese Constitution, which went into effect in 1947, contains two provisions that touch upon gender equality:

1. "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."

2. "Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes." [7]

In 1986, Japan passed the Equal Employment Opportunity Act, which prohibits discrimination against women workers in terms of recruitment, hiring, assignment, promotion, training, fringe benefits, mandatory retirement age, retirement,

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1 Stephanie Assman, *Gender Equality in Japan: The Equal Employment Opportunity Law Revisited* 日本における男女平等　雇用機会均等法再考, The Asia-Pacific Journal, Vol. 12, Issue. 45, No. 2, November 10, 2014, *available at* http://japanfocus.org/-Stephanie-Assmann/4211/article.html. Abe advocated "building a society in which women can shine" in his September 2013 General Assembly Address to the United Nations. *Id.* He pledged to appoint women to a third of all senior management positions in governmental agencies, to encourage private companies to recruit and promote more women, and to increase the number of women in the Japanese workforce by 530,000. *Id.* He also expanded the number of openings at child-care facilities by 200,000 between 2013 and April 2015, and promised to create 200,000 more openings by March 2018. *Id.*; *see also* Shinzo Abe, *When Women Thrive, So Will the World*, Bloomberg View (April 24, 2015), http://www.bloombergview.com/articles/2015-04-24/when-women-thrive-so-will-the-world. In addition, he appointed five female ministers as part of his September 2014 cabinet reshuffle. *See* Assman, *supra*.

2 *Gender Equality in Japan: The Equal Employment Opportunity Law Revisited*, *supra* note 1.

3 *The Global Gender Gap Report 2014: Japan, available at*: http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=JPN.

4 *Women in the boardroom: A global perspective,* Deloitte (4th Ed. 2015), http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-ccg-women-in-the-boardroom-a-global-perspective4.pdf.

5 *Gender wage gap, available at*: http://www.oecd.org/gender/data/genderwagegap.htm.

6 *Id.*

7 Christine Russell, *The American Woman Who Wrote Equal Rights Into Japan's Constitution,* The Atlantic (Jan. 5, 2013), http://www.theatlantic.com/sexes/archive/2013/01/the-american-woman-who-wrote-equal-rights-into-japans-constitution/266856/.

resignation, and dismissal.[8]

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 put in place.[9] The Act stipulates that the government shall establish a basic plan to comprehensively and systematically implement policies to promote a gender-equal society[10] (the "Basic Plan for Gender Equality"). Following this provision, the government prepared an initial Basic Plan for Gender Equality in 2000.[11] In 2005, the government issued a second Basic Plan for Gender Equality with the goal of "increasing the share of women in leadership positions[12] to at least 30% by 2020 in all fields of society."[13] 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.[14] The government released the Third Basic Plan for Gender Equality in 2010, which attempted to set clear goals and deadlines and to regularly monitor progress in order to meet the "30 percent by 2020" target.

The government set the following goals for each field, including politics, national and local civil services, private sector, education and research as follows:[15]

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)**

8 Each Prefectural Labor Bureau has an equal employment office to promote the equal employment policies, including consultation with employees with problems of discriminatory treatments.

9 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.

10 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.

11 The initial Basic Plan 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.

12 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 professions.

13 This target was decided by the Headquarters for the Promotion of Gender Equality in 2003.

14 *Concluding Observations of the Committee on the Elimination of Discrimination against Women /Japan, available at*: http://www2.ohchr.org/english/bodies/cedaw/docs/co/cedaw.c.jpn.co.6.pdf.

15 Excerpted from the website of the Gender Equality Bureau, http://www.gender.go.jp/english_contents/mge/process/index.html.

Proportion of Women for Each Item		Recently	Target (Deadline)
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)**

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 targets are nonbinding, these measures are voluntary and it is unclear how effective they will be.

Other Government Initiatives

In addition to the various initiatives announced by Abe, the Japanese government has adopted recognition-based measures designed to encourage companies to become more female- and family-friendly. Since 2012, the Ministry of Economy, Trade, and Industry and the Tokyo Stock Exchange have jointly conducted the "Nadeshiko Brand" initiative, which recognizes enterprises that encourage female empowerment.[16] The Ministry of Health, Labour, and Welfare also promotes gender equality in the private sector by recognizing companies for gender equality and work-life balance.

Private Sector Support

According to Deloitte's 2014 study, KEIDANREN, an economic organization representing approximately 1,300 companies in Japan, recommended that member companies promote active participation by women and set quotas regarding the percentage of female managers.[17] By December 2014, more than 300 member companies had revealed their initiatives, including quota policies, on both the KEIDANREN website as well as their own.[18]

16 *Women in the boardroom: A global perspective,* supra note 10.

17 *Id.*

18 *Id.*

Corporate Governance Code

In 2013, the Tokyo Stock Exchange (TSE) changed its disclosure rulings to require listed companies to disclose the number/percentage of female board members in their corporate governance reports.[19] Additionally, in response to a request from Prime Minister Abe, Japan's Financial Services Agency and the TSE launched a joint panel in the fall of 2014 to discuss the establishment of Japan's Corporate Governance Code.[20] The panel announced its final draft of the Code in December 2014.[21] The final proposal, published in March 2015, includes a provision specifically encouraging diversity and the promotion of women:

- **Principle 2.4 Ensuring Diversity, Including Active Participation of Women:**

  "Companies should recognize that the existence of diverse perspectives and values reflecting a variety of experiences, skills and characteristics is a strength that supports their sustainable growth. As such, companies should promote diversity of personnel, including the active participation of women."[22]

The new Code encourages an increase in the number of outside directors serving on Japanese boards to at least two.[23] Given the Code's express encouragement of gender diversity, companies are likely to target female candidates for these positions.[24]

Effective June 1, 2015, the TSE again amended its listing rules to require all companies listed on the TSE 1st and 2nd sections to fully adopt the new Code.[25] Interim measures extended the deadline for companies to submit their Corporate Governance Report, with comply-or-explain disclosures for each Code requirement until December 2015.[26]

Conclusion

The concept of female empowerment espoused by the Japanese government has gained theoretical popularity, but the country still has a long way to go toward achieving true gender equality. A white paper compiled by the Cabinet Office and released in June 2015 revealed that "the percentage of female leaders in various fields—defined as lawmakers, highly skilled professionals, or corporate department heads and higher—remains much lower than the 30 percent target."[27] The tension between the country's articulated desire for change and its highly conservative corporate culture is hampering Japan's movement toward the 2020 goal. However, given the rapid rate at which the country has transformed its stance on gender equality in the workforce—at least from a governmental perspective—the goal is not entirely out of reach. For it to be realized, the private sector must commit to it.

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19 *Id.*

20 *Japan's Corporate Governance Code and ISS' Director Election Policy: FAQ's,* Institutional Shareholder Services (2015), https://www.issgovernance.com/file/policy/faq-on-japan-s-corporate-governance-code-and-iss-director-election-policy.pdf.

21 *Id.*

22 *Japan's Corporate Governance Code [Final Proposal]: Seeking Sustainable Corporate Growth and Increased Corporate Value over the Mid- to Long-Term,* The Council of Experts Concerning the Corporate Governance Code (Mar. 5, 2015), http://www.fsa.go.jp/en/refer/councils/corporategovernance/20150306-1/01.pdf.

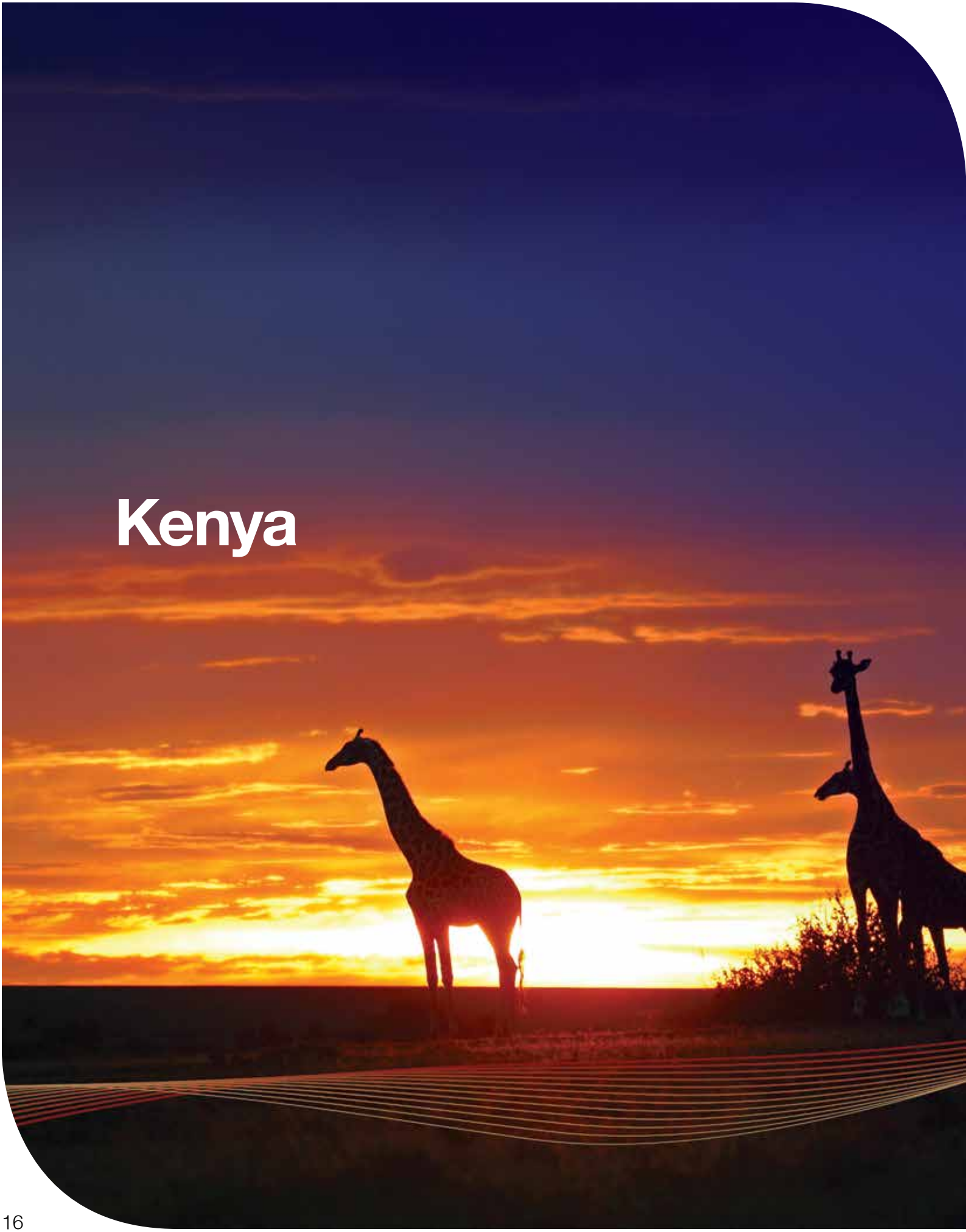
23 *Id.*

24 *Women in the boardroom: A global perspective,* supra note 10.

25 *Japan's Corporate Governance Code and ISS' Director Election Policy: FAQ's,* supra note 25.

26 *Id.*

27 Tomoko Otake, *Gender equality goal for 2020 elusive: white paper,* Japan Times (June 19, 2015), http://www.japantimes.co.jp/news/2015/06/19/national/social-issues/gender-equality-goal-2020-elusive-white-paper/#.VbesBvlVhBc.



Kenya

Kenya

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Of all African countries, Kenya has the highest percentage of women among its public companies' board directors. With women holding 19.8% of board seats, Kenya surpasses most countries worldwide—including the United States, France, and the Netherlands—in promoting gender equality on boards.[1]

A frequently-referenced example is major Kenyan beverage manufacturer Eastern African Breweries, which has appointed five women to its eleven-director board.[2] Several factors drive the strong presence of women on boards of Kenyan companies, including early adoption of a Corporate Governance Code addressing gender diversity, active non-governmental organizations that focus on advocacy and training, and a constitutional mandate that seeks to impose a quota on the representation of women in the boardroom. However, a lack of effective mechanisms to enforce compliance with these directives raises questions about further progress.

Kenya has the highest percentage of women in Africa that serve on public companies' board of directors

Corporate Governance Code

Kenya was one of the first countries worldwide to modify its Corporate Governance Code to include recommendations for representation of women on public boards. In 2002, before Finland, Norway, and Sweden announced similar initiatives, Kenya's Capital Markets Authority, regulator of the Nairobi Stock Exchange, amended its *Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya* to encourage participation of women on corporate boards.[3] According to the relevant provision, "The process of the appointment of directors should be sensitive to gender representation."[4] While the Corporate Governance Code is not binding on publicly-listed countries in Kenya or any other corporate entities, the inclusion of this recommendation increased visibility of the underrepresentation of women on boards and spurred similar progress throughout the region. Uganda's Capital Markets Authority issued new corporate governance guidelines with identical language on gender diversity the following year.[5]

Constitutional Mandate

A new Kenyan Constitution was passed in 2010, which—as a result of advocacy by several Kenyan non-governmental organizations—includes a constitutional mandate for representation of women on boards of state-owned companies. This provision states, "Not more than two-thirds of the members of elective or appointive bodies shall be of the same gender."[6] As the term "elective or appointive bodies" is defined broadly to include the boards of state-owned enterprises in which the government owns more than a 50% stake, a significant number of Kenya's largest companies were brought within the scope of the mandate.

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1 African Development Bank, *Where are the Women: Inclusive Boardrooms in Africa's Top Listed Companies?* (June 2015), *available at* http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Where_are_the_Women_Inclusive_Boardrooms_in_Africa%E2%80%99s_top-listed_companies.pdf (hereinafter, "African Development Bank Report").

2 African Development Bank Report at 26.

3 *Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya*, Gazette Notice No. 3362, *available at* http://www.cma.or.ke/index.php?option=com_docman&view=docman&Itemid=208.

4 *Id.* at 3.1.3 viii.

5 *Capital Markets Corporate Governance Guidelines* Part 2, Section 30 (2003), *available at* http://www.cmauganda.co.ug/sites/default/files/downloads/laws_%26_regulations_guidelines_CorporateGovernanceGuidelines.pdf.

6 Constitution of Kenya, 2010, Article 27 (8).

The constitutional mandate produced immediate effects, increasing the representation of women on boards of state-owned enterprises by 5% during the first two years it was effective—from 15% in 2010 to 20% in 2012.[7] However, as detailed in a 2015 African Development Bank report, because the final decision for appointing a board member for a state-owned enterprise is the responsibility of government officials, observers are concerned that "heavy intrusion of politics in these appointments, as well as cronyism" could compromise progress.[8] In addition, the absence of penalties for non-compliance with the quota creates uncertainty about whether state-owned enterprises will meet the 33% mandate set forth in the Constitution.

Privately-Owned Companies

While the constitutional mandate has spurred progress within state-owned enterprises, no parallel mandate applies to companies in Kenya that are not state-owned. The Corporate Governance Code recommends consideration of gender diversity on corporate boards, but is non-binding and does not include penalties or incentives to encourage compliance.

Although many in Kenya have advocated for a formal quota for participation of women on boards of private companies, no clear path toward progress has been identified. In 2012, Stella Kilonzo, former head of the Capital Markets Authority, expressed support for a quota applicable to publicly-listed companies in Kenya.[9] In discussing the possibility of regulatory action, Kilonzo stated, "I have studied models in other markets like the U.K. where gender balance has been considered in the composition of the board of directors, and this is something we want to take on board."[10] However, since Kilonzo's tenure at the Capital Markets Authority ended in June 2012, neither the Capital Markets Authority nor any other regulatory body has proposed a quota.

A strong network of advocacy organizations in Kenya continues to push for progress within privately-owned companies, as well as state-owned enterprises.[11] These organizations focus on providing training to women in the corporate sector in order to increase the number of women qualified to join corporate boards, as well as working with the media to encourage companies to adhere to the recommendations set forth in the constitutional mandate and the Corporate Governance Code.

Conclusion

While Kenya has garnered global recognition for its relatively high representation of women on corporate boards and, in particular, its constitutional mandate, women in the corporate sector continue to battle for leadership positions. However, the increasingly prominent voice of non-profits and advocacy groups has raised the visibility of the issue of women's representation in the corporate sphere within Kenya, and points toward continued progress.

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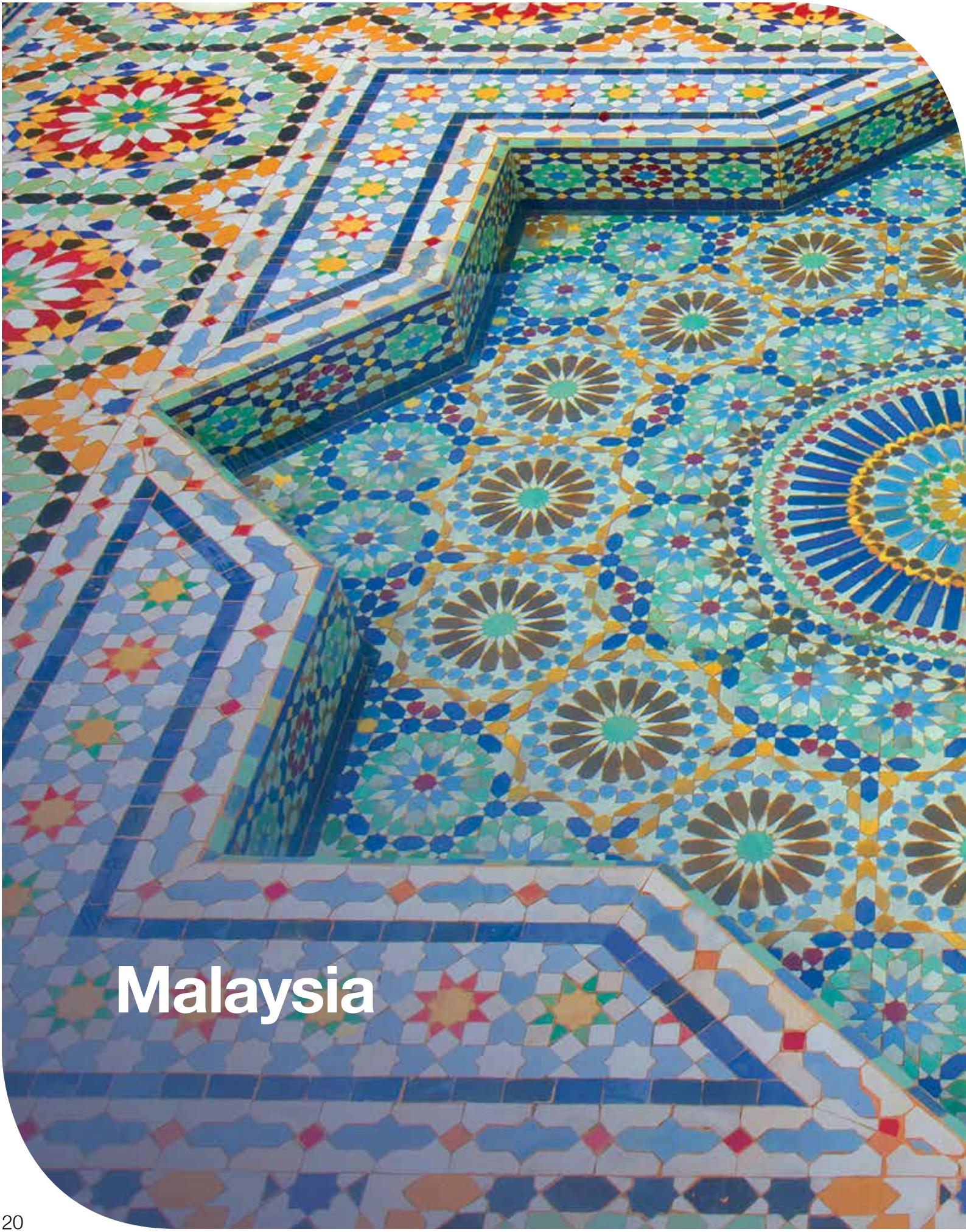
7 *Bringing the Other Half to the Boardroom: Case Study of State Corporations and Listed Companies in Kenya*, D. Muturi, J. Sagwe and G. Karugo, KIM Discussion Paper Series, 2012.

8 African Development Bank Report at 38.

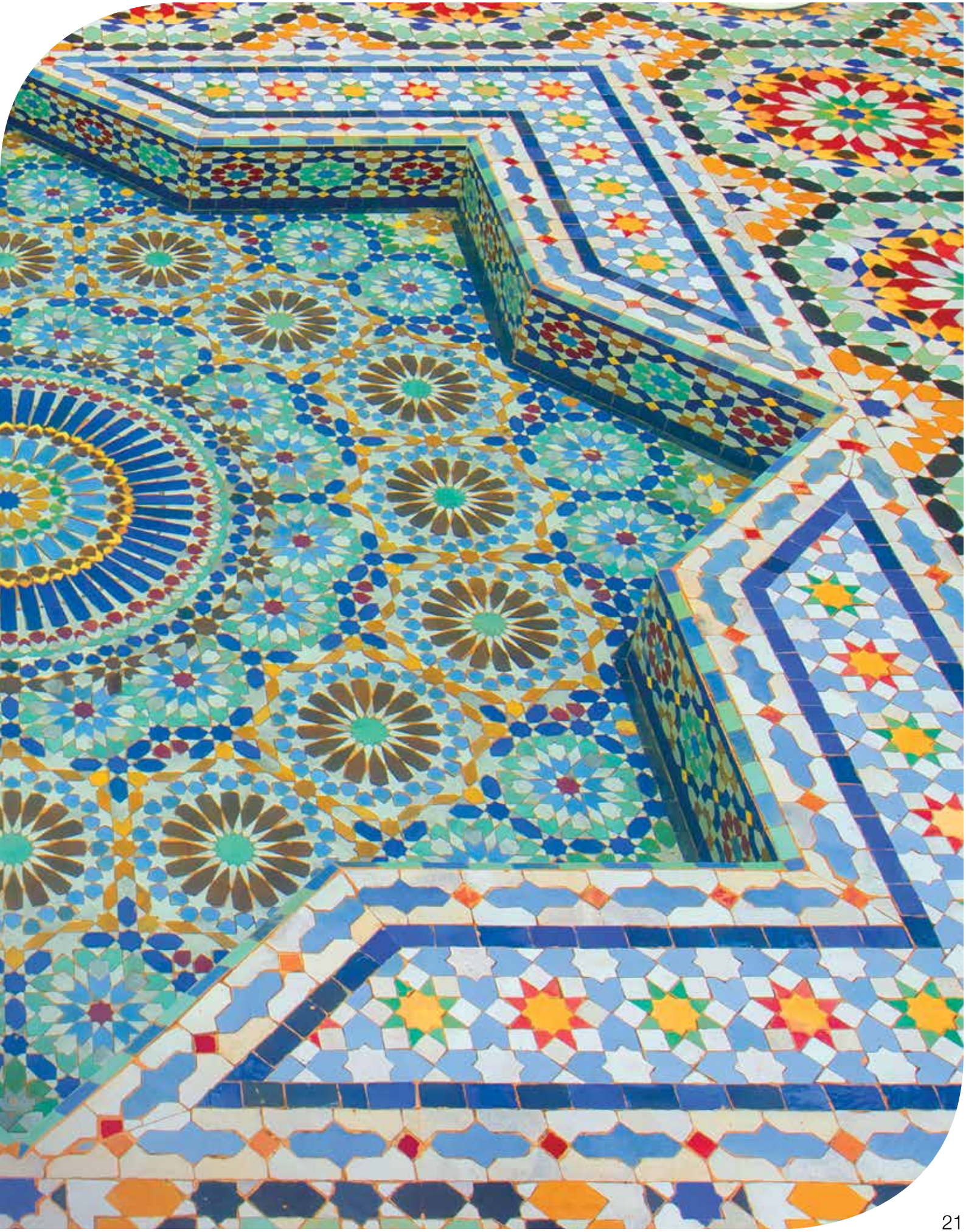
9 Michira, Moses and David Herbling, *CMA Push for Women Seats Stirs Listed Company Boards*, Business Africa Daily (Jan. 19, 2012), *available at* http://www.businessdailyafrica.com/CMA-push-for-women-seats-stirs-listed-company-boards--/-/539546/1310588/-/item/0/-/5f2sqb/-/index.html.

10 *Id.*

11 For example, the Federation of Women Lawyers (http://www.fidakenya.org/) and Women's Empowerment Link (http://wel.or.ke/) advocate for increased representation of women in corporate boardrooms in Kenya.



Malaysia



Malaysia

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Despite the fact that Malaysia has one of the highest percentages of female university graduates in Asia (57%),[1] companies in the country have historically faced a dearth of female representation in the workplace.[2] Commentators note that family obligations represent the biggest challenge to attracting and retaining female employees.[3]

The Malaysian government has taken numerous measures in an attempt to achieve gender parity in the workplace, particularly in leadership positions. In 2004, the Malaysian Cabinet approved a policy requiring that women should comprise at least 30% of those in decision-making positions in civil sector employment.[4] Within six years, women in public sector leadership positions increased from 18.8% to 32.3%.[5] Following the success of this initiative, in 2011 the Cabinet approved an additional policy requiring a similar 30% representation of female leaders on boards of directors in the corporate sector. Although not a mandatory quota, companies were encouraged to meet this target within five years (by 2016).[6] As of May 2015, Malaysian companies were far from the 30% goal—women only made up 16% of public company boards.[7]

Corporate Governance Code

Soon after the Cabinet approved its corporate sector policy, the Malaysian Securities Commission revised its Code on Corporate Governance.[8] This 2012 update sought to further the government's goals of strengthening board structure and composition, and ensuring that companies act in compliance with ethical values.[9] The Code recommends that "[t]he board should establish a policy formalizing its approach to boardroom diversity" and "take steps to ensure that women candidates are sought as part of its recruitment exercise."[10] The board is also encouraged to "explicitly disclose in the annual report its gender diversity policies and targets and the measures taken to meet those targets."[11] Although this Code is technically voluntary, listed companies are required to provide updates on compliance in their annual reports.[12]

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1 *See*, McKinsey & Company, *Women Matter: An Asian Perspective*, *available at* http://www.mckinsey.com/features/women_matter (last visited July 31, 2015) (hereinafter *Women Matter*); see also Vanitha Nadaraj, *It's a Struggle to Get Women on Corporate Boards in Malaysia*, The Establishment Post (July 9, 2014), *available at* http://www.establishmentpost.com/struggle-get-women-boards-malaysia/ (last visited July 31, 2015) (hereinafter *It's a Struggle*).

2 *See*, *It's a Struggle*. The UN Development Program Country report for Malaysia (2013-2015) noted participation in the labor market for women was 46.1% compared to 78.7% for men. See Bureau of Democracy, Human Rights and Labor, United States Department of State, Malaysia Country Report on Human Rights Practices for 2013, *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/ #wrapper (last visited July 31, 2015).

3 *See*, *It's a Struggle*.

4 *See,* Mazwin Nok Anis, *PM: 30% of corporate decision-makers must be women*, The Star Online (June 27, 2011), *available at* http://www.thestar.com.my/story.aspx/?file=%2f2011%2f6%2f27%2fnation% 2f20110627131533&sec=nation (last visited July 30, 2015).

5 *Id.*

6 *Id.*; see also, *Launch of "Lead The Change—Women On Boards," available at* https://najibrazak.com/blog/launch-of-lead-the-change-women-on-boards/ (last visited July 31, 2015) (hereinafter *Lead The Change*).

7 *See*, *Lead the Change*. If Malaysia can continue its efforts to raise female board participation, the country stands to benefit financially: as a recent study by McKinsey & Company estimated, increasing participation has the potential to raise GDP by between RM6 billion and RM9 billion. *See, Women Matter*.

8 Malaysian Code on Corporate Governance 2012, *available at* http://www.sc.com.my/wp-content /uploads/eng/html/cg/cg2012.pdf (last visited July 30, 2015).

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

Exchange Listing Requirements

The Bursa Malaysia stock exchange listing requirements do not prescribe specific levels of female participation on boards. However, they do mandate that issuers disclose their policies on board composition and gender diversity in their annual reports:

> Chapter 15.08A(3)—The listed issuer must provide, in its annual report, a statement about the activities of the nominating committee in the discharge of its duties for the financial year. Such statement must include…the following information:
>
> (a) the policy on board composition having regard to the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the listed issuer.[13]
>
> The listing requirements were last updated in January 2015. Though commentary on the rule is limited, Bursa Malaysia and other entities such as the Malaysian Institute of Accountants interpret Chapter 15.08(A)(3) as "strongly encouraging" listed issuers to address in their annual reports all efforts to reach the 30% leadership goal:
>
> [A] listed issuer is strongly encouraged to disclose the targets and measures taken to meet the targets in relation to its gender diversity policy as recommended in the Malaysian Code on Corporate Governance.
>
> In this regard, we wish to draw the listed issuer's attention to the announcement made by the Prime Minister Datuk Seri Najib Tun Razak on 27 June 2011 on the Government's policy approved by the Cabinet that women must comprise at least 30% of those in decision-making positions in the corporate sector within five years (i.e. by 2016).[14]

Public and Private Sector Groups Support

Although the goal of 30% board representation has not yet been reached in Malaysia, the corporate sector has shown some growth in female leadership. This has been achieved in part through cooperation with governmental agencies and private organizations.

For example, the NAM Institute for the Empowerment of Women Malaysia (NIEW) is an organization established by the Malaysian government to focus on issues pertaining to women's empowerment and advancement, both in Malaysia and internationally.[15] It was established in July 2006 and is maintained under the purview of Malaysia's Ministry of Women, Family and Community Development. One stated mission of the organization is to achieve the Cabinet policy of 30% female representation in decision-making positions in publicly-listed companies by 2016.[16] NIEW conducts various training programs, including a 2014 "Women's Director's Convention." This convention served as a network platform to connect "board-ready" women and businesses, and to facilitate discussions between women, chairpersons, board directors, board recruiters, and business and government leaders regarding progress made on the government's 30% policy.[17]

NIEW also runs an annual "Women Directors Programme," which strives to prepare qualified women for director roles in Malaysian publicly-listed companies.[18] This program consists of three modules: (1) an online assessment of qualification

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13 *See*, Bursa Malaysia Main Market Listing Requirements: Chapter 15.08A(3), *available at* http://www.bursamalaysia.com/misc/system/assets/5957/MAIN_Chap%2015_LRPh1%20%2827Jan2015%29.pdf (last visited July 30, 2015).

14 *See*, Bursa Malaysia Main Market Listing Requirements FAQ 15.20, *available at* http://customer. bursamalaysia.com:8080/MainLR/Pages/FAQ%2015.20.aspx (last visited July 30, 2015); Malaysian Institute of Accountants Appendix 3, Revised Questions and Answers, Amendments in relation to Corporate Governance & Other Requirements, *available at* http://www.mia.org.my/new/downloads/ circularsandresources/circulars/2012/68/App3_Revised.pdf (last visited July 30, 2015).

15 *See*, NAM Institute for the Empowerment of Women Malaysia FAQ, *available at* http://www.niew.gov.my/faq.html (last visited July 30, 2015).

16 *See*, NAM Institute for the Empowerment of Women Malaysia, The At Least 30% Women on Boards Initiative Gains Momentum, *available at* http://www.niew.gov.my/the_at_least_30percent_women-on-boards_initiative_gains_momentum.html (last visited July 30, 2015).

17 *Id.*

18 In 2014, approximately 250 women participated in the program. *See,* Deloitte, *Women in the boardroom, A global perspective*, *available at* http://www2.deloitte.com/global/en/pages/risk/articles/ women-in-the-boardroom.html (last visited July 31, 2015).

and "board readiness"; (2) coaching on preparation for boards and training on related knowledge and skills; and (3) a final simulation exercise to familiarize participants with the challenges of serving on a board.[19] Through this program, NIEW also facilitates board placement for participants by asking them to sign up for a registry accessible by companies looking for qualified candidates.[20]

In addition to public sector groups, the Prime Minister also recently launched the Malaysian chapter of the "30% Club" to help the country meet its target by 2016.[21] The "30% Club" is an international organization that advocates increasing female representation at all organizational levels;[22] 30% Club partners with local chapters in numerous countries help achieve this goal.[23]

Additional Measures to Improve Gender Parity

In a heightened effort to meet the 30% goal by 2016, Malaysian authorities have recently taken a variety of other measures to improve gender parity and increase female representation on boards. For example, in 2015 the government allocated RM2.26 billion to the Women, Family and Community Development Ministry for use in promoting the involvement of women in the job market.[24] Additionally, this year the government reportedly also planned to train 125 women to potentially serve as board members.[25]

Further, in December 2014 Bursa Malaysia announced a new "Environmental, Social and Governance Index." Constituents must now meet criteria measuring non-financial aspects of their companies such as "the practice of good governance through responsible and ethical decision-making."[26] Relatedly, in May 2015 the Prime Minister announced that in the future listed companies will be required to disclose "the composition and diversity of their boards and top management in terms of gender, ethnicity and age."[27]

Conclusion

Despite extensive and increased efforts by Malaysian authorities and private sector groups, the country still faces substantial obstacles in its quest for gender parity in the workplace and increased female board representation. The corporate sector lags significantly behind the government sector in appointing women to leadership positions. Although combined actions by the government, Bursa Malaysia, and private groups have raised public awareness and encouraged female board membership, at this time it seems unlikely that companies will satisfy the government's goal of 30% leadership by 2016.

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19 *See*, NAM Institute for the Empowerment of Women Malaysia, Application for Women Directors Programme 2015, *available at* http://www.niew.gov.my/application_for_women_dir_982.html (last visited July 30, 2015).

20 *Id.* Some commentators question the efficacy of this program, noting that more than 700 women participated in 2012 and 2013, yet only 115 of them hold leadership positions in their companies. See It's a Struggle.

21 *See*, *PM launches '30% Club' in bid to triple number of women on boards*, The Malay Mail Online (May 8, 2015), *available at* http://www.themalaymailonline.com/malaysia/article/pm-launches-30-club-in-bid-to-triple-number-of-women-in-boards (last visited July 30, 2015) (hereinafter 30% Club).

22 *See*, *Lead The Change*.

23 *See*, *30% Club*.

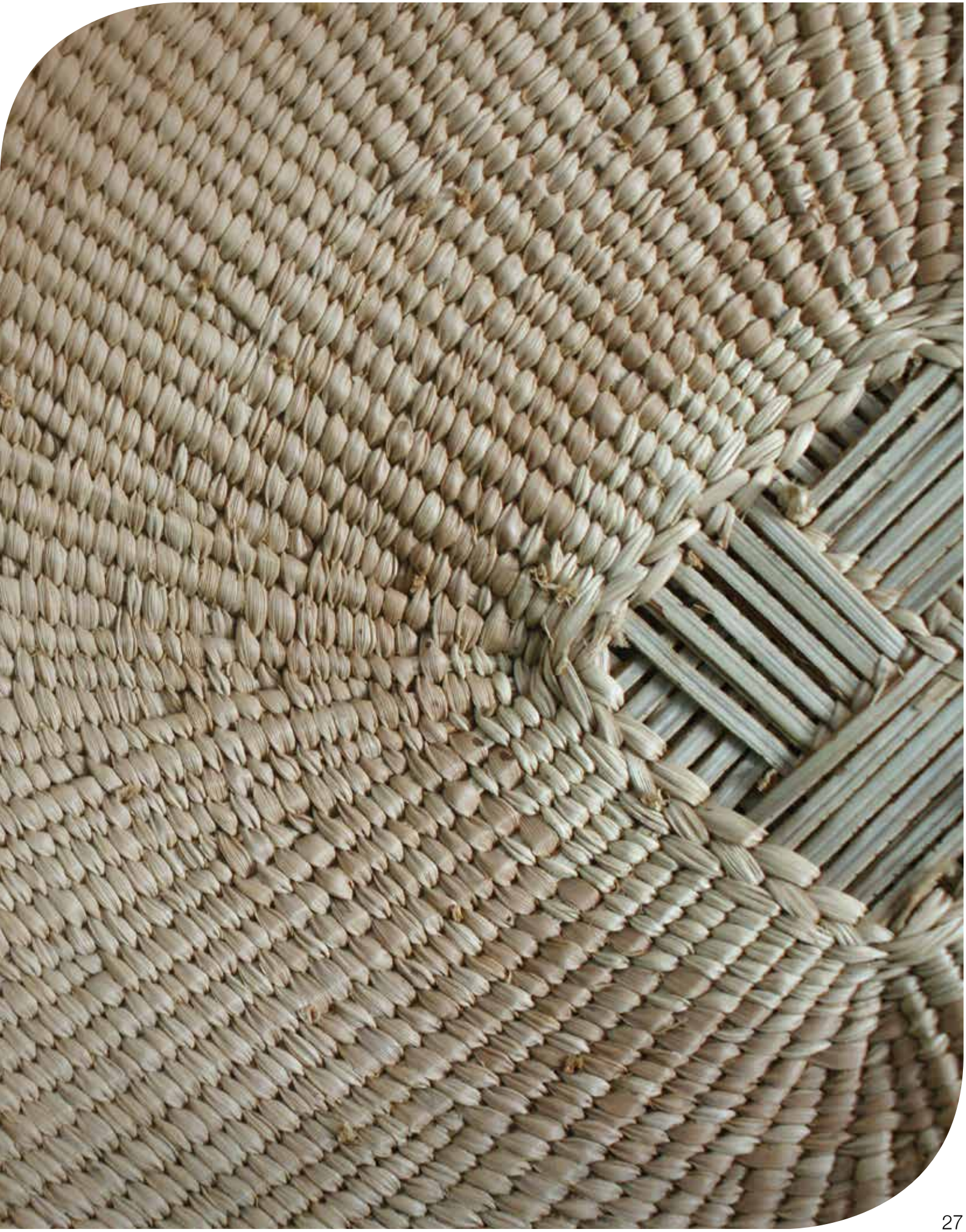
24 *See*, *RM2.26 billion to enhance women's involvement in job market*, *available at* http://www.themalaysianinsider.com/malaysia/article/rm2.26-billion-to-enhance-womens-involvement-in-job-market-bernama (last visited July 31, 2015) (hereinafter RM2.26 Billion).

25 *See*, *The 2015 Budget Speech* by Yab Dato-Sri Mohd Najib Tun Haji Abdul Razak Prime Minister and Minister of Finance, *available at* http://www.bernama.com/bernama/v8/newsspeech.php?id=753 (last visited August 28, 2015); see also RM2.26 Billion.

26 *See*, *Bursa unveils Environmental, Social and Governance Index*, The Star Online (December 24, 2014), *available at* http://www.thestar.com.my/Business/Business-News/2014/12/23/Bursa-unveils-Environmental-Social-and-Governance-Index/?style=biz (last visited July 31, 2015).

27 *See*, *Lead The Change*.

Nigeria



Nigeria

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The percentage of women on boards of Nigerian companies—11.5% as of 2015—falls slightly below the continental average of 12.7%.[1] Historically, many sociocultural factors have made progress toward gender equality in the corporate sphere difficult, including limited access to education for women which, in the past, resulted in a limited number of women presumed to be qualified for corporate positions.[2]

While many companies in Nigeria still struggle to attain adequate representation of women on their boards, major oil and gas company Oanda has been recognized as having one of the highest percentages of women directors in Africa, with women comprising over 30% of its board.[3] Recent developments—in particular, a regulatory directive issued by the Central Bank of Nigeria—have reflected innovative approaches toward combatting underrepresentation of women on corporate boards, suggesting that progress toward gender equality is in motion.

Corporate Governance Code

In 2011, the Securities and Exchange Commission of Nigeria issued a new Code of Corporate Governance for Public Companies.[4] The Code includes a recommendation for publicly-listed companies to take gender into consideration when selecting members of their boards of directors, stating, "The criteria for the selection of directors should be written and defined to reflect the existing Board's strengths and weaknesses, required skill and experience, its current age range, and gender composition."[5] The Code provides guidance for publicly-listed companies, but does not include penalties for failure to consider these factors.

Central Bank of Nigeria has taken a unique approach of tackling this issue through the lens of the banking sector

Central Bank Directive

Following the issuance of the Code, the Nigerian Central Bank, the primary regulator for Nigerian financial institutions, announced a regulatory directive requiring all banks operating in Nigeria to meet a quota of 30% participation by women on boards. The directive also requires banks to ensure that at least 40% of management is composed of women, as well as include in their annual reports statistics on representation of women within their institutions. The then-Governor of the Nigerian Central Bank stated, "The decision was taken with a view to stimulating women's participation in development and nation building," explaining that the regulatory action was taken based on recognition of the underrepresentation of women among the leadership of financial institutions.[6] Many advocates for gender

1 African Development Bank Report at 14.

2 Y. Fakeye, O.J. George and O. Owoyemi, *Women in Purgatory: The Case of Nigerian Women in the Boardrooms*, 1 Asian Journal of Business and Management Sciences No. 10, 134, 137, *available at* http://www.ajbms.org/articlepdf/AJBMS20121914.pdf.

3 African Development Bank at 26.

4 Securities and Exchange Commission of Nigeria, *Code of Corporate Governance for Public Companies* (2011), *available at* http://www.sec.gov.ng/code-of-corporate-governance-.html.

5 *Id.* at 13.2.

6 Chima, Obinna, *Women's Representation on Banks' Board Still Dismal,* THISDAY LIVE (Aug. 18, 2012), *available at* http://www.thisdaylive.com/articles/women-s-representation-on-banks-board-still-dismal/122638/.

equality on boards hoped that, by changing the landscape of the financial sector, the regulatory directive would spur change in other market sectors as well.

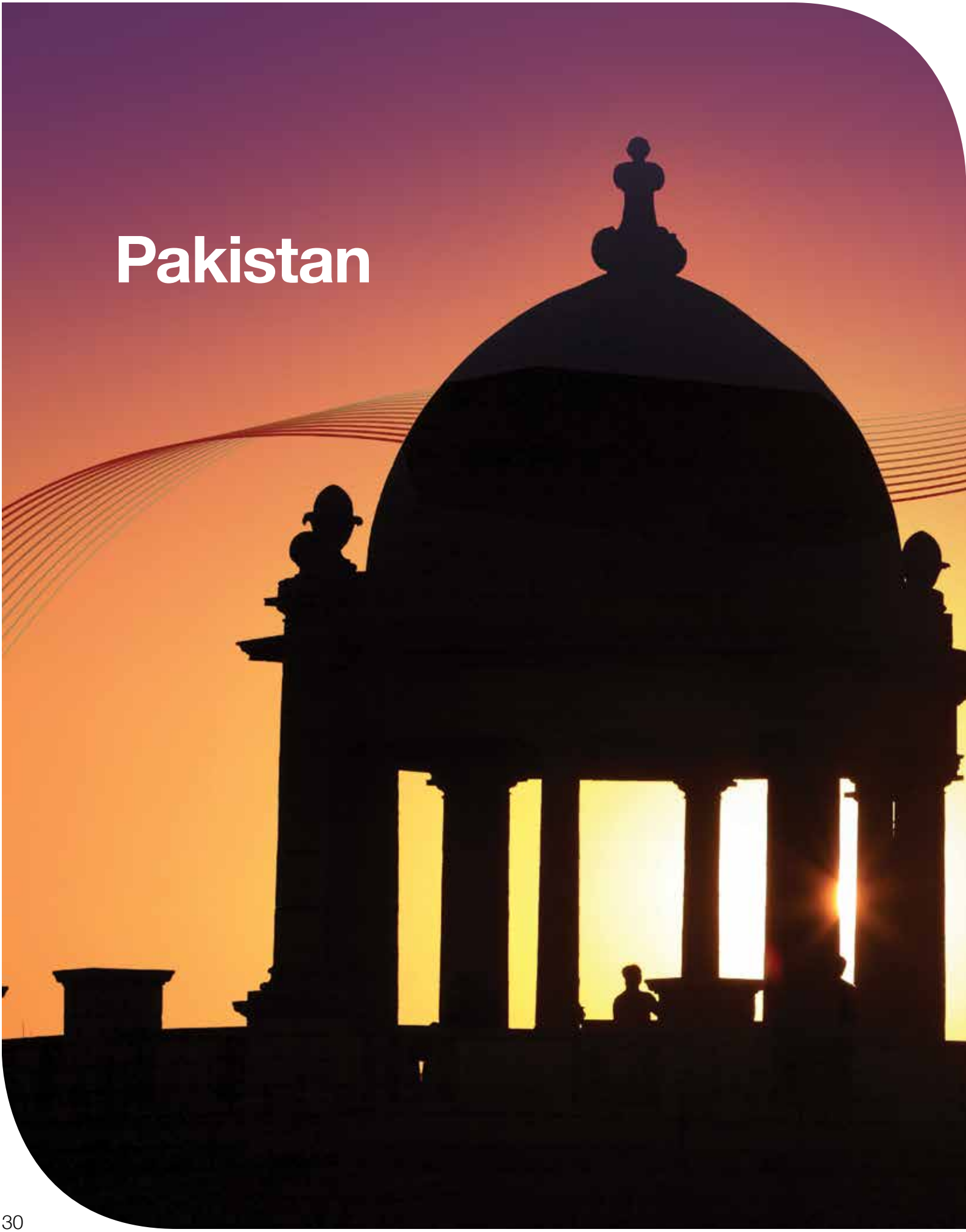
Though the regulatory directive represented a strong step toward parity, subsequent studies have revealed that many financial institutions continue to fall short of the 30% target. For example, Women in Management, Business and Public Service—a Nigerian non-profit organization that advocates for the success of women in the workplace—found that 19% of board members for Nigerian banks were women as of 2014.[7] While this percentage falls significantly short of the 30% target identified in the regulatory directive, 19% is significantly higher than the countrywide average of 11.5% and the continental average of 12.7%. Moreover, this percentage has increased from 15% to 19% since the announcement of the regulatory directive in 2012, suggesting that progress toward gender equality in Nigeria is ongoing.

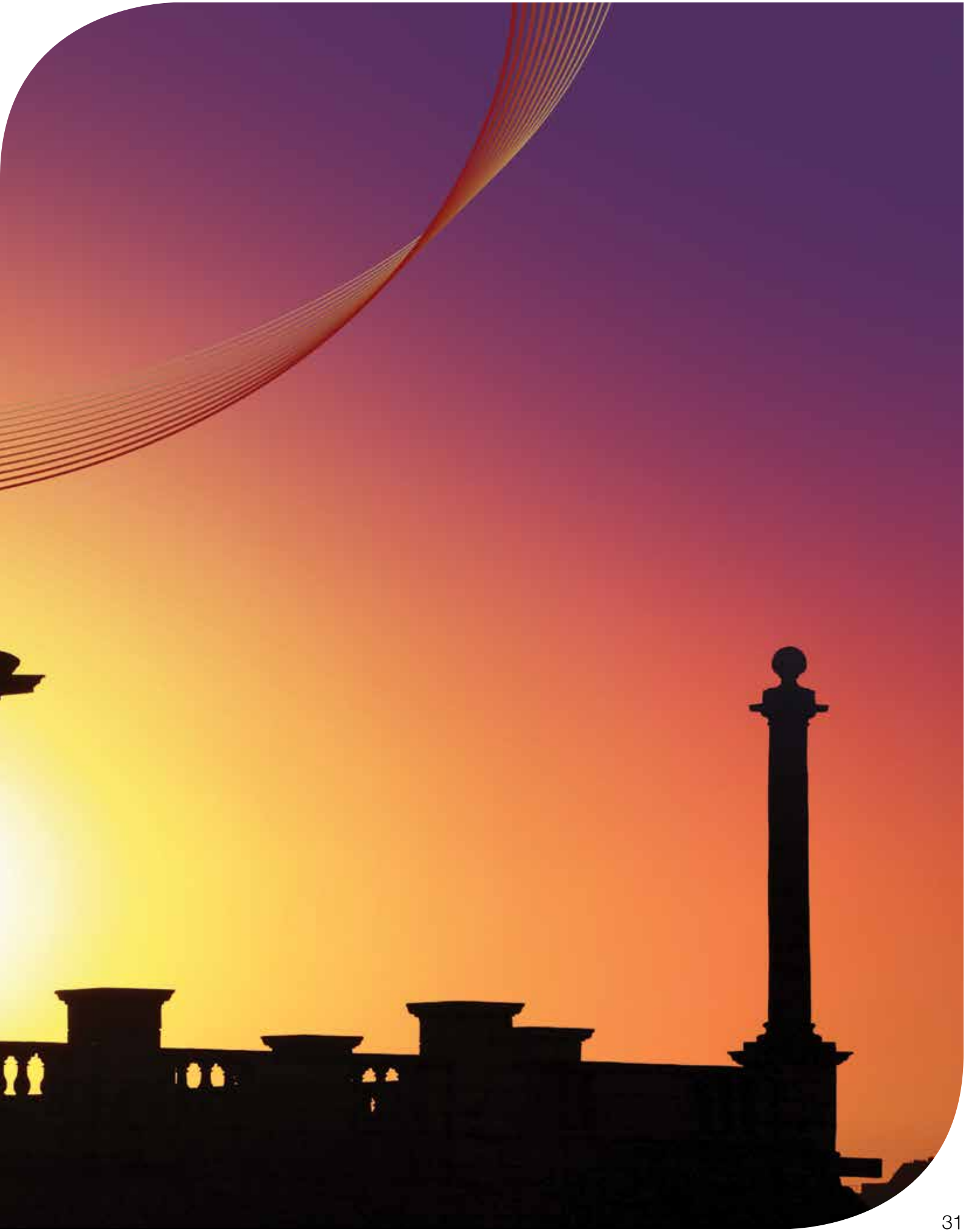
Conclusion

While the representation of women on boards in Nigeria currently falls just below average among African nations, the unique approach of tackling this issue through the lens of the banking sector suggests that Nigeria will continue to make strides in this area. Though the regulatory directive so far lacks a strong enforcement mechanism, the shift toward parity within financial firms could play a significant role in shifting norms throughout the private sector as well.

7 Women in Management, Business & Public Service, *WIMBIZ Findings on Female Representation on Boards and Top Management of Financial Institutions in Nigeria* (Aug. 2014), *available at* http://wimbiz.org/publication/Due%20Diligence%20Analysis%20for%20Financial%20Institutions%20in%20Nigeria%202012-August%202014.pdf.

Pakistan





Pakistan

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In Pakistan, women comprise just 23% of the work force.[1] Although there is little publicly available information regarding gender diversity on boards of listed companies, a 2010 paper commissioned by the International Finance Corporation (IFC), a member of the World Bank Group, and the Association of Chartered Certified Accountants of Pakistan (ACCA) found that 78% of Pakistan's largest companies do not have a single woman on their board of directors.[2]

Corporate Governance Code

The Constitution of the Islamic Republic of Pakistan guarantees citizens' equality under the law and prohibits discrimination on the basis of sex, specifically providing that "[a]ll citizens are equal before law and are entitled to equal protection of law" and that "there shall be no discrimination on the basis of sex."[3] There are no legal provisions within Pakistan mandating quotas for women on corporate boards of directors.[4]

The SEC of Pakistan, however, has issued a Code of Corporate Governance, which indirectly supports gender diversity on corporate boards of directors. The Code applies to listed companies and is part of the listing regulation of stock exchanges. The Code encourages boards:

> to have a balance of executive and non-executive directors, including independent directors and those representing minority interests with the requisite skills, competence, knowledge and experience so that the board as a group includes core competencies and diversity, including gender, considered relevant in the context of the company's operations.[5]

Despite Support, Disparity Continues

Despite the Code's encouragement of gender diversity on corporate boards, commentators have observed that "the largest companies of Pakistan are not practicing gender diversity as a best practice at the board level."[6]

The IFC/ACCA study—which predated amendments to the Code encouraging gender diversity—found that the majority of companies represented by the Karachi Stock Exchange's (KSE) KSE 100 Index did not have a single woman on their board of directors. This study surveyed 303 publicly listed corporations, including KSE 100 Index companies and a random sample of 203 actively trading companies on the KSE.[7] The study did not estimate the overall percentage of women directors on corporate boards in Pakistan. However, it did find that 31% of the surveyed publicly listed companies had women on their boards, with 18% of those surveyed having one woman director and 13% having more than one.[8]

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1 World Bank Group, *Women, Business and the Law: Creating Economic Opportunity for Women* (2013), *available at* http://wbl.worldbank.org/data/exploreeconomies/pakistan/2013.

2 ACCA/IFC, *Gender Diversity on Boards in Pakistan* (2010), *available at* http://www.accaglobal.com/content/dam/acca/global/pdf/News-GenderDiversityPakistan.pdf.

3 Constitution of the Islamic Republic of Pakistan, Art. 25(1)-(2).

4 World Bank Group, *Women, Business and the Law: Creating Economic Opportunity for Women* (2013), *available at* http://wbl.worldbank.org/data/exploreeconomies/pakistan/2013.

5 Securities and Exchange Commission of Pakistan, *Code of Corporate Governance* (2012, amended 2014), *available at* http://www.secp.gov.pk/CG/CodeOfCorporateGovernance_2012_AmendedJuly2014.pdf.

6 ACCA/IFC, *Gender Diversity on Boards in Pakistan* at 10.

7 *Id.*

8 *Id.*

Significantly, 72% of companies that have women on their boards of directors are family-owned businesses—companies where one or more family members have significant ownership interests in the business.[9] When the IFC/ACCA study asked participants to identify the main criterion for nominating or appointing women to board positions, 55% stated it was a family relationship, while only 9% cited qualifications, and only 3% singled out experience as the most important criterion. In light of these responses, the IFC/ACCA study queried whether the higher incidence of gender diversity among boards of family-owned businesses "reflect[ed] appreciation of the business case for such boards or rather the innate desire of owners of family-owned businesses to maintain business control and decision making within the family."[10]

Despite such concerns, however, survey responses indicated that companies do recognize there is a business case to be made for increasing gender diversity on corporate boards. For example, 26% of respondents identified improved quality of board discussions as an advantage of gender diversity because women are perceived as not shying away from asking challenging questions and as coming to meetings more prepared to discuss agenda items.[11] In addition, 23% of respondents viewed gender-diverse boards as producing more balanced decisions because women bring a different dimension to decision making.[12]

72% of companies that have women on their boards are family-owned

Conclusion

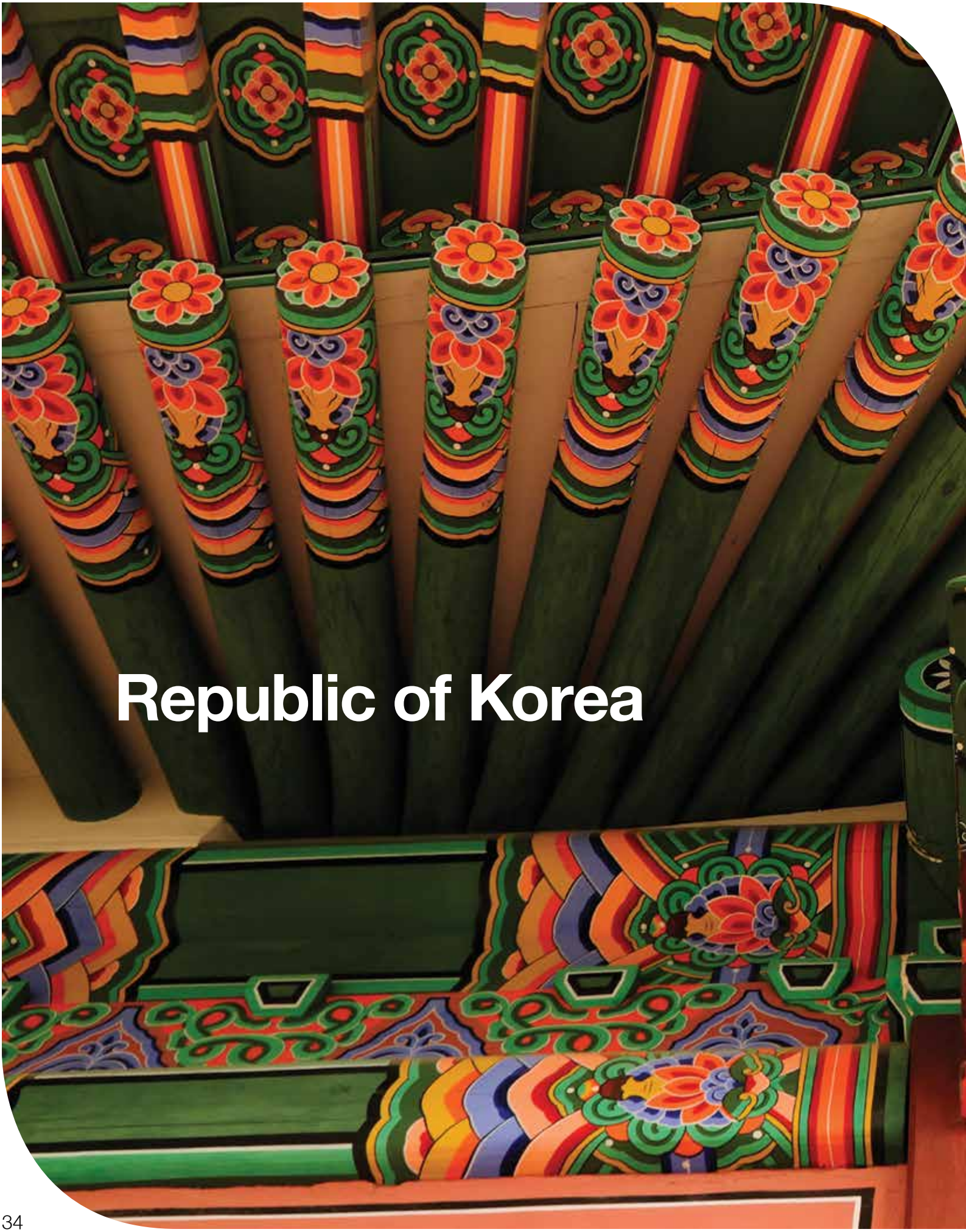
The issue of gender diversity on corporate boards of directors in Pakistan does not appear to have been examined extensively by commentators. There are, however, promising signs that gender diversity is an issue being considered within board rooms and by regulators. Companies appear to appreciate the business case for increasing gender diversity on their boards and the SEC has revised the Code of Corporate Governance to encourage consideration of gender diversity in the composition of a corporate board. Further effort is needed to continue to improve rates of women's participation on corporate boards in Pakistan.

9 *Id.* at 10-11.

10 *Id.* at 10.

11 *Id.* at 13.

12 *Id.*



Republic of Korea

The Republic of Korea

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Korea's intense corporate culture, as well as its deeply entrenched social and religious culture that places almost exclusive responsibility for managing the household and raising children upon women, drives most Korean women from the workforce when they marry or have children.[1] The Korean government, however, is now leading the effort to address this problem and to encourage the advancement of women in the workplace.

Initiatives Underway

The country's Ministry of Gender Equality (now called the Ministry of Gender Equality and Family, or MOGEF) was originally established in 2001 to address issues of gender discrimination.[2] MOGEF's present focus is on policies designed to promote work-life balance in the hopes that such policies will enable women with families to sustain their careers and ultimately lead to more female executives in top management positions and leadership roles.[3] Despite these initiatives, the employment rate of women within the managerial ranks in Korea remains low, and pay disparities between men and women remain high.

Korea has made some significant breakthroughs in recent years with respect to the presence of women in positions of political power. In 2013, the country swore in its first female president, Park Geun-hye, following a historic election.[4] Park's victory was largely viewed as an endorsement of her economic agenda, however, rather than her proposed agenda for helping women.[5] Yet despite initial skepticism, Park pledged to lift the female employment rate to 61.9% (from 53.5%) before her term ends in 2018, and her administration has since championed several measures designed to increase female participation in the workforce.[6]

The Statistics

Korea ranked 117 out of 142 countries in the World Economic Forum's 2014 Gender Gap Index.[7] While women tend to fare well at the entry level, the participation rate drops sharply for women in their 30s due to familial obligations.[8] The labor participation rate among Korean women aged 20-24 was almost 55% in 2014, compared with about 44% for

1 Katrin Park, *S. Korea reflects lag in gender equality*, USA TODAY (Mar. 14, 2015, 8:45 AM), http://www.usatoday.com/story/opinion/2015/03/14/womens-inequality-south-korea-park/70165200/; *see also,* Cho Jin-young, *Government Policy Not Working: 22% of Married Korean Women Quit Their Jobs*, Business Korea (Nov. 27, 2014, 2:40 PM), http://www.businesskorea.co.kr/article/7504/government-policy-not-working-22-married-korean-women-quit-their-jobs; Choe Sang-Hun, *Korean Women Flock to Government*, NY Times (Mar. 1, 2010), http://www.nytimes.com/2010/03/02/world/asia/02iht-women.html?pagewanted=all&_r=2&.

2 About MOGEF: History, *available at*: http://english.mogef.go.kr/sub01/sub01_31.jsp.

3 Kanga Kong, *Q&A: Minister Emphasizes the Importance of Work-Life Balance*, The Wall Street Journal (Jan. 24, 2014, 7:14 PM), http://blogs.wsj.com/korearealtime/2014/01/24/qa-minister-emphasizes-the-importance-of-work-life-balance/; Jiyeun Lee, *South Korea Wants Its Women to Lean In To Workforce After Childbirth*, Bloomberg Business (Feb. 25, 2015, 10:00 AM), http://www.bloomberg.com/news/articles/2015-02-25/challenging-gender-inequality-in-south-korea; *see also* infra.

4 See Profile: *South Korean President Park Geun-hye*, BBC Asia (Nov. 1, 2013), http://www.bbc.com/news/world-asia-20787271; Chico Harlan, *In 'Madam Park,' S. Korea sees its first potential female leader*, The Washington Post (Dec. 17, 2012), https://www.washingtonpost.com/world/asia_pacific/in-madame-park-s-korea-sees-its-first-potential-female-leader/2012/12/17/4d91b344-4825-11e2-b6f0-e851e741d196_story.html.

5 *Id.*

6 *South Korea pushes for gender equality*, Taipei Times (Feb. 5, 2014), http://www.taipeitimes.com/News/world/archives/2014/02/05/2003582798; *see also* infra.

7 *The Global Gender Gap Report 2014: Korea*, *available at*: http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=KOR.

8 *South Korea pushes for gender equality*, supra note 6; *see also,* Lee Myung-sun, *New paradigm of gender equality starts now*, The Korea Herald (July 5, 2015, 10:20 PM), http://www.koreaherald.com/view.php?ud=20150705000319.

men.[9] Participation for women in their 30s, by contrast, is reportedly 30% lower than that of men.[10] For women in their late 30s, the disparity is nearly 40%.[11]

These trends result in very few women occupying top public and private sector positions. In 2014, women held only 3.2% of all senior government positions in Korea, and a mere 1.2% of corporate senior management positions.[12] In addition, female executives held only 2.4% of board seats in 2013.[13] This figure, however, represents a slight increase from 2010, 2011, and 2012, when women made up less than 1% of the nation's corporate boards each year.[14]

Despite the absence of women in top-ranking governmental and corporate positions, Korean women have flooded the lower ranks of the government bureaucracy. In 1996, the Korean government instituted a quota requiring at least 30% of new hires in all government departments (except the police and military) be women.[15] The system was so successful that by 2010 the government began applying a minimum 30% quota to men.[16] In 2013, 46% of people passing the nation's civil service exam were women (although they made up only about 10% of managers in the central government).[17]

At 39%, Korea had the highest pay gap between men and women in 2014.[18] This figure is consistent with the country's low representation of women in senior management positions and on boards.[19] In addition, women who take time off for pregnancy, childbirth, and child care reportedly earn 21.9% less than men when they are reemployed.[20]

The Legal Framework

The Korean Constitution guarantees equality at law for men and women.[21] Article 11 provides that "all citizens shall be equal before the law, and there shall be no discrimination in political, economic, civic or cultural life on account of sex, religion or social status."[22] Article 36(1) states that "marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes."[23] The Korean Constitution specifically prohibits unjust discrimination against women in the areas of employment, wages, and working conditions, and requires the State to promote the welfare and rights of women.[24]

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9 Lee, supra note 3. These figures are somewhat misleading due to compulsory military service, which removes young men from the workforce for almost two years. *Id.*

10 Myung-sun, supra note 8.

11 *Id.*

12 Kong, supra note 3; Dawson et al., *The CS Gender 3000: Women in Senior Management*, Credit Suisse Research Institute (Sept. 2014), *available at*: http://30percentclub.org/wp-content/uploads/2014/10/2014-09-23_Research_Institute_Women_in_Business.pdf.

13 *Id.*; *see also* Park, supra note 1.

14 Dawson et al., supra note 12.

15 Sang-Hun, supra note 1.

16 *Id.*

17 Lee, supra note 3.

18 Dawson et al., supra note 12.

19 *Id.*

20 Myung-sun, supra note 8.

21 Rosa Kim, *The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law*, 14 B.C. Third World L.J. 145 (1994), *available at*: http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1269&context=twlj.

22 Korea Const., Art. 11.

23 *Id.* Art. 36(1).

24 *Id.* Arts. 32(4), 34(3).

In 1995, Korea passed the Framework Act on Women's Development "to promote the equality between men and women in all the areas of politics, economy, society and culture and to facilitate the women's development[.]"[25] A complete revision of the act passed the Korean National Assembly on May 2, 2014, with the name changed to the Framework Act on Gender Equality.[26] The focus of the revised Act is on realizing gender equality in practical and measurable ways.[27] The Act, which took effect on July 1, 2015, institutes a quota for women in executive and senior positions aimed at enhancing female representation.[28]

In the corporate context, the obstacles women face in management stem more from cultural and familial pressures than from a lack of legislative support. For example, Korean law requires firms of a certain size to offer three months of paid maternity leave.[29] Many female workers are reluctant to take advantage of this benefit, however, given the intensely competitive nature of the country's corporate environment, where taking maternity leave is viewed as an impediment to becoming a senior manager.[30]

Corporate Governance Code

There is no standalone corporate governance code in Korea.[31] Corporate governance is mainly regulated by the country's Commercial Code, and by the Financial Investment Services and Capital Markets Act (FISCMA) for listed companies.[32] Although there are no requirements for the gender composition of corporate boards, listed companies must disclose the gender of their directors in their corporate disclosure information.[33]

The Movement Toward Gender Equality

In 2014, Korea launched a Task Force on Gender Parity and Empowerment of Women, the country's first private-public partnership aimed at promoting gender equality and capitalizing on female talent.[34] The task force consists of over 100 organizations from the public and private sectors, and is scheduled to operate through the first half of 2017.[35] The task force is partnering with MOGEF on various initiatives designed to support and encourage family-friendly workplace policies, such as a two-track paternity leave system under which the government will subsidize paternity leave and provide financial support to companies that need to hire temporary replacements for staff on childcare leave.[36] The Korean government also gives loans or subsidies to businesses that allow women to work less than full time, re-employ women returning from maternity leave, and build childcare facilities, which more than half of Korean businesses now provide.[37]

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25 Framework Act on Women's Development, *available at:* http://www.hsph.harvard.edu/population/womenrights/korea.women.95.pdf.

26 Myung-sun, supra note 8.

27 *Id.*

28 Kim Soohee, *Assembly passed the Framework Act on Gender Equality*, The Women's News (May 16, 2014), http://www.wnewsworld.com/news/640#.Va1njflVhBc.

29 Park, supra note 1.

30 *Id.*; *see also* Sang-Hun, supra note 1.

31 Hyung Soo Lee et al., *Corporate governance and directors' duties in South Korea: overview*, Practical Law (Current as of Dec. 1, 2014), http://uk.practicallaw.com/8-209-5002.

32 *Id.*

33 *Id.*

34 *Overview, Task Force on Gender Parity and Empowerment of Women*, http://genderparity.go.kr/en/encontent.do?cid=introduce01 (last visited July 29, 2015).

35 *Id.*

36 Kim Hee-jung, *Q&A: How is South Korea closing the gender gap?,* World Economic Forum (Mar. 6, 2015), https://agenda.weforum.org/2015/03/qa-how-is-south-korea-closing-the-gender-gap/.

37 Claudia Süssmuth-Dyckerhoff et al., *Women Matter: An Asian Perspective*, McKinsey & Company (June 2012), http://www.mckinsey.com/features/women_matter.

In 2014, Park's administration championed a "name-and-shame" policy in which the government will publicly identify companies with low female employment levels.[38] The government also stated its intent to give preferential treatment to "family-friendly" companies seeking government contracts.[39] Park's administration has set targets to have female managers make up at least 15% of central government managers and 18.6% of state-run enterprise managers by 2017, and plans to include those results in the organizations' yearly evaluations.[40]

Kim Hee-Jung, Minister of Gender Equality and Family of the Republic of Korea and co-chair of the task force, is optimistic about the country's progress, stating, "There has been a shift in mentality, and women in Korea are now considered as essential to the long-term development and success of companies."[41] In addition, a majority of Korean corporate executives anticipate the rapid introduction of gender diversity initiatives within their companies.[42]

Conclusion

Despite robust support from the government, progress for women in Korea is slow due to deep-rooted traditions and cultural norms that make it difficult and undesirable for women to continue their careers once they have families. As a recent study by Deloitte notes, change in Korea is as much about changing society's perception of gender roles as it is about numerical achievements.[43] Women in Korea echo this sentiment. As a 24-year-old university student in Seoul told the Wall Street Journal earlier this year, "Women still feel restrictions in their career choices because of their gender. Many people still strongly feel that women should be in charge of housekeeping after getting married.... People's perceptions will not change easily[.]"[44]

38 *South Korea pushes for gender equality*, supra note 6.

39 *Id.*

40 Lee, supra note 3.

41 Hee-jung, supra note 36.

42 Claudia Süssmuth-Dyckerhoff et al., supra note 37.

43 *Women in the boardroom: A global perspective*, Deloitte (4th Ed. 2015), http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-ccg-women-in-the-boardroom-a-global-perspective4.pdf ("[T]he gender quota isn't just about boosting the number of female executives or board members in companies. It is more about changing society's perception of gender roles.").

44 Lee Serah, *Heard in Seoul: Gender Inequality in South Korea*, The Wall Street Journal (Feb. 11, 2015, 6:00 AM), http://blogs.wsj.com/korearealtime/2015/02/11/heard-in-seoul-gender-inequality-in-south-korea/tab/interactive/.

Taiwan


平安
千秋

Taiwan

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Although efforts have been made in the last decade to achieve gender parity in several facets of Taiwanese society, the number of women in the boardroom has yet to show progress in this regard. Our research shows that statistics regarding the percentage of female board membership in Taiwan varies greatly, ranging from as low as 4.4% to as high as 14.1% for publicly listed companies.[1] Taiwan's Financial Supervisory Commission has published statistics showing that the percentage of female board membership is slightly higher at non-listed companies, with 14.12% of seats held by women, compared to 11.48% at companies listed on the Taiwan Stock Exchange (TWSE) and 12.25% at companies listed on the Gre Tai Securities Market.[2]

One reason for the low percentage among publicly traded companies is the fact that the majority of these companies in Taiwan are small and medium enterprises or family businesses. These boards are typically dominated by family members and are not receptive to outside directors. However, the TWSE has recently begun a new process for evaluating corporate governance that takes into account companies' efforts to promote gender equality on their boards (among many other factors). The release of the evaluation results will be staggered over a three-year period to reward early adopters and (eventually) shame underperformers. Only time will tell, as the full survey results are not set to be released until 2017. With luck, this incentive, combined with legislative and private efforts to promote gender equality, should increase the degree of female participation in the boardroom and more accurately reflect the efforts of these stakeholders.

Legislative Efforts

Beginning in 2002 with the Gender Equality in Employment Act, the Taiwanese government has pursued a program to ensure equal rights and treatment of women in all aspects of society, including in the boardroom. The most important pieces of the 2002 law were those aimed at prohibiting discrimination on the basis of gender, eliminating sexual harassment in the workplace, and promoting equality in employment.[3] This last aim was addressed through guaranteed maternity and parental leave, guaranteed child care at employers above a certain size, occupational training for employees forced to leave their jobs for family reasons, and rewards for employers who hire such individuals.[4] The 2002 law also specified that damages were available to employees harmed by violations of the Act, and provided for fines against employers.[5] Finally, the 2002 Act adopted the principle of non-retaliation against those who seek to invoke its protections.[6]

The Gender Equality in Employment Act was revised in 2007, 2011, 2013 and 2014. Notably, the 2011 amendments increased the potential fines for violation and prohibited discrimination on the basis of sexual orientation.[7]

In addition to these workplace protections, the Taiwanese government has undertaken several other measures to promote women's rights.

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1 *Compare Catalyst, Women on Boards: Quick Take*, (Mar. 3, 2014), *available at* http://www.catalyst.org/knowledge/women-boards, *and WOB Touts Female Participation in Business*, Taiwan Today (Apr. 18, 2014), *available at* http://taiwantoday.tw/ct.asp?xitem=216541&CtNode=416.

2 Financial Supervisor Commission, R.O.C. (Taiwan), *Gender Analysis for Directors of Public Companies in Taiwan in 2013-2014*.

3 *Id.* at chs. II, III, IV.

4 *Id.* at arts. 15-25.

5 *Id.* at arts. 26-29, 38.

6 *Id.* at art. 36.

7 Act of Gender Equality in Employment, arts 7-11 [English translation], *available at* http://laws.mol.gov.tw/Eng/FLAW/FLAWDAT01.asp?lsid=FL015149.

According to the Taiwanese government, these efforts are paying off. According to its Directorate General of Budget, Accounting and Statistics, Taiwan is ranked second out of 187 countries on the Gender Inequality Index.[8] This puts Taiwan ahead of other highly ranked neighbors like Japan, South Korea and Singapore, due in large part to its proportion of female legislators. It must be noted, however, that this ranking comes from Taiwan's own self-evaluation based on the survey factors, as it was not included in the official U.N. ranking conducted by independent evaluators.[9]

Efforts in Civil Society

A number of non-governmental organizations in Taiwan have been organized to promote gender equality. One in particular, Women on Boards, was founded in April 2014 with the express aim of promoting female involvement in the corporate sector and increasing the percentage of women on boards and in decision-making positions at management level.[10]

Similarly, the Taiwanese arm of the International Federation of Business and Professional Women has several aims, including providing a platform for business and professional women to exchange ideas and promoting gender equality.[11]

Many other gender-focused advocacy groups exist in Taiwan targeting a broad range of issues, from education[12] to legal reform[13] to employment protections.[14] Outside of their primary missions, women's advocacy groups also participate in reviews of the government's periodic progress reports on Taiwan's implementation of the U.N. Convention on the Elimination of Discrimination Against Women.[15]

Corporate Governance Code

In 2013, the Taiwan Stock Exchange amended its Corporate Governance Best Practice Principles to encourage listed companies to consider gender equality when appointing directors.[16] The change was promulgated in response to the trend of appointing increasing percentages of female directors to the boards of international companies, as well as efforts in several leading Asian countries like Singapore and Malaysia to incorporate diversity, including gender diversity, in corporate governance standards.[17]

Later that year, the Financial Supervisory Commission issued its five-year Corporate Governance Roadmap. The Roadmap followed several years of corporate governance reform efforts by the Taiwanese government that produced positive results, but not at the pace of corporate governance improvements in other Asian countries. One of the Roadmap's five overarching goals is to increase the quality and capabilities of corporate boards to ensure that they are equipped with the knowledge and professionalism needed to make strategic decisions and exercise

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8 John Liu, *Taiwan Gender Equality Ranked 2nd Globally Due to Political Engagement: DGBAS*, The China Post (June 11, 2013), *available at* http://www.chinapost.com.tw/taiwan/national/national-news/2013/06/11/380930/Taiwan-gender.htm.

9 *Id.*

10 *WOB Touts Female Participation in Business*, Taiwan Today (Apr. 18, 2014), *available at* http://taiwantoday.tw/ct.asp?xitem=216541&CtNode=416; Women on Boards, http://twiod.org/wob-about-us.

11 International Federation of BPW, Taiwan, *Mission: Aims of BPW-Taiwan*, http://www.bpw-taiwan.org.tw/en/about-us/mission.

12 *See, e.g.,* Taiwan Gender Equity Education Association, http://www.tgeea.org.tw/index_en.php.

13 *See, e.g.,* Awakening Foundation, http://www.awakening.org.tw/enhtml/about.asp?id=1&atype=1.

14 *See, e.g.*, Taiwan Grassroots Women Workers' Center, http://tgwwc.iwomenweb.org.tw/.

15 Press Release, Office of Information Services, Executive Yuan, *International Experts to Review Taiwan's CEDAW Progress Report*, (June 18, 2014), *available at* http://www.ey.gov.tw/en/News_Content2.aspx?n=1C6028CA080A27B3&s=B254AF6B784FBD33.

16 Press Release, Taiwan Stock Exchange, *To Push Forward Gender Equality on the Boards of Directors of Listed Companies, the Taiwan Stock Exchange Amended the Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies* (Mar. 19, 2013), *available at* http://cgc.twse.com.tw/pressReleases/promoteNewsArticleEn/52.

17 *Id.*

effective oversight.[18] The Roadmap outlines several recommended actions to achieve this goal, and chief among them is increasing diversity of board composition. Another of the Roadmap's key initiatives is the development and implementation of the Corporate Governance Evaluation System. Launched in 2014 by the newly established TWSE Corporate Governance Center, the Evaluation System annually measures all listed TWSE and TPEx companies against 98 indicators,[19] which are grouped into five weighted categories.[20] There are 33 indicators that score companies on their efforts to enhance board composition and operation, which account for 32% of the total evaluation score.[21] Two of those indicators require companies to answer whether they adopted and disclosed a board diversity policy, and whether the board of directors included at least one female director in the previous year.[22]

In 2015, companies ranking in the top 20% according to the Corporate Governance Evaluation System were announced publicly as a reward for their performance. In 2016, the top 50% will be announced and in 2017, all rankings will be revealed. By staggering publication of the results this way, evaluators hope to incentivize listed companies to improve their policies and board composition, including diversity and female directorship.

Conclusion

Despite advances for gender equality in the workplace generally, efforts to increase gender parity in the boardroom have not received the same degree of legislative intention. Instead, efforts to increase female directorships are championed primarily by non-governmental organizations and other stakeholders. While recommendations on gender equality from Taiwanese financial regulators and stakeholders are laudable, for the most part they remain just that—recommendations. Only time will tell whether these efforts, including publicizing the Corporate Governance Evaluations, will encourage different behavior. At this point, however, it seems likely that real change will come only when gender initiatives carry the force of law.

18 Financial Supervisory Comm'n, *Corporate Governance Roadmap 2013*, 7-8 (2013), *available at* http://cgc.twse.com.tw/frontEN/aboutCorpgov.

19 The first Evaluation contained only 92 indicators, but the Evaluation that will be applied to 2015 data, with results to be published in 2016, will apply 98 indicators. Press Release, Taiwan Stock Exchange Corporate Governance Center, *The Second Version of the Corporate Governance Evaluation Indicators is Formally Announced and Takes Effect* (Jan. 7, 2015), http://cgc.twse.com.tw/pressReleases/promoteNewsArticleEn/133.

20 Corporate Governance Evaluation System, 5 (March 2015), *available at* http://cgc.twse.com.tw/evaluationCorp/listEn.

21 *Id.*

22 *Id.* at 14, 16.

Thailand

Thailand

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Thailand has the second-largest economy in Southeast Asia.[1] In recent years, it has adopted corporate governance standards appropriate for its relatively large, industrialized economy. While the standards have not been specifically geared toward enhancing gender diversity on boards, these general improvements have created a fairer, more transparent, more accountable system that benefits both men and women serving in senior management and as directors.

Over the course of several decades, women's rights in Thailand—including those related to the workplace—have expanded significantly. Thailand has an unfortunate history of mistreatment of women, including workplace discrimination, domestic violence, and sex trafficking. Although these forms of mistreatment continue today, the country has made significant strides in promoting gender equality in the boardroom and beyond. According to a July 2014 report by Ernst & Young, Thailand was the highest-ranking Asian country in terms of women's participation on corporate boards at 9.7%.[2]

Legal and Policy Framework

Thailand ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in 1985 and its Optional Protocol in 2000.[3] As such, the Thai government is required to "apply the Convention as a guideline for formulating policies and plans relating to women, as well as laws and regulations to eliminate all forms of discrimination."[4] Additionally, the 1997 Thai Constitution explicitly provided that "[m]en and women shall enjoy equal rights"[5] and required the state to promote equality between women and men.[6] The 2007 Constitution confirmed the equality provisions, however, there appears to be little enforcement.[7]

As in many countries, some stereotypes and prejudices against women still persist. Women hold only a small fraction (approximately 13%) of seats in Thailand's Parliament. However, Thailand has gained ground in that women comprise a significant portion of the workforce and nearly half of Thai women attend college.[8]

Additionally, in early 2015 a member of Thailand's Constitution drafting panel confirmed that the new version of the Thai Constitution will include the term "third gender" for the first time. If the new terminology takes effect, this will be a significant step toward empowering transgender and gay communities and ensuring those communities more equitable treatment under Thai law.[9]

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1 *Thai Economic Performance in Q1 and Outlook for 2013* (PDF). Office of the National Economic and Social Development Board. Retrieved 20 May 2013.

2 *See*, Ernst & Young, *Women on boards: global approaches to advancing diversity*, *available at* http://www.ey.com/Publication/vwLUAssets/ey-women-on-boards-pov-july2014/$FILE/ey-women-on-boards-pov-july2014.pdf

3 *See*, http://asiapacific.unwomen.org/en/countries/thailand.

4 United Nations DEDAW Report, June 24, 2004, *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/411/30/PDF/N0441130.pdf?OpenElement.

5 1997 Constitution, Section 30.

6 1997 Constitution, Section 80.

7 *The Women of Thailand*, *available at* https://www.american.edu/cas/economics/ejournal/upload/Global_Majority_e_Journal_3_1_Romanow.pdf.

8 *See*, Liza Romanow, *The Women of Thailand*, *available at* https://www.american.edu/cas/economics/ejournal/upload/Global_Majority_e_Journal_3_1_Romanow.pdf.

9 *See*, Amy Sawitta Lefevre, *Thailand Will Recognize 'Third Gender' in New Constitution*, Huffington Post, *available at* http://www.huffingtonpost.com/2015/01/15/thailand-third-gender-_n_6476582.html.

Corporate Governance Standards

Thailand has adopted internationally accepted standards on corporate governance. This includes adoption of the Organisation for Economic Cooperation and Development's Principles of Corporate Governance. These principles encompass five core areas: shareholder rights, equitable treatment of shareholders, role of stakeholders in corporate governance, disclosure and transparency, and responsibilities of the board.[10] The principles are specified in related Thai laws and regulations.

In accordance with these principles, Thailand considers corporate governance to encompass a company's responsibilities to its stakeholders and community.[11] According to Dr. Prasarn Trairatvorakul, the Deputy Secretary General of the SEC of Thailand, effective corporate governance includes the following:

- *Fairness.* The rights of shareholders and other stakeholders should be observed, respected and treated fairly. All shareholders, both insiders and outsiders, should be entitled to receive equitable treatment.
- *Transparency.* The operations of a company should be transparent both in terms of decision-making processes and the disclosure of information. This should include timely, accurate, and sufficient disclosures to investors and other stakeholders.
- *Accountability.* The board of directors and the management should be accountable not only to shareholders, but also to other stakeholders and the community.[12]

Recent corporate governance reforms in Thailand have enhanced these areas. According to the World Bank, "Corporate governance reform has been a priority since the 1997 financial crisis and has continued since… 2005, with significant revisions to the Securities and Exchange Act [of] 1992, new Principles of Good Corporate Governance for listed companies, and a new banking act and supporting regulation to improve bank corporate governance."[13] The amendments to the Securities Exchange Act included clearer duties for directors, as well as stronger protections for shareholders and whistleblowers. The Act also included provisions designed to increase the independence and professionalism of the SEC, in accordance with the principles described above.[14]

Most directors are non-executive, and typically at least one-third are independent (i.e., non-management or major shareholders). Boards are required to adopt a corporate governance policy, and a corporate board has fiduciary duties of care and loyalty to the company and its shareholders. The board also has the duty to oversee the executives' and the management's performance to optimize corporate efficiency and investors' returns. According to the World Bank, "Directors take their responsibilities seriously. Directors participate in director training, and many undertake annual self-evaluations of their performance. The SEC screens directors of listed companies, and can disqualify them under the SEA."[15] There are additional qualifications for directors and major shareholders of financial institutions, including the requirement to pass a fitness test and non-rejection by the Bank of Thailand. Banks and other financial institutions are subject to additional requirements, including instituting a board risk.[16]

Shareholders have strong rights in Thailand, including a right to review the company's information, make material investment decisions, and review the performance of directors and executives.[17]

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10 *OECD Principles of Corporate Governance, available at* http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf.

11 *See*, Thailand Law Forum, *Regulatory Framework of Corporate Governance in Family Controlled companies in Hong Kong and Thailand: Can they learn from each other? available at* http://www.thailawforum.com/articles/corporate-governance2.html.

12 *See*, *id.*

13 *World Bank Report on the Observance of Standards and Codes, January 2013, available at* http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/ROSC_Thailand_web.pdf.

14 *World Bank Report on the Observance of Standards and Codes, January 2013, available at* http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/ROSC_Thailand_web.pdf.

15 *World Bank Report on the Observance of Standards and Codes, January 2013, available at* http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/ROSC_Thailand_web.pdf.

16 *World Bank Report on the Observance of Standards and Codes, January 2013, available at* http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/ROSC_Thailand_web.pdf.

17 *See*, *Corporate Governance*, Securities and Exchange Commission, *available at* http://www.sec.or.th/EN/RaisingFunds/EquityDebt/Pages/link-Laws_Regulations/CorporateGovernanceCG.aspx.

Gender Equality in the Workplace

Thailand has implemented the Women's Development in the Tenth National Economic and Social Development Plan, which seeks to change attitudes toward gender equality.[18] The government of Thailand has implemented programs to encourage women's economic potential through projects and activities. These include the National Science and Technology Development Agency Business Incubation Center, skills development for women employees and self-employed women, and training for women entrepreneurs.

While significant strides need to be made to achieve gender parity, Thailand's percentage of women on corporate boards is only slightly below the global average of 11 percent.[19] According to industry consultant Grant Thornton, the percentage of women participating as board members in companies registered in the Thai stock market is even higher (approximately 22%), while the percentage of women members of the board of companies registered with the Ministry of Commerce is 35.37%. Additionally, as of 2013, Thailand reported 49% of businesses with at least one woman in senior management.[20]

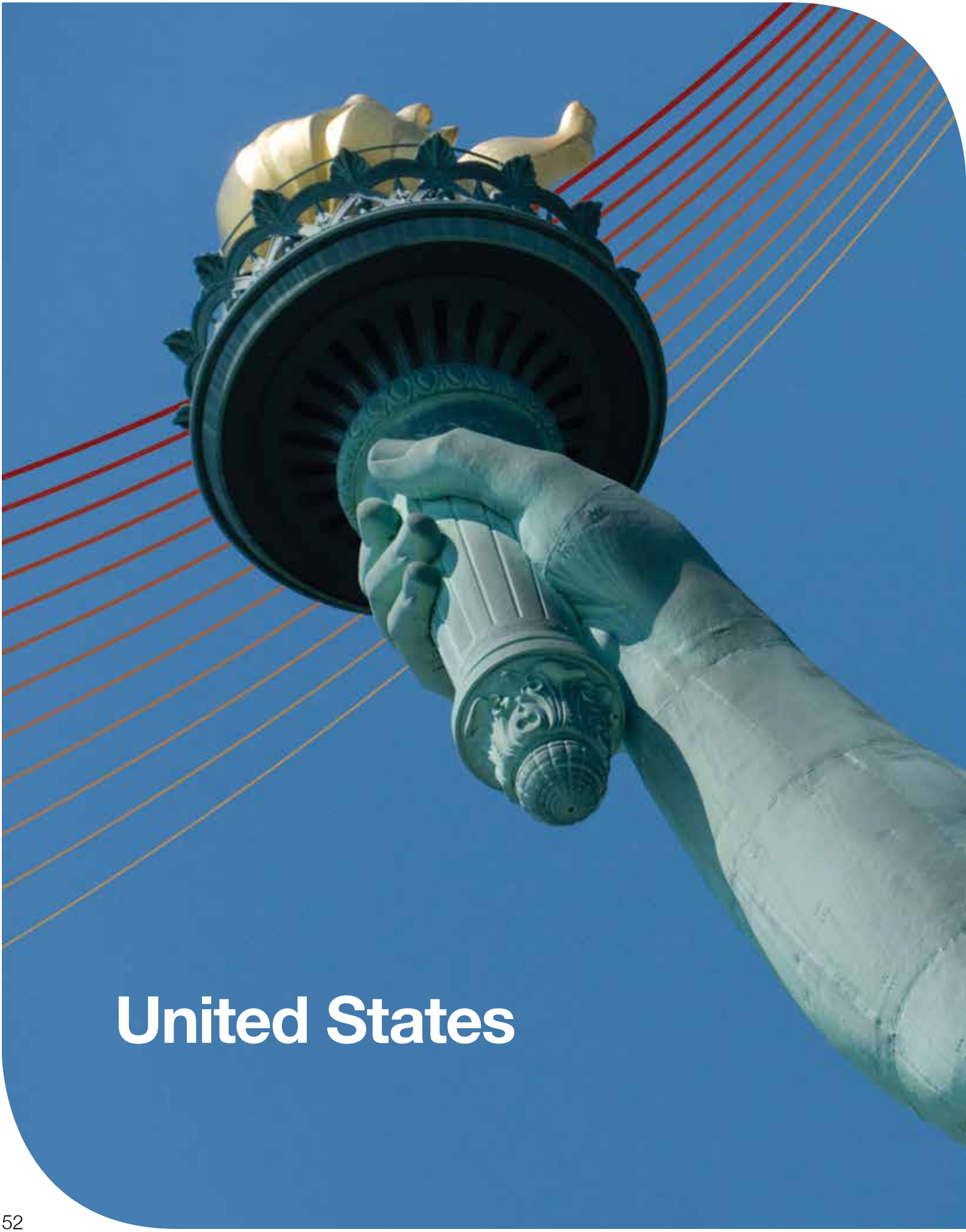
Conclusion

Despite the absence of government-imposed quotas regarding the number of women on corporate boards, Thailand has a relatively high percentage of women serving on boards and continues to make headway in promoting gender equality. As government initiatives geared toward promoting equality and diversity continue to improve, Thailand will likely see an increase in the number of women on corporate boards and in senior management roles.

18 *See*, http://www.un.org/womenwatch/daw/beijing15/responses/escap/Thailand.pdf.

19 *See*, *id.*

20 *See*, Grant Thornton, *Women in senior management: setting the stage for growth*, 2013, *available at* http://www.grantthornton.ie/db/Attachments/IBR2013_WiB_report_final.pdf.



United States

United States

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Paul Hastings (Washington, D.C.)

Despite the attention gender parity continues to receive, women are still greatly underrepresented on corporate boards in the United States. Without more support from the federal level and/or a push to go beyond voluntary initiatives, this will not likely change significantly any time soon.

Stock exchanges continue to take little action to address the lack of diversity on boards of listed companies. And what actions have been taken by state officials and public interest groups have had minimal impact on the number of women directors. In 2014, women held 19.2% of board seats for Fortune 500 companies,[1] a slight increase from 2013 where 16.9% of board seats were held by women.[2] Despite these small gains, it still remains that 1 in 25 boards have no women on their boards of directors.[3]

Federal Regulatory Efforts

In 2010, the SEC amended its corporate governance disclosure rules to require companies to disclose how they incorporate diversity when searching for new board members. Specifically, the SEC requires public companies to disclose if they consider diversity when searching for a new board member, how a company uses diversity when considering candidates, and if they have a policy that specifically addresses the consideration of diversity when searching for board candidates.[4] Although the rules do not define diversity, numerous commenters cited by the Commission have made clear that investors are particularly interested in the disclosure of board policies regarding gender and/or racial diversity.[5]

While it is still unclear whether the disclosure rule has had any measurable effect on diversity in the boardroom, research suggests that companies are failing to abide by the requirements of the disclosure rules, and that the SEC has failed to adequately enforce the requirements.[6] Beyond the SEC disclosure rule, there are no other federal regulatory or legislative requirements on corporate boardroom diversity.[7] Recently, elected officials have called on the SEC to revise the disclosure rule to include specific disclosures including the board nominees' gender, race, ethnicity, skills, experiences, and attributes.

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1 *2014 Catalyst Census: Women Board Directors*, Catalyst (Jan. 13, 2015), *available at* http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors.

2 Rachel Soares et al., *2013 Catalyst Census: Fortune 500 Women Board Directors*, Catalyst 1 (Dec. 10, 2013), *available at* http://www.catalyst.org/knowledge/2013-catalyst-census-fortune-500-women-board-directors [hereinafter "Catalyst Census 2013"].

3 *Catalyst Census* 2013 at 2.

4 17 C.F.R. § 229.407(c)(2)(vi) (2010).

5 Release No. 33-9089, notes 116-117, note 193.

6 *See*, Tamara S. Smallman, Note, *The Glass Boardroom: The SEC's Role in Cracking the Door Open So Women May Enter*, 2013 Colum. Bus. L. Rev. 801 (2013).

7 David A Katz, *Developments Regarding Gender Diversity on Public Boards*, The Harvard Law School Forum on Corporate Governance and Financial Regulation (Nov. 12, 2013), *available at* http://blogs.law.harvard.edu/corpgov/2013/11/12/developments-regarding-gender-diversity-on-public-boards/.

Listing Requirements

None of the U.S. stock exchanges require or encourage the disclosure of diversity policies in nominating board members as a requirement of listing on an exchange.[8] In fact, none of the U.S.-based stock exchanges, including the NASDAQ[9] and New York Stock Exchange (NYSE),[10] discuss gender diversity in any of their listing requirements.

Additionally, neither the NYSE nor the NASDAQ has proposed any corporate governance diversity rules, and it is unlikely either exchange will act without a push from regulators. While the NYSE has not commented on recent efforts to increase gender diversity on corporate boards, the NASDAQ has indicated it relies on securities regulators for guidance.[11]

State Legislative Efforts

In 2013, California passed the first-of-its kind resolution to encourage equitable gender representation on corporate boards. The resolution calls for every publicly held corporation in California with nine or more director seats to have a minimum of three women on its board, every publicly held corporation in California with five to eight director seats to have a minimum of two women on its board, and every publicly held corporation in California with fewer than five director seats to have a minimum of one woman on its board by December 2016.[12] Since its enactment, the number of women in board positions in California has increased from 8.8% in 2006 to 12.4% in 2013, with the largest change occurring after the passage of the resolution.[13]

Illinois and Massachusetts have considered similar resolutions. Like California, Illinois adopted a resolution urging that within the next three years publicly held corporations have the same minimum number of women on their boards.[14] In Massachusetts, the Women on Boards Resolution urges all corporate boards with nine or more members to have a minimum of three women and all other boards to have a minimum of two.[15] This resolution also calls on all companies that are both privately held and publicly traded to measure their progress toward a goal of equal representation.[16] The Massachusetts resolution is pending before the House of Representatives, having recently passed the State Senate.

Efforts by Public Pension Funds

In addition to legislative activities, state officials on behalf of public retirement or pension funds have led the charge for greater board diversity. Certain states, such as Massachusetts and California, have implemented policies that require the pension fund to vote against a company's board nominee if the board does not meet minimum diversity requirements.[17] Certain other state pension funds have filed shareholder resolutions seeking "access to the proxy" or

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8 The list of exchanges is available on the SEC website, and includes the New York Stock Exchange, the NASDAQ, and the Chicago Stock Exchange. *See Exchanges*, U.S. Securities and Exchange Commission (last visited July 30, 2015), http://www.sec.gov/divisions/marketreg/mrexchanges.shtml.

9 *See*, *NASDAQ Listing Rules*, NASDAQ § 5600 (last accessed July 30, 2015), http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_4_2&manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F [hereinafter " NASDAQ Corporate Governance Rules"].

10 *See*, *Corporate Governance Standards*, New York Stock Exchange (last accessed July 30, 2015), http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?selectednode=chp_1_4_3&manual=%2Flcm%2Fsections%2Flcm-sections%2F [hereinafter "NYSE Corporate Governance Rules"].

11 Joann S. Lublin and Theo Francis, *Careers: Women Gain Board Seats—Abroad*, The Wall Street Journal, Feb. 5, 2014, at B6.

12 S Con. Res. 62, 2013 Reg. Sess. (Cal. 2013).

13 *See*, UC Davis Study of California Women Business Leaders: *A Census of Women Directors and Highest-Paid Executives* (Dec. 4, 2014), *available at* http://gsm.ucdavis.edu/sites/main/files/file-attachments/ucdaviswomenstudy2014_full.pdf.

14 *See*, H.R. Res. 439, 99th Gen. Assemb. Reg. Sess. (Ill. 2015).

15 S. 1007, 189th Gen. Ct. (Mass. 2015).

16 *Id.*

17 *See*, Press Release, Massachusetts State Treasurer Deborah B. Goldberg, *Statement from Treasurer Goldberg on New Prim Custom Proxy Voting Guidelines* (April 7, 2015) (on file with author); Press Release, California State Treasurer John Chiang, *Treasurer Chiang Calls for More Diversity on Corporate Boards Including Expanding the Definition of Diversity to Include Sexual Orientation* (Feb. 19, 2015) (on file with author).

the ability for an investor to nominate Board members for election. In 2014, the Comptroller of the City of New York, who oversees pension funds with a combined $160 billion in assets, filed proxy access resolutions in 24 companies that had little or no diversity on their boards.[18] In addition, elected officials on behalf of public retirement and pension funds in California, North Carolina, Ohio, Illinois, New York, Washington, and Connecticut, have recently called on the SEC to update its board nominee disclosure rules by requiring companies to create a chart or matrix of each nominee's gender, race, ethnicity, skills, experiences, and attributes.[19]

Public Advocacy Efforts

Public advocacy groups have had some success in increasing gender diversity on corporate boards. One such advocacy group, the Thirty Percent Coalition, has a stated goal of filling 30% of corporate director seats with women by 2015.[20] To achieve this goal, the group has pressed its members to file shareholder resolutions. By 2015, their resolution and letter writing campaign saw 22 companies appoint women board members.[21] Other advocacy groups have also created campaigns to increase gender diversity on corporate boards. Catalyst, an international organization, uses traditional tools such as conferences to encourage corporate leaders to increase gender diversity.[22] 2020 Women on Boards, which aims to increase the representation of women on corporate boards to 20% by the year 2020,[23] utilizes a different approach. It established a grassroots campaign targeted specifically at middle managers and consumers in an effort to engage constituencies who might not otherwise focus on the issue.

Conclusion

While there seems to be significant support for diversity initiatives in the United States, efforts have resulted only in regulatory and state-based initiatives, and are voluntary for U.S. corporations. And although there are no initiatives underway to implement quotas or mandatory requirements related to gender diversity on corporate boards of directors on a federal level, there has been increased support from public advocacy groups and state elected officials for enhanced obligations in stock exchange listing requirements to force U.S. corporations to take tangible steps to address the issue.

18 *See*, *Board Accountability Project*, New York City Comptroller Scott M. Stringer (last visited July 31, 2015), http://comptroller.nyc.gov/boardroom-accountability/.

19 Letter from Anne Simpson, Director of Global Governance, California Public Employees' Retirement System, et al. to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (March 31, 2015), https://www.nctreasurer.com/inv/Resources/ProxyRuleAmendmentPetition.pdf.

20 *About*, Thirty Percent Coalition (last visited July 11, 2014), http://www.30percentcoalition.org/about.

21 *Thirty Percent Coalition Commends 22 Public Companies Adding Women to their Boards of Directors*, Thirty Percent Coalition (last visited July 31, 2015), http://www.30percentcoalition.org/news/108-thirty-percent-coalition-commends-22-public-companies-adding-women-to-their-boards-of-directors.

22 *United States*, Catalyst (last visited July 11, 2014), http://www.catalyst.org/regions/united-states.

23 *The Idea*, 2020 Women on Boards (last visited July 11, 2014), http://www.2020wob.com/about/idea.

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