Breaking the Glass Ceiling

Women in the Boardroom

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Introduction

Women account for nearly 50% of the world's population[1] and approximately 40% of the global workforce.[2] However, women are consistently underrepresented on corporate boards of directors across the globe. Though many countries have made great strides in promoting women's rights with respect to combating discrimination and representation in public office, women's equal representation on corporate boards remains elusive, with some shining exceptions.

France, for instance, is a European Member State that has had the most dramatic increase since legislation was enacted in 2011 to address this issue. A year before the law was enacted the proportion of women serving on corporate boards in France's top 40 largest listed companies was 15%. In 2018, that number has significantly increased to 42%.[3]

The United Kingdom saw similar progress, with the percentage of female-held directorships at the top 100 companies increasing from 10.5% in 2005 to 27.7% in 2017.[4] There are some potentially encouraging signs that this issue is becoming more visible in the United States as well. The ushering in of the Women's March globally and the #MeToo movement is bringing gender equality to the forefront of many conversations and making headlines. Already, in the first five months of 2018, women are gaining more seats on boards—with women making up 31% of new board directors at the top 3,000 publicly traded companies in the U.S.[5]

The Link Between Diversity and Performance

The business case for diverse boards has also been more firmly established. There are several empirical studies establishing a correlation—not causation—between diversity and corporate performance.

A 2018 report by McKinsey & Company "reaffirms the global relevance of the link between diversity—defined as a greater proportion of women and a more mixed ethnic and cultural composition in the leadership of large companies—and company financial outperformance."[6] The analysis draws on a dataset of more than 1,000 companies covering 12 countries and found that companies in the top quartile for gender diversity on their executive teams were 21% more likely to experience above-average profitability than companies in the fourth quartile.[7]

Morgan Stanley published similar findings in its 2016 report, concluding that companies with more diverse gender populations (both inside and outside of the boardroom) tend to perform better. The report was based on a proprietary gender-diversity framework that ranked more than 1,000 stocks globally.[8]

According to the report, "[h]igh gender diversity companies have delivered slightly better returns, with lower volatility, compared with their low diversity or sector peers, and they have moderately outperformed on average in the past five years."[9] Further, "[t]he top fifth of selected companies that consistently rank gender diversity among their priorities, with data to back it up, outperformed their peers based on volatility and risk factors."[10]

It should be noted that while some research has found that diverse boards have a positive impact on a company's

1 *Population, female (% of total)*, World Bank, https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS (last visited Aug. 16, 2018).

2 *Labor force, female (% of total labor force)*, World Bank, https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS (last visited Sept. 16, 2018).

3 *Women in the boardroom: A global perspective*, Deloitte 52 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

4 *The Female FTSE Board Report 2017*, Cranfield Univ. Sch. of Mgmt. (2017), https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index.

5 Vanessa Fuhrmans, *Women on Track to Gain Record Number of Board Seats*, Wall St. J. (June 21, 2018), https://www.wsj.com/articles/women-on-track-to-gain-record-number-of-board-seats-1529573401.

6 *Delivering through Diversity*, McKinsey & Co. (Jan. 2018), https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity_full-report.ashx.

7 *Id.*

8 *Why It Pays to Invest in Gender Diversity*, Morgan Stanley (May 11, 2016), http://www.morganstanley.com/ideas/gender-diversity-investment-framework; *see also An Investor's Guide to Gender Diversity*, Morgan Stanley (Jan. 17, 2017), https://www.morganstanley.com/ideas/gender-diversity-investor-guide.

9 *Id.*

10 *Id.*

financial performance, other reports have not. The differing results depend in part on how financial performance is defined and what methodologies are used.[11] Aside from financial performance, however, research identifies a number of other business benefits to board diversity, including better understanding of consumer preferences, a stronger mix of leadership skills, and improved risk management.[12] According to recent reporting, other firms are demanding greater representation in the boardroom in the wake of sexual harassment scandals.[13]

Getting to the Root of the Issue

In the United States, studies have looked at the root causes of underrepresentation of women in the boardroom. The U.S. Government Accountability Office (GAO)—the nonpartisan agency often called the "congressional watchdog"—found that several factors hinder increases in women's representation, including "boards not prioritizing diversity in recruitment efforts; lower representation of women in the traditional pipeline for board positions; and low turnover of board seats."[14]

The corporate pipeline problem was also identified in a study entitled "Women in the Workplace" (the "WiW Study"), a comprehensive study of the state of women in corporate America conducted by a partnership of McKinsey & Company and LeanIn.Org.[15] The objective of the WiW Study is to "give organizations the information they need to promote women's leadership and foster gender equality."[16] The WiW Study surveyed 222 companies in the United States that employ over 12 million people. More than 70,000 employees completed the survey which focused on their experiences regarding gender, opportunity, career, and work-life issues.[17] According to the WiW Study, "Women remain significantly underrepresented in the corporate pipeline. From the outset, fewer women than men are hired at the entry level, despite women comprising 57% of recent college graduates.[18] At every subsequent step, the representation of women further declines, and women of color face an even more dramatic drop-off at senior levels. As a result, one in five C-suite leaders is a woman, and fewer than one in 30 is a woman of color."[19] The WiW Study concludes that, "Until we treat gender diversity, and diversity more broadly, like the business imperative it is, true progress will be hard to achieve."[20]

Institutional Investors Lead the Way

The notion that including women and diversity among the top ranks of companies is good for business is so widely recognized that institutional investors are leading the way:

- In 2013, Eve Ellis of JP Morgan's Matterhorn Group started the Parity Portfolio, which factors gender-diversity criteria in the investment process, requiring that its companies have a minimum of three women on the board of directors.[21]

- State Street Global Advisors created the Gender Diversity Index ETF, which tracks the performance of companies that have the highest levels of gender diversity in their boards of directors and senior management teams.[22] Since

11 U.S. Gov't Accountability Office, GAO-16-30, *Corporate Boards: Strategies to Address Representation of Women Include Federal Disclosure Requirements 5 (Dec. 2015), https://www.gao.gov/assets/680/674008.pdf (hereinafter "GAO Report").*

12 *Investors letter to companies–2017, Thirty Percent Coalition (Oct. 4, 2017), https://www.30percentcoalition.org/simplepagemenu/thirty-percent-coalition-investors-letter-to-companies-2017.*

13 Fuhrmans, *supra note 5.*

14 GAO Report, *supra note 11, at 13.*

15 *Women in the Workplace, McKinsey & Co. & Lean In (2017), https://womenintheworkplace.com/Women_in_the_Workplace_2017.pdf.*

16 *Id at 1.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id. at 31.*

21 *The Parity Portfolio Strategy, Matterhorn Grp. at Morgan Stanley, https://fa.morganstanley.com/matterhorn/mediahandler/media/147218/Parity%20Fact%20Sheet%20022015.pdf; see also Gender Lens Investing: Q&A with Eve Ellis, Financial Advisor and Portfolio Manager in The Matterhorn Group at Morgan Stanley, US | SIF (Nov 3, 2016), https://www.ussif.org/article_content.asp?edition=1&section=5&article=7.*

22 Press Release, State Street Corp., State Street Global Advisors Launches Gender Diversity ETF to Help Investors Seek a Return on Gender Diversity (Mar. 7, 2016), https://newsroom.statestreet.com/press-release/corporate/state-street-global-advisors-launches-gender-diversity-etf-help-investors-se.

its inception in 2016, the ETF (which is listed on the ticker symbol "SHE") has increased by 24%.[23]

- State pension funds, such as CalSTRS, are using their positions to press this issue within the investor community and at the U.S. Securities and Exchange Commission. In March 2018, the New York State Common Retirement Fund, the third largest pension fund in the United States,[24] announced that it would vote against all the directors standing for re-election at the more than 400 companies that have no women on their boards.[25]

These movements are having an impact in the political and business arenas. More countries are creating government-led and -funded initiatives to evaluate the disparity between genders. In the UK, for example, Business Minister Lord Davies commissioned a report in 2010 that not only provided insights into the gender imbalance on boards, but provided actionable solutions and goals for companies to do better, including a target of at least 25% female representation by 2025 at the top 100 companies on the Financial Times Stock Exchange.[26] A review five years later, conducted by the Cranfield School of Management in cooperation with the UK Government, found that the FTSE 100 had exceeded the 25% goal and raised the voluntary target for FTSE 350 companies to 33% female representation within five years.[27]

Other initiatives range from studying the problem and addressing so-called traditional areas of gender inequality like pay gaps, such as in France, to recommending voluntary gender diversity policies, such as in Japan, to helping implement mandatory quotas, such as in Norway.

While legislative bodies play a large part in creating such policies in the private sector, other public and private institutions are also playing a large role. Many countries' public exchanges are requiring the adoption of diversity policies and mandating companies "comply or explain" why they have failed to comply.

The Australian Securities Exchange (ASX) has done just that—and seen the total percentage of board of director seats allotted to women increase, with over 50% of board positions appointed in 2018 belonging to women.[28] Additionally, corporate codes that govern businesses are increasingly issuing guidelines that encourage companies to adopt gender-based diversity policies. Even such non-mandatory measures seem to have an effect on companies' policies, as evidenced by Kenya which has had a non-binding code provision since 2002[29]. The country now boasts one of the highest percentages of female representation on boards of directors on the African continent.

There are three primary methods that countries employ to increase the percentage of female members on boards of directors: (i) mandatory, government-applied quotas; (ii) stock exchanges encouraging in, and requiring disclosure by, listed companies of diversity policies and, often, requiring that targets are set and measured against; and (iii) corporate governance codes or other private organizations that set voluntary standards.

In certain countries, such as the United States, private non-government organizations have taken up the mantle and pushed for policies to address this issue, with results being seen at the state and municipal levels. While virtually all are non-mandatory and aspirational, one state legislature (California) has recently passed quota legislation and sent it to the Governor to sign.[30] At the local government level, New York City and Philadelphia each have taken steps to increase

23 *See SHE:US, Bloomberg, https://www.bloomberg.com/quote/SHE:US (last visited Aug. 16, 2018).*

24 *Corporate Board Diversity: Gaining Traction Through Investor Stewardship, Bus. Law Today (Jul. 16, 2018), https://businesslawtoday.org/2018/07/corporate-board-diversity-gaining-traction-investor-stewardship/.*

25 Press Release, Office of the N.Y. State Comptroller, DiNapoli: State Pension Fund Will Vote Against Board Members at Corporations with no Women Directors (Mar. 21, 2018), https://www.osc.state.ny.us/press/releases/mar18/032118.htm.

26 *Independent Review into Women on Boards, Dep't for Bus., Innovation, & Skills 1 (Feb. 2011), https://www.gov.uk/government/news/women-on-boards.*

27 *Influencing national policy on gender diversity on top corporate boards, Cranfield Univ. Sch. of Mgmt., https://www.cranfield.ac.uk/som/case-studies/women-on-boards-ftse-research (last visited Aug. 27, 2018).*

28 Australian Institute of Company Directors, http://aicd.companydirectors.com.au/advocacy/board-diversity/statistics.

29 The Capital Markets Act (Cap. 485a), Code of Corporate Governance Practices for Public Listed Companies in Kenya (2015), https://www.kenya-airways.com/uploadedFiles/Content/About_Us/Investor_Information/Code%20of%20Corporate%20Governance%20Practices%20for%20Issuers%20of%20Securities%20to%20the%20Public%202015%20-%20Code-8.pdf.

30 *See S.B. 826, 2017-2018 Sess. (Cal. 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826.*

diversity disclosures by city contractors.[31] The New York City Comptroller and New York City's pension funds launched a Boardroom Accountability Project designed to enhance public disclosure reporting. The initial phase, which began in 2014, included pressing companies to make "'proxy access'—the right of large, long-term shareholders to nominate corporate board candidates on a company's ballot—a market standard."[32] When the project began, just six U.S. companies allowed proxy access. Today that number has increased to more than 524.

Further, in 2017, the Board Accountability Project 2.0 launched and included an initiative to ask 151 companies to disclose the race, gender, and skills of their board members, as well as their process for adding or replacing board members.[33] The results of the project were announced in June 2018: 35 of the targeted companies now disclose information on racial and gender diversity and 49 of the companies have chosen 59 new directors who are women or minorities.[34] In launching the program, New York City Comptroller Scott M. Stringer said, "We're doubling down and demanding companies embrace accountability and transparency."[35]

Mandatory Quotas

Mandatory quotas are currently more prevalent in Europe than any other region. Certain of the countries studied for this report—such as Belgium, France, Germany, Italy, the Netherlands, and Norway—utilize them. Norway, one of the early adopters of quotas in 2003, also has one of the most stringent penalties attached to non-compliance: a company can face dissolution if it fails to comply with the quota requirement.[36] Though strict, the impact has been tremendous. In 2018, 40.5% of public company boards of directors' seats belong to women. This increase is nearly 35 percentage points higher from the year prior to the law's enactment.

Belgium, France, Germany, and Italy all adopted quotas nearly a decade later. The penalties for non-compliance range from nullification of any non-compliant appointment of a director to monetary penalties. No countries in East Asia currently have mandatory, government-set quotas in place (Malaysia has set a quota of 30% but it is not mandatory[37]).

In Africa, Kenya mandates a quota for state-owned enterprises. In the Middle East, Israel has had a quota mandate in place since 1999, where public companies were required to appoint a director of the opposite sex if all directors were of one sex.[38]

Though quotas are not as prevalent in the Americas (of the countries analyzed in this report, only Panama has some type of mandatory quota[39]), legislation has been introduced in Brazil[40] and is gaining momentum.

In the United States, while federal legislative efforts have stalled, states are increasingly playing a role in encouraging

31 Philadelphia Mun. Code § 17-104, as amended by B. 130457 (2013), https://phila.legistar.com/LegislationDetail.aspx?ID=1432999&GUID=0DB3C132-E00B-46D1-B7D5-6C96FEE35D3F; New York City Local Law No. 44 (2016), http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2240496&GUID=43C2F69D-B671-4363-917F-3F8265961E93.

32 *Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign — Version 2.0*, City of New York Boardroom Accountability Project, https://comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/boardroom-accountability-project-2-0/ (last visited Sept. 13, 2018).

33 *Id.*

34 Press Release, Comptroller Stringer, NYC Funds: Unprecedented Disclosure of Corporate Boardroom Diversity Following Groundbreaking Campaign, (June 27, 2018), https://comptroller.nyc.gov/newsroom/comptroller-stringer-nyc-funds-unprecedented-disclosure-of-corporate-boardroom-diversity-following-groundbreaking-campaign/.

35 Press Release, New York City Comptroller Scott M. Stringer, Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign — Version 2.0 (Sept. 8, 2017), https://comptroller.nyc.gov/newsroom/press-releases/comptroller-stringer-nyc-pension-funds-launch-national-boardroom-accountability-project-campaign-version-2-0/.

36 Public Limited Liability Companies Act (Nor.), https://www.oslobors.no/ob_eng/obnewsletter/download/20fd77664bccdf3f6b8cb0dc95eeb7bb/file/file/Norwegian%20Public%20Limited%20Liability%20Companies%20Act.pdf.

37 *See Towards Achieving at Least 30 Percent Participation of Women at Decision Making Levels in Malaysia*, UNDP (Nov. 2006), http://www.undp.org/content/dam/malaysia/docs/WomenE/GenderProDocs/Towards%20Achieving%20At%20Least%2030%20Per%20Cent%20Participation%20of%20Women%20at%20Decision%20Making%20Levels%20in%20Malaysia.pdf.

38 Deloitte, *supra* note 3, citing Government Companies Law, Sec. 18A.

39 *See* Law 56 of July 11, 2017 (Pan.).

40 *See* Bill No. 112 (2010).

gender diversity on boards of directors. Illinois' and Massachusetts' state legislatures have introduced measures designed to promote diversity[41] and California's state legislature has passed legislation that would require all California-headquartered public companies to have at least one woman director by the end of 2019. [42] The bill is on the Governor's desk to sign as of the date of this report. And cities such as Philadelphia have taken steps to increase diversity by requiring contractors who do business with the city to disclose certain demographic information including the gender and race of those serving as board members and executive staff.[43]

Exchange-Encouraged Diversity Programs

Public stock exchanges have been another key driver of the increase in gender diversity in the corporate boardroom. Both Australia and New Zealand boast relatively high percentages of women on boards and neither country has adopted mandatory quotas. Both the Australian and New Zealand stock exchanges, the ASX and NZX respectively, have adopted diversity policies and encourage companies to have a written diversity policy. Listed companies are required to explain how they have complied with the diversity recommendations or otherwise explain why they have failed to do so. So far, Australia is leading the way with 28.5% of board seats held by women at Australian Securities Exchange (ASX) 200 companies,[44] as compared to 19% for New Zealand Stock Exchange companies.[45]

Where countries in Asia have adopted widespread board diversity recommendations they have largely done so through exchanges. Hong Kong and Malaysia's exchanges have both adopted diversity requirements, with Malaysia even requiring a diversity policy for companies to be able to list publicly on the exchange.[46] Women now comprise 14.6% of public company board seats in Malaysia. Hong Kong has seen less success, with only 1.06% of the board seats on all listed companies belonging to women[47] (but among the top 51 blue chip companies in Hong Kong that figure is 13.8%)[48].

Other exchange programs are less direct. For example, Mexico's exchange, BMV, created a "sustainability index," one factor of which is the percentage of women on a company's board of directors.[49] Singapore's exchange promulgates a Code of Corporate Governance, which provides that gender diversity be included as a factor to be considered in a board's composition.[50]

Private Organization and Other Voluntary Standards

The most prevalent, and least stringent, method of encouraging gender diversity on boards of directors is voluntary standards established by primarily non-governmental, non-regulatory bodies. This method can be found in some form for most countries surveyed in this report.

African countries have embraced the concept of voluntary standards. In Egypt, Morocco, and Nigeria, a corporate

41 H.R. Res. 439, 99th Gen. Assemb., Reg. Sess. (Ill. 2015); S. Res. 1007, 189th Gen. Ct. (Mass. 2015).

42 S.B. 826, 2017-2018 Sess. (Cal. 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826.

43 Philadelphia Mun. Code § 17-104, as amended by B. 130457 (2013), https://phila.legistar.com/LegislationDetail.aspx?ID=1432999&GUID=0DB3C132-E00B-46D1-B7D5-6C96FEE35D3F; New York City Local Law No. 44 (2016), http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2240496&GUID=43C2F69D-B671-4363-917F-3F8265961E93.

44 Australian Institute of Company Directors, *supra note 29.*

45 *Gender Diversity Statistics*, NZX (Jan. 2018), https://s3-ap-southeast-2.amazonaws.com/nzx-prod-c84t3un4/comfy/cms/files/files/000/003/158/original/Gender_diversity_statistics_as_at_31_December_2017.pdf.

46 Bursa Malaysia Main Market Listing Requirements: Chapter 16.11(1)(a), http://www.bursamalaysia.com/misc/system/assets/5001/MAIN_Chap16_CIS_9Apr18.pdf (last visited Aug. 23, 2018).

47 *Distribution of female directors per HK-listed company*, Webb-Site, https://webb-site.com/dbpub/FDirsPerListcoHKdstn.asp?d=2018-03-30 (last visited Mar. 30, 2018).

48 Sophie Hui, *Women still struggle for boardroom space*, The Standard (Mar. 7, 2018), http://www.thestandard.com.hk/section-news.php?id=193483&sid=4.

49 *Social Responsibility*, Grupo BMV, https://www.bmv.com.mx/en/Grupo_BMV/Mercado_responsabilidad_social#.VbjCo_mqpBc (last visited Mar. 23, 2018).

50 *The Diversity Scorecard 2016: Building Diversity in Asia Pacific Boardrooms*, Korn Ferry Institute 32 (2016), https://www.kornferry.com/institute/korn-ferry-diversity-scorecard-2016-building-diversity-in-asia-pacific-boardrooms.

governance code encourages gender diversity. Morocco's code, directing companies to consider gender diversity in evaluating potential board members, employs a "comply or explain" requirement. In Morocco, only 7% of directors at companies listed on the Casablanca Stock Exchange were women.[51]

* * *

Our report outlines the measures adopted in 41 jurisdictions. As you will see, the methods employed often involve a combination of approaches to foster gender equality in boards of directors. Different regions have made strides using different techniques, and we hope that this report helps highlight some of the progress made and spark conversation about ways the gap can continue to close in the future.

While this report is intended to examine gender diversity on corporate boards, we also consider whether, and in what ways, countries have addressed the broader issue of diversity beyond gender. In some countries, there has been little if any consideration. In others, diversity writ large is a focus. Both Austria and Belgium, for example, have developed voluntary diversity charters that companies can sign to make commitments to diversity, including having a diversity plan or promoting diversity principles.

The Bottom Line

Board diversity, and gender diversity more specifically, continues to garner attention across many countries, and in some countries has been made a priority both in the private sector and in governments. Given the seismic social changes over the past year or so—#MeToo and more—the next five years will be pivotal in determining whether further significant progress is achieved.

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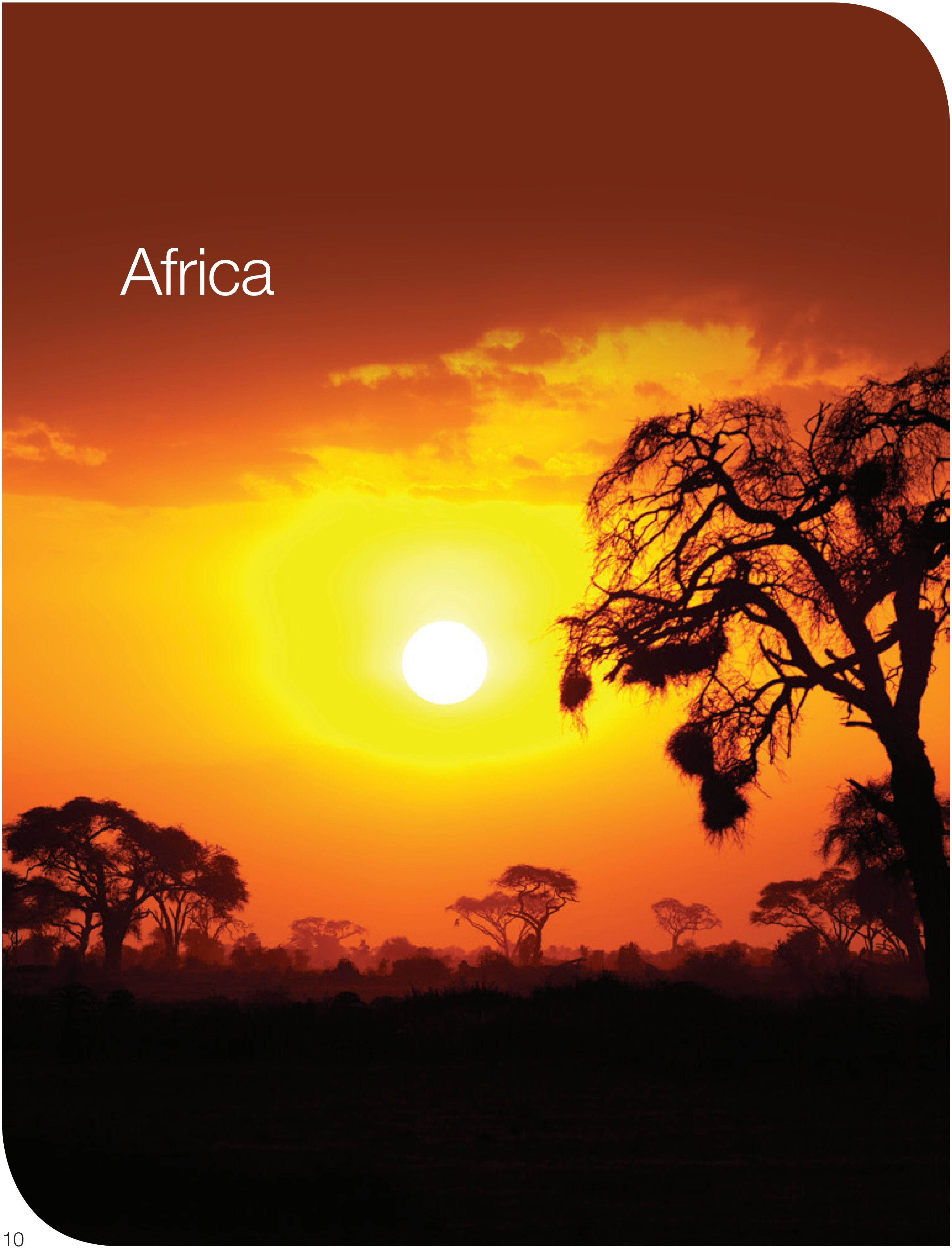
51 Deloitte, *supra* note 3, at 39.

Africa



Kenya

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Of all African countries, Kenya has one of the highest percentages of women directors among its public company boards. According to one study, as of 2017 women in Kenya held 19.8% of board seats, 8% of boards have women as chairs,[1] and women represent 26% of boards of state-owned corporations in Kenya.[2] A frequently referenced example is the major Kenyan beverage manufacturer, East African Breweries Limited, which as of 2013 had appointed five women to its eleven-director board.[3] However, as of 2018 it only has three women on its eleven-director board.[4]

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 (NGOs) 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.

Diversity on Corporate Boards

There are several forums and initiatives that are promoting overall diversity in Kenya's boardrooms. For example, since 2014, the Nairobi Stock Exchange (NSE) has convened roundtable events for listed companies through its Leadership & Diversity Dialogue program to discuss various aspects of board diversity, including gender, culture, age, and profession. Through this dialogue, leaders of listed companies are able to share experiences, discuss challenges, and determine how the NSE can help support diversity in the boardroom.[5]

Furthermore, Kenya's Institute of Directors (KID) has organized forums for corporate governance practitioners to become better educated and increase their understanding about issues surrounding board diversity. KID offers training and professional development for directors and business leaders, and identifies qualified women to serve on boards.[6]

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, 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.[7] According to the Guidelines, "[t]he process of the appointment of directors should be sensitive to gender representation."[8]

In 2015, the *Code of Corporate Governance Practices for Listed Companies (the Code)* recommends that Boards have

1 *Women in the boardroom: A global perspective*, Deloitte 39 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf (citing Institute of Directors, *Report of the Taskforce on Women Representation on Boards* (July 2015)).

2 *Where are the Women: Inclusive Boardrooms in Africa's Top Listed Companies?*, African Development Bank (June 2015), https://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").

3 *Id.* at 26.

4 East African Breweries Limited (EABL), https://www.eabl.com/en/our-business/leadership/board-directors (last visited Sept. 12, 2018).

5 Deloitte, *supra* note 1 (citing NSE Leadership & Diversity Dialogue Series Press Briefing Brochure).

6 Deloitte, *supra* note 1.

7 Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya, Gazette Notice No. 3362.

8 *Id.* at 3.1.3 viii.

a policy to ensure the achievement of diversity in their composition and that "[e]ach Board shall consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender. The appointment of Board members shall be gender sensitive and shall not be perceived to represent a single or narrow constituency interest. Where companies establish a diversity policy, the companies shall introduce appropriate measures to ensure that the policy is implemented."[9] While the Code is not binding on publicly listed companies in Kenya or any other corporate entities, the inclusion of this recommendation increased visibility of the underrepresentation of women on boards, spurring similar progress throughout the region. For instance, Uganda's Capital Markets Authority issued new corporate governance guidelines with identical language on gender diversity the following year in 2016.[10]

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."[11] 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.

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.[12] 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.[13] 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.[14] 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."[15] 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. The Capital Markets Authority has, however, made it mandatory for

9 The Capital Markets Act (Cap. 485a), Code of Corporate Governance Practices for Public Listed Companies in Kenya (2015), https://www.kenya-airways.com/uploadedFiles/Content/About_Us/Investor_Information/Code%20of%20Corporate%20Governance%20Practices%20for%20Issuers%20of%20Securities%20to%20the%20Public%202015%20-%20Code-8.pdf.

10 Capital Markets Corporate Governance Guidelines Part 2, Section 30 (2003), http://www.cmauganda.co.ug/sites/default/files/downloads/laws_%26_regulations_guidelines_ CorporateGovernanceGuidelines.pdf.

11 CONSTITUTION OF KENYA 2010, art. 27 (8).

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

13 African Development Bank Report, *supra* note 2, at 38.

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

15 *Id.*

all listed companies to report at their annual meetings the number of women serving on their boards.[16]

A strong network of advocacy organizations in Kenya continues to push for progress within privately owned companies, as well as state-owned enterprises.[17] 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. 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. Kenya has made significant strides in the representation of women on boards, and there is reason for measured optimism about continued progress.

16 Deloitte, *supra* note 1 (citing a speech by Paul Muthaura, CEO, Capital Markets Authority).

17 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.

PAUL HASTINGS

Morocco

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Global rankings and national statistics suggest that universal gender equality remains unrealized in Morocco. According to the World Economic Forum's 2017 Global Gender Gap Report, Morocco ranked among the worst countries for gender parity in economic participation, education, health, and political empowerment—ranking 136 out of 144 countries.[1] And while women make up 50% of the population and 47% of the tertiary education enrollment, they only represent 26% of the labor force.[2]

Despite that sobering quantitative reality, there have been notable achievements in the battle for gender equality in Morocco this decade. For example, in July 2011, the Moroccan Constitution was amended to recognize equality between women and men—vowing that the state is "working to achieve parity between men and women," and even erecting an Authority for Equality and the Control of all Forms of Discrimination to ensure that meaningful equality would be realized.[3] The Moroccan Constitution also now requires that Moroccan law include provisions "likely to promote equal access for women and men to electoral functions"[4] and mandates a quota system for the representation of women in the political sphere,[5] reserving seats for them at the national, regional, and local government levels.[6] Yet, even with these legislative achievements, gender inequality in Morocco's business world remains rampant.

Corporate Governance Codes and Moroccan Women in the Boardroom

The Moroccan Code of Good Practice on Corporate Governance (the "Code") was adopted by the National Commission on Corporate Government and entered into force in March 2008. Section 3.4.1 of the Code expressly encourages companies to consider gender diversity when evaluating potential board members. It provides:

> The composition of the management board is essential to enable it to perform its role. It should be composed of members with integrity [who are] competent, informed, involved, providing diversity (training, professional experience, *gender balance*, age, nationality) likely to generate real debate and to avoid the systematic search of consensus.[7]

Companies that fail to comply with the Code are required to provide an explanation for non-compliance. The adoption of the Code denotes an awareness of the importance of women's voices in the boardroom and is a key step toward achieving gender parity. However, several years have passed since the Code's adoption, and women's presence on Moroccan corporate boards remains sparse. For example, according to a Deloitte Global Center for Corporate Governance report publicized in 2017, women represent a mere 11% of board members of Morocco's publicly listed companies and only 7% of board members of Morocco's state-owned companies.

While the Moroccan Parliament has not yet enacted legislation to combat the underrepresentation of women in the

1 *The Global Gender Gap Report 2017*, World Economic Forum (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

2 Yuko Morikawa, *The opportunities and challenges for female labor force participation in Morocco* (July 13, 2015), https://www.brookings.edu/research/the-opportunities-and-challenges-for-female-labor-force-participation-in-morocco/.

3 Specifically, Article 19 of the Moroccan Constitution provides: "Men and women enjoy equal human rights and freedoms of a civil, political, economic, social, cultural and environmental [nature], as set out in this and other provisions of the Constitution, and in international covenants and conventions duly ratified by the Kingdom …. The Moroccan government is working to achieve parity between men and women. It is created for this purpose an Authority for Equality and the Control of all Forms of Discrimination." *See* CONSTITUTION OF THE KINGDOM OF MOROCCO 2011, art. 19 (not official translation).

4 *See id.* at art. 30.

5 *See id.* at art. 146.

6 Loi organique no 27-11 relative à la Chambre des représentants [Organic Law no. 27-11 on the House of Representatives]; Loi no 36-08 modifiant et complétant la loi no 9-97 formant code électoral [Law no. 36-08 amending and supplementing Law no. 9-97, the Electoral Code].

7 *See* The Moroccan Code of Good Practice on Corporate Governance, at Section 3.4.1 (Mar.9 2008) (not official translation).

boardroom, the topic of quotas has been subject to widespread debate.[8] Moreover, private initiatives have increased their programs to combat gender inequality in the boardroom. For instance, Nezha Hayat—the first woman member of Société Générale Morocco's Executive Board and champion for women in business—founded Association des Femmes Chefs d'Entreprises du Maroc (AFEM),[9] an independent professional association of women entrepreneurs in Morocco which represents women entrepreneurs at different economic institutions and serves as a liaison between public authorities and other institutions.[10] Additionally, the Moroccan Institute of Directors and the Moroccan Chapter of Women Corporate Directors have vowed to raise awareness on the issue of gender diversity in the future.[11]

Conclusion

While there have been serious efforts to encourage Moroccan companies to increase gender diversity in Morocco's corporate sphere, any meaningful representation of women in Moroccan boardrooms remains to be realized.

8 Ahlam Nazih, *Competence & RH–Femmes cadres: Ce qu'elles en pensent*, L'Economiste (June 2, 2018), https://www.leconomiste.com/article/1023731-femmes-cadres-ce-qu-elles-en-pensent.

9 Larbi Arbaoui, *Top 10 Influential Moroccan Businesswomen*, Morocco World News (Nov. 23, 2014), https://www.moroccoworldnews.com/2014/11/144863/top-10-influential-moroccan-businesswomen/; AFEM, http://www.afem.ma/presentation-maroc-pionnieres/ (last visited Aug. 29, 2018).

10 *AFEM*, http://www.afem.ma/presentation-maroc-pionnieres/ (last visited Aug. 29, 2018).

11 *Corporate Governance –Women on Boards*, Int'l Fin. Corp. (Apr. 2014), https://www.ifc.org/wps/wcm/connect/75610d004f860220bd95ff0098cb14b9/women-on-boards-handout_042013.pdf?MOD=AJPERES.

Nigeria

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The percentage of women on boards of Nigerian companies—16.8% as of 2016 (and 7.5% of board chairs)[1]—is above the continental average of 12.7% in 2015.[2] 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, contributed to the relatively low number of women in corporate positions and the boardroom.[3]

While many companies in Nigeria still struggle to attain adequate representation of women on their boards, Nigeria's 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.[4] Recent developments—in particular, a regulatory directive issued by the Central Bank of Nigeria—have reflected innovative approaches toward combating 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 (the "Code").[5] 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."[6] The Code provides guidance for publicly listed companies, but does not include penalties for failure to consider these factors. There are currently no quotas for women on corporate boards.[7]

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 their boards by 2014.[8] However, as of 2018 only 22.3% of the board appointments are women.[9]

The directive also requires banks to ensure that at least 40% of their management is composed of women and that

1 *Women in the boardroom: A global perspective*, Deloitte 41 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

2 *Where are the Women: Inclusive Boardrooms in Africa's Top Listed Companies?*, African Development Bank (June 2015), 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").

3 Y. Fakeye, O.J. George & O. Owoyemi, *Women in Purgatory: The Case of Nigerian Women in the Boardrooms*, 1 ASIAN J. OF BUS. & MGMT. SCI. No. 10 (2012), 134, 137, http://www.ajbms.org/articlepdf/AJBMS20121914.pdf.

4 African Development Bank Report, *supra* note 2, at 26.

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

6 *Id.* at 13.2.

7 Sarah Iqbal, *Women, Business, and the Law 2016: Getting to Equal*, World Bank, at 186, http://documents.worldbank.org/curated/en/455971467992805787/Women-business-and-the-law-2016-getting-to-equal.

8 Sunday Michael Ogwu, *CBN directive: Women Occupy Only 22% Boards' Seats in 21 Banks*, Daily Trust (Feb. 8, 2018), https://www.dailytrust.com.ng/cbn-directive-women-occupy-only-22-boards-seats-in-21-banks.html.

9 *Id.*

their annual reports include statistics on representation of women within their institutions.[10] 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 based on recognition of the underrepresentation of women among the leadership of financial institutions.[11] Many advocates 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 (WIMBIZ)—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.[12] 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.

Organizations Supporting Gender Diversity

Outside of government directives, the Governing Council of the Institute of Directors Nigeria (IoD Nigeria) started a Women Directors Forum to promote dialogue between top women directors, leaders, and groups within the IoD on the challenges to achieving gender equality in Nigeria. The Forum is structured as interactive panel sessions for eminent women to discuss topics from their respective experiences.[13] WIMBIZ also has programs to assist female entrepreneurs and increase the presence of women on company boards and management teams.[14]

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.

10 *Id.*

11 Maggy Parries, *Nigeria: Banks to Appoint 30 Percent Women Board Members – Sanusi*, Fin. News Newspaper (Apr. 15, 2013), https://www.finance-news.lu/nigeria-banks-to-appoint-30-percent-women-board-members-sanusi.

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

13 *Women Directors Forum*, Institute of Directors Nigeria (IoD Nigeria), http://www.iodnigeria.org/Programmes/Women-Directors-Forum (last visited Sept. 12, 2018).

14 *Women in Management, Business and Public Service (WIMBIZ)*, http://wimbiz.org/ (last visited Sept. 12, 2018).

South Africa

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While there have been significant strides in increasing the number of women directors in South African companies, women continue to be underrepresented in boardrooms. According to the Businesswomen's Association of South Africa's (BWA) 2017 Women in Leadership Census ("BWA 2017 Census"), women comprise 20.7% of total director positions, 29.4% of executive managers, 4.7% of CEOs, and 7.1% of chairpersons in South Africa.[1] In 2017, there were 1,062 directorship positions in South African companies held by women.[2] However, only 506 women filled these positions, meaning that many women held more than one directorship position; several women even held three or more directorships.[3] Furthermore, only 10 companies had at least 50% of their director positions filled by women.[4]

Notably, the number of women on boards of state-owned enterprises (SOEs) far surpasses that of companies listed on the JSE Ltd.[5] The BWA 2017 Census found that women accounted for 41.2% of directors at SOEs, as compared to 19.1% at JSE-listed companies.[6] In addition, 85% of the SOEs surveyed had three or more women directors.[7] However, only 25.6% of JSE-listed companies had three or more women directors, and 16.3% of JSE-listed companies had no women directors at all.[8]

Moreover, the low percentage of women CEOs and chairpersons indicates that there is still significant room for improvement, particularly since women comprise 51% of the South African population and 44.3%[9] of the employed workforce.[10]

In many ways, South Africa's efforts to increase the presence of women, both in business generally and in boardrooms specifically, are a byproduct of the country's efforts to overcome the legacy of apartheid. Apartheid, which ended in 1994, systematically excluded a majority of South Africans from meaningful participation in the economy for almost 50 years.[11] In addition to the exclusion of persons of color, women in general were also excluded. Laws limited the rights of women of all races to own, inherit, or alienate property.[12] Since the end of apartheid, South Africa has worked to develop a legislative framework to overcome existing economic disparities and entrenched inequalities that are a result of apartheid.

Legislative Initiatives

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

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1 *BWASA South African Women in Leadership Census 2017*, Businesswomen's Ass'n of S. Afr. 11-12 (2017), https://bwasa.co.za/wp-content/uploads/2018/04/2017-BWASA-CENSUS-report.pdf (hereinafter "BWA Census"). The BWA's annual census quantifies the representation of women on the boards of companies listed on the JSE, including their subsidiaries, as well as on boards of state-owned enterprises in South Africa.

2 *Id.* at 18.

3 *Id.*

4 *Id.* at 26.

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

6 BWA Census, *supra* note 1, at 8.

7 *Id.* at 16.

8 *Id.*

9 *Id.* at 11; *Quarterly Labour Force Survey Quarter 1: 2017*, Stats SA Statistics S. Afr. (2017), http://www.statssa.gov.za/publications/P0211/P02111st-Quarter2017.pdf (hereinafter "StatsSA").

10 StatsSA defines "employed" persons as "those aged 15–64 years who, during the reference week, did any work for at least one hour, or had a job or business but were not at work (i.e. were temporarily absent)." *Id.*

11 *South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment*, Dep't Trade & Industry 3 (2003), http://www.empowerdex.com/Portals/5/docs/dti%20BEE%20STRATEGY.pdf.

12 *Women's Charter*, Fed. of South African Women (April 17, 1954), http://www.anc.org.za/content/womens-charter. *See also The Women's Charter for Effective Equality*, National Women's Coalition (Feb. 27, 1994), http://www.anc.org.za/content/womens-charter-effective-equality.

- “National legislation must be enacted to prevent and prohibit unfair discrimination.”[13]
- “To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.”[14]

Since the end of apartheid, the South African government has implemented several pieces of legislation that advance gender equity. In 1996, the Commission for Gender Equality (CGE) was established to “promote, protect, monitor and evaluate gender equality” in both the government and private sector in South Africa.[15] The CGE reviews and recommends legislation and investigates gender discrimination complaints.[16] The Employment Equity Act and the Broad-Based Black Economic Empowerment (BBBEE) Act (the “Act”) have implemented broad requirements for diversity and equity in business generally. The BBBEE also addresses diversity in boardrooms specifically.

A. BBBEE Scoring System

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

Remedying gender discrimination is only a secondary focus of BBBEE, and the BBBEE is limited in scope to the empowerment of Black women only. Still, while BBBEE primarily focuses on race, scores also take into account gender, disability, youth, unemployment, and rural location. Therefore, companies have an additional incentive to recruit black women in particular. One of the Act’s many objectives is to increase black women’s ownership and management of “new enterprises and facilitate their access to economic activities, infrastructure, and skills training.”[21] There are Codes of Good Practice to enforce the system, which measure, among other things, the extent to which companies have empowered black people and women in the composition of management teams, including boards of directors.[22] The Management category for BBBEE scoring encompasses participation on the company’s board of directors, with the target being 50% Black voting members. The Adjusted Recognition for Gender allows additional

13 S. AFR. CONST. 1996, ch. 2, § 9(4).

14 S. AFR. CONST. 1996, ch. 2, § 9(2).

15 *The Commission for Gender Equality*, http://www.cge.org.za/ (last visited Sept. 14, 2018).

16 Suzette Viviers et al., *Mechanisms to promote board gender diversity in South Africa* (2017), http://www.scielo.org.za/pdf/acom/v17n1/23.pdf.

17 *Id.*

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

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

20 *Broad-Based Black Economic Empowerment Act (53/2003): Issue of Codes of Good Practice*, Gov’t Gazette, Vol. 580 No. 36928 (Oct. 11, 2013) (S. Afr.), http://bee.b1sa.co.za/docs/Revised_BBBEE_COGP_10102013.pdf (hereinafter *Codes of Good Practice*).

21 *Diversity in the Boardroom, King IV*, Deloitte 5 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/za_KGIV_BoardDiversity_FA.pdf.

22 *Women in the boardroom: A global perspective*, Deloitte 42 (2017) https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

points for Black women members, up to the target of 50% of the Black members being women.[23] According to the 2013 BEE Codes of Good Practice, the appointment of female leaders in the Management and Skills development categories was specifically referred to, and a 25% compliance target was set for the exercisable voting rights of Black female directors (as a percentage of all directors) and for Black female executives (as a percentage of all executives).[24]

The BBBEE system, while similar to the quota systems utilized in some countries, is not actually a quota system. Companies are not required to have a minimum number of female or Black board members on their boards of directors.[25] Because the BBBEE Level rating is based on the total score from seven categories, companies can achieve competitive BBBEE scores in a variety of ways. For example, a company can compensate for a low Management score with strong scores in other categories, such as Employment Equity or Preferential Procurement. That a company without any female or Black directors on its board can still have a strong BBBEE score suggests that the BBBEE is less effective at remedying gender inequality at the board level than more gender-focused initiatives, such as quotas or comply-or-explain obligations.

B. Proposed Gender Equity Bill

In 2010, the Department for Women, Children and People with Disabilities issued a Green Paper[26] proposing the passage of gender equality legislation to ensure enforcement of existing gender equity laws in the public and private sectors. The proposed gender equity legislation would establish punitive sanctions for public and private entities that violate anti-discrimination laws;[27] make affirmative action mandatory for all employers;[28] and implement mandatory measurement of progress toward gender equality, including gender audits, analysis, and compulsory reports.[29] The minister for the Department for Women, Children and People with Disabilities had hoped the bill would be submitted for consideration by the Cabinet in March 2012.[30]

However, the bill was withdrawn in Parliament in November 2013.[31] Certain proposed quotas in the bill were criticized as being unrealistic, such as the appointment of at least 50% females in corporate decision-making structures.[32] The criticism was that quotas would not address the problems underlying the existing gender inequalities (such as problems in the education system or rigid labor policies).[33] Additionally, critics also suggested the bill would place an administrative burden on companies, contribute to symbolic appointments, and had 'vague' objectives and weak enforcement mechanisms.[34] As of 2017, there was no board-related gender diversity legislation in South Africa.[35]

Private Sector Initiatives

The private sector in South Africa has been involved in developing initiatives to ensure gender equity on boards. Most

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23 *Codes of Good Practice, supra* note 20.

24 *Id.*

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

26 *Green Paper: Toward a Gender Equality Bill (draft)*, Ministry for Women, Children & People with Disabilities (2008), http://www.pmg.org.za/node/26586.

27 *Id.* at § 22.

28 *Id.*

29 *Id.* at § 23.

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

31 Viviers et al., *supra* note 16.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

of the private sector efforts to increase the representation of women on boards were initiated by South Africa's business associations. These efforts include the 2016 King Code of Governance for South Africa and the King Report on Governance for South Africa (together referred to as "King IV"), as well as increasing support for board diversification from institutional investors.

In addition to conducting an annual census on the number of women directors, the BWA has also taken steps to try to accelerate growth in numbers. For example, as part of its Census report each year, BWA publishes a list of the "top performing" and "worst performing" companies in terms of the number of women directors.[36] In 2008, only 18.5% of companies (62 companies) in the Census had 25% or more female directors on their boards, and by 2017 this percentage has increased to 34.4% (102 companies) of the total number of companies included in the Census.[37]

The King Code of Governance ("King Code") applies to all companies listed on the JSE, and although its provisions are not mandatory, the JSE-listing requirements provide that all listed companies must disclose and explain any non-compliance with the King Code in their annual report. Consistent with King IV, which promotes the benefits of diverse boards, the JSE included a requirement for the boards of listed companies to disclose targets at the board level for gender and race representation, as well as progress made against these targets in annual reports. In June 2017, the JSE amended its listing requirements, and the implementation date of the required disclosure in the annual report was June 1, 2018.[38] While no quotas have been prescribed, the goal is that companies will be held accountable for meeting their respective gender and race targets.[39]

Business Unity South Africa (BUSA) promotes the interests of the country's business community to create an environment in which businesses can thrive. The organization brings together professional associations, industry groups, and chambers of commerce. Like BWA, BUSA has also developed a number of recommendations for companies to improve board diversity,[40] including:

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

Similar to BWA, BUSA has also pledged to develop a database of potential board candidates, training for future directors, and programs to monitor changes in board composition on an on-going basis.[41]

Corporate Governance Code

The King reports are named after Mervyn King, a veteran corporate lawyer and former South African Supreme Court judge, who formed the first King Committee in 1993, shortly after South Africa gained independence.[42] This committee issued the first King report on corporate governance in 1994. King IV, the most recent report, was issued in 2016 by the fourth King Committee, which consists of professionals and experts in various areas of corporate governance. The Committee was convened by the Institute of Directors in Southern Africa (IoDSA), a non-profit organization promoting good governance. The King reports include a voluntary code of governance referred to as the King Code. It is closely aligned with the Companies Act, and the JSE listings requirements incorporate certain provisions of the King Code. The King Code promotes ethics as the foundation of corporate governance and, along with the Companies Act and the

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36 BWA Census, *supra* note 1, at 20-33.

37 *Id.* at 20.

38 *JSE amends listing requirements to include disclosure on the promotion of racial diversity at board level*, JSE (June 22, 2017), https://www.jse.co.za/articles/jse-amends-listing-requirements.

39 Deloitte, *supra* note 22.

40 *Transformation Study: A Snapshot of the Demographic Profile and Pace of Transformation of JSE Listed Companies*, Business Unity S. Afr., 4-5 (2011), http://www.politicsweb.co.za/documents/busas-transformation-study.

41 *Id.*

42 *Mervyn E. King, Judge Professor*, Integrated Reporting, http://integratedreporting.org/profile/professor-mervyn-e-king/ (last visited Sept. 14, 2018).

JSE listing requirements, serves as a guide for corporate entities throughout South Africa.

As discussed above, in addition to setting targets for race and gender representation in its membership,[43] King IV specifically deals with diversity and board composition, which is a new addition from King III. King IV proposes that a board should promote diversity in its membership in order to promote better decision-making and effective governance. Diversity includes "fields of knowledge, skills and experience as well as age, culture, race and gender."[44]

In addition, the King Code provides that the majority of the board should consist of non-executive directors, and that the majority of those directors should be independent.[45] It also states that companies should implement a staggered rotation of directors.[46] Furthermore, it states that a formal evaluation of the board, its committees, and its individual members should be conducted at least every two years.[47] As mentioned above, the BUSA is advocating for restrictions on director terms to increase turnover, such as maximum term limits, to create more opportunities to fill empty board seats with diverse directors.

Conclusion

Significant government-initiated legislation, such as the BBBEE Act, has largely contributed to the increase in women on boards in South Africa. Since 2004, when the BWA Census started, the percentage of female South African directors has increased from 7.1% to 20.7%, as of 2017.[48] The argument that government intervention, especially the BBBEE (which focuses exclusively on Black women), is having a positive effect is bolstered by the fact that 74.3% of female directors are Black, as compared with 21.9% White women directors.[49] However, the gap between the number of women directors on JSE-listed companies and SOEs emphasizes the continued importance of private sector initiatives as well. Gender diversity on boards is increasing in South Africa, but slowly.[50]

43 *King IV, Report on Corporate Governance for South Africa 2016*, Inst. of Directors Southern Africa (2016), https://c.ymcdn.com/sites/iodsa.site-ym.com/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf (hereinafter "King IV").

44 Deloitte, *supra* note 21.

45 King IV, *supra* note 43, at 50.

46 *Id.*

47 *Id.* at 29.

48 BWA Census, *supra* note 1, at 11.

49 *Id.* at 42. The census uses separate categories for Black, Indian, and Coloured, all of which the BBBEE Act considers "Black." Broken down, the census found that female directors were 58.7% Black, 8.2% Indian, and 7.4% Coloured. Id.

50 Deloitte, *supra* note 21.

Asia

China

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While women have enjoyed tremendous gains in gender equality in China over the past fifty years, there is still substantial room for improvement regarding participation by women on corporate boards of directors.

According to Credit Suisse's CS Gender 3000 data,[1] on average only 9.2% of board seats were held by women in China in 2015 (only up 0.1% from 2014).[2] Deloitte and MSCI released reports that showed comparable numbers for 2016 and 2017.[3] Sixteen of China's 28 largest companies in the Fortune Global 200 do not have a single women director, according to Corporate Women Directors International's 2015 Report.[4] A 2011 survey of the top 100 largest Chinese companies conducted by The Korn/Ferry Institute found that the biggest enterprises fare no better, with only 8.1% female representation on those boards.[5] Some of the country's top tech companies have all-male boards.[6]

These surveys did not specify whether the companies analyzed were publicly listed. However, a 2010 survey focused solely on publicly traded Chinese firms showed that more than 90% had female directors and that women accounted for 16.7% of the board seats of these companies.[7] While the survey did not offer an explanation as to why the percentage of women directors is so much higher for publicly listed companies, one reason could be that many such firms are outgrowths of closely held operations, in which family relationships trump gender.

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

The presence of female directors on the boards of foreign companies, where representation tends to be higher, has not gone unnoticed in China. However, compared with other countries in East Asia and South Asia, China seems like less of an outlier. While Malaysia (13.9%), Thailand (12.7%), and the Philippines (10.9%) come out ahead in the region for female board representation, Indonesia (6.2%), Taiwan (4.5%), South Korea (4.1%), and Japan (3.5%), all fare worse.[8]

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1 The database includes close to 3,400 companies across all industries in all countries. *The CS Gender 3000: The Reward for Change*, Credit Suisse (2016), https://glg.it/assets/docs/csri-gender-3000.pdf.

2 *Id.*

3 *Women in the boardroom: A global perspective*, Deloitte (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf; Meggin Thwing Eastman, *Women on Boards: Progress Report 2017*, MSCI (Dec. 2017), https://www.msci.com/documents/10199/239004/MSCI_Women+on+Boards+Progress+Report+2017.pdf/b7786a08-c818-4054-bf3f-ef15fc89537a.

4 *2015 CWDI Report on Women Directors: Fortune Global 200 – 2004-2014*, Corporate Women Directors Int'l (2015), http://globewomen.org/CWDInet/index.php/2015-cwdi-fortune-global-200-report/.

5 Alicia Yi, *Mind the gap: Half of Asia's boards have no women, a risky position for governance and growth*, Korn Ferry Inst. (2011), http://www.kornferryinstitute.com/about_us/thought_leadership_library/publication/2956/Mind_the_gap.

6 Bruce Einhorn, *These Asian Billionaires Don't Have Any Women on Their Boards*, Bloomberg (Sept. 25, 2017), https://www.bloomberg.com/news/articles/2017-09-25/you-won-t-find-any-women-on-boards-of-these-asian-billionaires.

7 Ren Ting and Wang Zheng, *Female Participation in TMT and Firm Performance: Evidence from Chinese Private Enterprises*, NANKAI BUS. REV., Vol. 13, No. 5, at 81-91 (2010).

8 Credit Suisse, *supra* note 1, at 8.

Legislative Efforts

In contrast to the United States and the European Union, gender parity on company boards has never been a particularly hot topic in China. Unsurprisingly, legislative efforts to increase representation are still in preliminary stages. Currently, there is no specific law in China setting a gender quota for women on boards of state-owned or privately held companies. However, China's State Council, the country's chief administrative authority, has formulated certain goals for women.

As early as 1995, the State Council articulated its Programs for the Development of Chinese Women (the "1995 Programs"), outlining major goals for women's development over the ensuing five years, including measures relating to women's participation in decision-making processes and administrative bodies. The 1995 Programs delegate responsibility for articulating and implementing specific plans to individual government agencies and lack the force of law. They are more aspirational than legislative in nature.

A further set of initiatives adopted in 2001 (the "2001 Programs") stipulate that, from 2001 to 2010, state-owned enterprises (SOEs) shall increase the representation of women on their boards and that the relevant governmental organs (i.e., the State-owned Assets Supervision and Administration Commission) shall endeavor to promote gender parity. These goals were reiterated in amendments to the 2001 Programs passed in 2011 (the "2011 Programs"). As one notable example, in its draft implementation plan for the 2011 Programs, the government of Jiujiang City (in the southern province of Jiangxi) set a 10% target for female directors on SOE boards. If passed, this program would represent the first time that a specific target for female membership was proposed for the boards of Chinese companies. The 2011 Programs exceed the scope of the prior programs by calling for an increase in the participation by women on boards of *all enterprises, public or private, by 2020.*

The Code of Governance for Listed Companies (the "Code") is issued by the China Securities Regulatory Commission and State Economic Trade Commission. All listed companies are required to comply with this Code. Currently, the Code does not provide for a quota or any other provisions regarding gender diversity on corporate boards.

Conclusion

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

While the current picture of Chinese women in the boardroom is not exactly hopeful, in the long term Chinese women have numbers, if not the laws, on their side. One bellwether is the Graduate Management Admission Test (GMAT). In the testing year 2016, women made up 67% of all GMAT test takers in China, up from 65% in 2011.[9] Many of those women pursue MBAs at prestigious western institutions with the ultimate goal of taking leadership positions in Chinese companies.[10] Whether or not legislation mandates it, as more women graduate from business school programs and rise through the ranks of their organizations, gaining the solid business experience and corporate leadership skills that are foundations of board membership, the pressure to appoint women as directors will likely build.

9 *Profile of GMAT Testing: Citizenship*, GMAC (Nov. 2016), https://www.gmac.com/~/media/Files/gmac/Research/GMAT-Test-Taker-Data/gmat-profile-citizenship-ty2016-web-release-2.pdf.

10 Alison Damast, *For Chinese Women, U.S. MBAs Are All the Rage*, Bloomberg Business Week (May 5, 2011), https://www.bloomberg.com/news/articles/2011-05-05/for-chinese-women-u-dot-s-dot-mbas-are-all-the-rage.

Hong Kong

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Although Hong Kong was under British colonial rule for decades, women's rights and gender equality had only been enshrined in the Hong Kong legal system for a little over 20 years when, in 1996, the United Nations Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") was extended to Hong Kong. Today, there are a number of laws that address gender inequality and women's rights in Hong Kong.[1] However, the issue of representation of women in boardrooms has been prominent only in the last decade. A growing group of women is working to change that conversation. In 2013, the 30% Club Hong Kong was formed, with the goal of achieving 20% female representation by the year 2020, working toward a long-term goal of 30% and to reduce to zero all-male boards by the end of 2018.

The Law and the Equal Opportunities Commission

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

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

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

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

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

3 Bills of Rights Ordinance, Ch. 383 of the Laws of Hong Kong, art. 22, § 8.

4 Bills of Rights Ordinance, Ch. 383 of the Laws of Hong Kong, art. 1(2), § 8.

5 Bills of Rights Ordinance, Ch. 383 of the Laws of Hong Kong, § 7.

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

7 Sex Discrimination Ordinance, ch. 480 of the Laws of Hong Kong, §§ 5, 7, 8 and 11; *Sex Discrimination Ordinance and I*, Equal Opportunities Commission, http://www.eoc.org.hk/eoc/GraphicsFolder/showcontent.aspx?content=Sex%20Discrimination%20Ordinance%20and%20I (last visited Sept. 13, 2018). Both direct discrimination (when a person is treated less favorably than another person of the opposite sex) and indirect discrimination (when a condition or requirements, which is not justifiable, is applied to everyone but in practice adversely affects persons of a particular sex or marital status, or those who are pregnant) on the grounds of sex, martial status and pregnancy are recognized as unlawful acts under the SDO. Sex Discrimination Ordinance, ch. 480 of the Laws of Hong Kong, § 5.

8 Sex Discrimination Ordinance, Ch. 480 of the Laws of Hong Kong, §§ 63 and 64.

as these are merely guidelines lacking the force of law.[9]

The Facts and Statistics

Notwithstanding the extensive legislative protections afforded to women and emphasis on gender equality, statistics show that Hong Kong still lags behind many countries with respect to representation of women in the boardroom, but there has been improvement in the past decade in the representation of women on boards in Hong Kong's top-listed companies.[10] By a measure which looks at the percentage of women on the board of the 51 blue-chip companies on the Hang Seng Index (HSI)[11], the number of women directors reached 13.8 percent in 2018 (from 8.9% in 2009).[12] Thirteen HSI companies now have 20% or more women on their boards.[13]

However, according to Webb-site.com, a website established by David Webb, a retired investment banker and an equity market analyst who collects extensive data on Hong Kong-listed companies, there are currently approximately 2,174 listed companies in Hong Kong and the average number of female directors per listed company is 1.06.[14] In addition, over 40 percent of the listed companies in Hong Kong have no female representation on their boards.[15] The following table summarizes the number of female directors on the board of companies with a current primary listing in Hong Kong:[16]

Number of female directors	Number of Companies	Total seats	Cumulative companies	Cumulative seats
6	2	12	2	12
5	8	40	10	52
4	56	224	66	276
3	134	402	200	678
2	405	810	605	1488
1	822	822	1427	2310
0	747	0	2174	2310

An Attempt to Change

The Stock Exchange of Hong Kong Limited ("HKSE") helps to promote best practices with respect to corporate governance among issuers.[17] The governance framework is embodied in the Code on Corporate Governance Practices (the "Code"), which was developed by the HKSE with a view toward providing a fair, orderly, and efficient market for trading of securities.

9 *Code of Practice on Employment under the Sex Discrimination* Ordinance, Equal Opportunities Commission, http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs on Employment(SDO)&fld=content (last visited Sept. 13, 2018).

10 Fern Ngai, *Women on Boards: Hong Kong 2018*, Community Business 2 (Mar. 2018).

11 The HSI is a free float-adjusted market capitalization-weighted stock market index in Hong Kong, and is the main indicator of overall market performance in Hong Kong. *Id.* at 4.

12 Sophie Hui, *Women still struggle for boardroom space*, The Standard (Mar. 7, 2018), http://www.thestandard.com.hk/section-news.php?id=193483&sid=4.

13 *30% Club HK Announces Progress in Interim Goals*, 30% Club (Sept. 28, 2017), https://30percentclub.org/press-releases/view/30-club-hk-annouces-progress-in-interim-goals.

14 *Distribution of female directors per HK-listed company*, Webb-Site, https://webb-site.com/dbpub/FDirsPerListcoHKdstn.asp?d=2018-03-30 (last visited Mar. 30, 2018).

15 *Id.*

16 *Id.*

17 *Guidance for Boards and Directors*, HKEX (July 2018), http://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/Corporate-Governance-Practices/guide_board_dir.pdf.

In September 2013, the HKSE implemented amendments to the Code to introduce a "comply or explain" requirement for every Hong Kong listed company's nominating committee to implement a board diversity policy, and to disclose in its annual report details of the policy and the company's progress in achieving the objectives outlined in the policy.[18] The amendments also expressed a sense that "the board should have a balance of skills, experience, and diversity of perspectives appropriate to the requirements of the issuer's business" but did not specifically reference gender.[19] In July 2018, HKSE released guidance to companies – this time addressing gender.[20] On the topic of gender diversity, the guidance states:

A growing number of studies have shown that gender and other aspects of diversity enable the board to be better able to understand their customers' and stakeholders' needs and are positively associated with the issuer's financial performance, more effective board and better risk management. Hong Kong appears to be lagging behind other leading markets in terms of ratio of women on boards and falls below the average growth according to some research statistics.[21]

It further notes that a "substantial proportion of issuers are without a single woman on their boards" and that "there should be more transparency on the considerations for diversity, including gender, during the nomination process of directors."

The guidance provides that pursuant to Rule 13.92 (effective on January 1, 2019), a diversity policy "should include measurable objectives that the issuer has set for implementing the diversity policy (for example, those relating to gender) and progress on achieving those objectives."[22]

Although this comply and explain provision was a major step forward, some have argued that it is not enough. The Chair of the 30% Club HK Steering Committee explains that additional steps include "changing the corporate governance code to direct Hong Kong listed companies' diversity policies and reporting to explicitly reference and measure gender diversity on their boards and in their management teams."[23]

Conclusion

The issue of gender diversity on corporate boards has received more attention in the last decade by the general public, legislature, and government and regulatory bodies in Hong Kong. Although Hong Kong already has legislation promoting gender equality and protection of women's rights that is comparable to international standards and is making incremental improvements in representation of women on boards, it may take some time before Hong Kong follows in the footsteps of Norway, Spain, and France, each of which has adopted quota requirements as a means of increasing female representation in boardrooms.

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18 *Nomination and diversity on Hong Kong boards: Best practice and in practice*, Linklaters (Sept. 2014), https://30percentclub.org/wp-content/uploads/2014/10/Linklaters_Nomination_Diversity_HK_Boards.pdf.

19 *Breaking the Glass Ceiling: Women in the Boardroom, A Study of Major Global Exchanges,* Paul Hastings 25 (Fall 2014)

20 HKEX, *supra* note 17, at 8. .

21 *Id.*

22 *Id.*.

23 30% Club, *supra* note 13.

Indonesia

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Gender Equality in Indonesia

Article 27 of the Indonesian Constitution mandates that all citizens must have equal status before the law.[1] A constitutional amendment in 2000 enshrined freedom from discrimination as a constitutional right. However, despite the constitutional mandate, in reality the traditional stereotypes of women as mothers and housewives still prevail in rural areas, and inequality in the labor force remains evident in Indonesia.

According to the 2017 Global Gender Gap Report issued by the World Economic Forum,[2] 52.9% of Indonesian women participate in the labor force, yet women make up only about 38% of the country's labor force.[3] Women constitute 49.2% of professional and technical workers in Indonesia.[4] However, women constitute only 22% of legislators, senior officials, and managers.[5] Indonesia has made strides since 2006 in closing the gender wage gap for equal work and in the realm of political empowerment, but the country has seen "declines on its previously fully closed gender gap in professional and technical workers for the second year running."[6] In addition, women make up the majority of Indonesian international migrant workers, and those women are more likely to emigrate independently than as dependents.[7]

Women's Representation on Corporate Boards

Despite Indonesia's high proportion of women in the workforce, they hold only 7.9% of board seats in Indonesia, and only 6.2% of board chairs are women.[8] These numbers, however, are on the rise; women's representation on boards increased 4.2% between 2015 and 2017, and women's representation as board chairs increased by 3.2% in the same period.[9] Women have the highest representation on corporate boards in the financial securities industry, where they hold 13% of board seats.[10] Since Indonesian law does not set gender quotas for women's participation on corporate boards, this increase has been driven by companies themselves. According to Jose Sabater of Deloitte Southeast Asia, "Many Indonesian companies recognize the benefits of diversity; it is an open society that supports women in significant roles in politics, business, and other aspects."[11]

According to "Women in Business," a 2017 study by Grant Thornton—an independent audit, tax, and advisory firm—at 46% Indonesia has the second-highest proportion of women in "senior management" roles at mid-market companies, behind only Russia.[12] Though this study does not take into account female leadership at large companies, it shows a strong trend towards gender parity in corporate leadership.

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1 INDONESIA CONST. art. 27, § 1 ("All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.").

2 *The Global Gender Gap Report 2017*, World Economic Forum 8 (2017), *http://www3.weforum.org/docs/WEF_GGGR_2017.pdf*. In its 2017 report, the World Economic Forum includes data from 144 countries.

3 *Indonesia: Labor force: percent female*, Global Economy, https://www.theglobaleconomy.com/Indonesia/Labor_force_percent_female/ (last visited Sept. 3, 2018).

4 World Economic Forum, *supra* note 2, at 178-79.

5 *Id.*

6 *Id.* at 16.

7 *World Immigration Report 2018*, Int'l Org. Migration 185 (2017), https://publications.iom.int/system/files/pdf/wmr_2018_en.pdf.

8 *Women in the boardroom: A global perspective*, Deloitte 25 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Women in business: New perspectives on risk and reward*, Grant Thornton (Mar. 2017), http://www.grantthornton.com.my/globalassets/1.-member-firms/malaysia/publications/ibr/grant-thornton_women-in-business-2017-final_digital.pdf.

Despite the overall underrepresentation of women in corporate positions of influence and power in Indonesia, there are certain notable exceptions. For example, Forbes Asia recognized two Indonesian women in its “50 Women in the Mix” series celebrating women corporate leaders: Wendy Sui Cheng Yap and Shinta Widjaja Kamdani.[13] Ms. Yap is the co-founder, President Director, and Chief Executive Officer of Nippon Indosari, the largest bread company in Indonesia.[14] Ms. Kamdani is the Chief Executive Officer of Sintesa Group, an Indonesian company that partners with international brands to guide their entry into the Indonesian market.[15]

Other female entrepreneurs, such as Shinta W. Dhanuwardoyo, are forging their own path in the Indonesian markets. Ms. Dhanuwardoyo is the founder and Chief Executive Officer of Bubu.com, a pioneering web development company.[16]

Gender Parity Under Indonesian Law

In addition to the constitutional mandate for gender parity, the government of Indonesia has passed several laws and promulgated a number of regulations related to gender equality, women’s rights, and women’s participation in Parliament and political parties. Appendix A includes a list of the primary statutes that address the issue of women’s rights in Indonesia.

Representation of Women in Politics

Presidential Instruction No.9/2000 provides guidelines to the executive branch of the government (including ministers, governors, regents, and mayors) to include gender parity as a goal in formulating and implementing development programs at the national and regional levels. The regional regulations are passed by governors (the heads of regional governments). For example, in 2009 the Governor of South Kalimantan passed the Regulation of the Regional Government of South Kalimantan No.5/2009 on Gender Parity in Regional Development.[17]

In 2011, then-Minister for Women Empowerment and Children Protection Linda Agum Gumelar announced that the Indonesian Parliament would be introducing a gender equality bill that was developed in cooperation with the Ministry.[18] However, “due to the strong opposition from many institutions, mostly religious ones,” the bill was stalled in Parliament and was never passed into law.[19]

Under Law No.2/2008 (as amended) and Law No.10/2008 (as amended), there must be at least 30% female representation in a political party, and each party must have at least 30% female candidates for Parliament. The National Mid-Term Development Plan 2010–2014 elaborated on the vision, mission, and program of the former Indonesian President Sisilo Bambang Yudhoyono, which includes adopting principles of gender parity.[20]

Indonesia’s Law on Political Parties/Law on General Election of Members of Parliament stipulates that women should represent at least 30% of members of, and/or candidates for, the national Parliament (DPR) and regional parliaments (DPRD) and at least 30% of commissioners of the Election Committee (KPU).

13 *Forbes Asia’s 50 Women in the Mix*, Forbes, https://www.forbes.com/pictures/fdgk45ehfi/shinta-widjaja-kamdani/#4c7715e951a6 (last visited Apr. 10, 2018).

14 *Investor Relations: Corporate Governance, Sari Roti*, http://www.sariroti.com/en/corporate-governance/#board-of-directors (last visited Apr. 10, 2018).

15 *Board, Sintesa Group*, http://sintesagroup.com/board (last visited Apr. 10, 2018).

16 *Empowering Female Business Leaders, ‘Telstra Business Woman in Asia Award’ Opens for Nominations in Indonesia*, Telkom Telstra (Apr. 21, 2017), https://www.telkomtelstra.co.id/en/insights/news/367-empowering-female-business-leaders,-%E2%80%98telstra-business-woman-in-asia-award%E2%80%99-opens-for-nominations-in-indonesia.html; Bubu, https://bubu.com/about (last visited Sept. 13, 2018).

17 *See Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. CEDAW Report 14 (Nov. 22, 2010), https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.IDN.6-7.pdf.

18 *Indonesia to introduce gender equality law: minister*, People’s Daily Online (Mar. 9, 2011), http://en.people.cn/90001/90777/90851/7312871.html.

19 Khoiriyah Helanita, *Aceh’s curfew for women and the urgency of gender equality law*, Jakarta Post (June 13, 2015), http://www.thejakartapost.com/news/2015/06/13/aceh-s-curfew-women-and-urgency-gender-equality-law.html.

20 *Country Gender Profile: Indonesia*, Japan Int’l Cooperation Agency (Jan. 2011), www.jica.go.jp/activities/issues/gender/pdf/e10ind.pdf (last visited Feb. 3, 2012).

As of July 2017, Indonesia had nine female ministers in the President's Working Cabinet.[21] Thus, at 26%, Indonesia had the highest representation of women ministers among the 10 most populous countries.[22] Presently, women in Indonesia hold high-profile positions in the government, including the Finance Minister, the Foreign Minister, and the Deputy Governor of Bank Indonesia.[23]

Indonesia's efforts to increase female representation in the Indonesian National Parliament have also shown results. As of 2017, women held 20% of seats in the Indonesian National Parliament, up from 12% in 1990 and only 8% during a slump in 2003.[24]

However, strict compliance with the "quota" laws remains a challenge, in part due to "[p]atriarchal attitudes about gender roles and the suitability of women for public office."[25] The legal provisions have been described as weak because they do not include sanctions for non-compliance, and because they merely urge political parties to "consider" the 30% target for women candidates.[26]

Law on Human Rights

Articles 45 through 51 of Law 39/1999 provide specific protection for women's rights. Article 45 emphasizes the protection and acknowledgement of women's rights by categorizing women's rights as human rights. The law also specifies minimum representation of women in the general election system, political parties, and elected members of legislative and executive bodies; women's right to an education; and women's equal right to vote and to be elected to or appointed to any job, post, or profession.

The country has established a number of entities tasked with the protection of women's rights. For example, Presidential Decree No.181 of 1998 officially created the National Commission on Women (*Komisi Nasional (Komnas) Perempuan), the purpose of which is to develop a more conducive environment for the elimination of all kinds of abuse of women in Indonesia and to protect and enforce women's rights.*

Ministry for Women's Empowerment

In 1978, the Indonesian government established the State Ministry for Women's Empowerment as the entity responsible for the national implementation of gender equality and women's empowerment. The Ministry has since been renamed the State Ministry for Women's Empowerment and Child Protection (SMWC). The functions of the SMWC include policy formulation on women's empowerment and welfare and child protection issues; implementation of such programs at the local level; monitoring and evaluation of the Ministry's initiatives; and collaboration with other ministries, the private sector, and community organizations on issues relating to gender equality and child protection. One example of a recent SMWC initiative is a 2017 partnership with the Millennium Challenge Account, a trustee institution created by the Indonesian government, to advance a program that "aims to end the injustice suffered by women seeking economic access" through "policy dialogue about gender equality and community empowerment."[27]

Corporate Governance Code

Indonesia's National Committee on Governance adopted the Code of Good Corporate Governance in 2001, and

21 *Indonesia, world's biggest Muslim country, puts more women into senior roles*, The Straits Times (July 25, 2017), http://www.straitstimes.com/asia/se-asia/indonesia-worlds-biggest-muslim-country-puts-more-women-into-senior-roles.

22 *Id.*

23 *Id.*

24 *Id.; Proportion of seats held by women in national parliaments (%)*, World Bank, https://data.worldbank.org/indicator/SG.GEN.PARL.ZS (last visited Sept. 13, 2018).

25 Ben Hillman, *Increasing Women's Parliamentary Representation in Asia and the Pacific: The Indonesian Experience*, 4 ASIA & THE PAC. POL'Y STUD. (2017), https://doi.org/10.1002/app5.160.

26 *Id.*

27 *MOWECP and MCA-Indonesia Committed to Increase Economic Access for Women*, Millennium Challenge Account – Indonesia (Mar. 21, 2017), http://www.mca-indonesia.go.id/en/our_news/press_releases/ministry_of_women_empowerment_and_children_protection_and_mca-indonesia_are_committed_to_end_economic_gap-1111.

the Code was revised in 2006.[28] The Code is a voluntary set of guidelines for Indonesian companies with the goal of encouraging "fair competition and [a] conducive business climate leading to sustainable economic growth and stability."[29] Although the Code does not include specific guidelines for achieving gender equity on corporate boards, the Code affirms the principle of non-discrimination on the bases of gender, ethnicity, race, and religion, and promotes the development of all employees in accordance with their respective competencies, capabilities, experience and skills.[30]

Conclusion

Greater gender equality can enhance productivity, improve development outcomes for the next generation, and make institutions more representative of the populations they serve. Compared to other emerging countries in its region, Indonesia has passed significant legislation promoting gender parity and women's rights in the political sphere. Although the country has yet to pass sanction-backed legislation stipulating gender quotas for corporate representation, women's board representation is on the rise, and women currently hold 7.9% of board seats in Indonesia. However, more progress is needed to fully implement the goals of such legislation.

28 *Indonesia's Code of Good Corporate Governance* (2006), Nat'l Comm. on Governance, http://www.ecgi.org/codes/documents/indonesia_cg_2006_en.pdf.

29 *Id.* at i.

30 *Id.* at 23.

Appendix A

Law or Regulation	Year	Gender Parity / Women's Rights Provisions
Indonesian Constitution, as amended	1945, 1999, 2000, 2001, 2002	All citizens have equal status before the law and the right to be free from discrimination.
Marriage law	1974	Women and men have an equal duty to maintain the household and care for children.
Labour Law (Law No.13/2003) and related regulations	2003	Equal opportunity to secure work, equal treatment by employers, maternal leave, menstrual leave.
Law on Political Parties (Law No.2/2008, as amended by Law No.2/2011)	2008, 2011	Every political party should have at least 30% female representation on its management board and recruitment of candidates.
Law on General Elections of Members of Parliament (Law No.8/2012)	2012	In an election of the Parliament members, there should be at least 30% female candidates. This is in line with the requirement set out in the above Law on Political Parties.
Compilation of Islamic Law	1991	Women's right to custody of their children in the event of divorce, similar to Marriage Law.
Law on Human Rights (Law No. 39/1999)	1999	The right to equal work opportunities, fair terms and conditions of work, and salaries. Women's rights are specifically regulated (in Articles 45–51), e.g., the right to education at all levels and to choose, be chosen, and be appointed to any job, position, or profession.
Indonesian Criminal Code and Law on Elimination of Human Trafficking (Law No. 21/2007)	2007	Women's right to protection from human trafficking.
Law on the Implementation of General Elections (Law No. 15/2011)	2011	At least 30% of the Election Committee should be female.

Japan

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Gender equality has moved to the forefront in Japan in recent years. For example, the government, including under Prime Minister Shinzo Abe, has proclaimed support for working women through a variety of initiatives aimed at encouraging the recruitment, retention, and promotion of women in the workforce.[1] For example, in 2015 Japan's Financial Services Agency, in conjunction with the Tokyo Stock Exchange (TSE), passed a Corporate Governance Code that expressly encourages gender diversity in the corporate sphere. KEIDANREN, an economic organization representing approximately 1,350 companies in Japan, has been leading a movement to promote gender quota policies at corporations, as well as other initiatives to advance women's status in the workplace. Despite these efforts, as of 2018 only 3.7% of executives of listed Japanese companies are women, and 73% of Japanese companies have no women at the management level at all.

The Stats

Japan ranked 114th out of 144 countries in the World Economic Forum's 2017 Gender Gap Index, dropping 10 places since 2014.[2] According to a 2017 study by Deloitte, the percentage of women serving on boards increased to 3.5% in 2016 from 1.6% in 2013, while the total board seats held by women increased to 4.1% from 1.2% in 2014.[3] Women represented just 0.6% of board chairmanships and 0.4% of CEO positions across 589 companies that Deloitte analyzed in 2016.[4]

Data published by the OECD in 2016 showed that Japan had the third-highest gender wage gap of the 34 countries studied, at 25.7%.[5] For comparison, the average across the 34 countries was 14.1%.[6] Japan's overall employment rate for women over the age of 25 is 66.1%, well above the OECD average of 59.4%.[7]

The Legal Framework

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

> "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."
>
> "Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual

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1 Stephanie Assmann, *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 J., Vol. 12, Issue. 45, No. 2 (Nov. 10, 2014), 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 (Apr. 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 *The Global Gender Gap Report 2017*, World Economic Forum 11 (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf; *The Global Gender Gap Report 2014: Japan*, World Economic Forum (2014), http://reports.weforum.org/_static/global-gender-gap-2014/JPN.pdf.

3 *Women in the boardroom: A global perspective*, Deloitte 26 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf; *Women in the boardroom: A global perspective,* Deloitte (2015), http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-ccg-women-in-the-boardroom-a-global-perspective4.pdf.

4 Deloitte (2017), *supra note* 3, at 26.

5 *Gender wage gap*, OECD (2018), https://data.oecd.org/earnwage/gender-wage-gap.htm (last visited Sept. 13, 2018).

6 *Id.*

7 *Reality Check: Has Shinzo Abe's 'womenomics' worked in Japan?,* BBC (Feb. 17, 2018), http://www.bbc.com/news/world-asia-42993519.

> 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."[8]

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, resignation, and dismissal.[9]

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.[10] The Act stipulates that the government shall establish a basic plan to comprehensively and systematically implement policies to promote a gender-equal society[11] (the "Basic Plan for Gender Equality"). Following this provision, the government prepared an initial Basic Plan for Gender Equality in 2000.[12] In 2005, the government issued a second Basic Plan for Gender Equality with the goal of "increasing the share of women in leadership positions[13] to at least 30% by 2020 in all fields of society."[14] In 2009, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) 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.[15] 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, and education and research as follows:[16]

Proportion of Women for Each Item		Baseline Statistics	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)

8 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/.

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

10 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.

11 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.

12 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.

13 The leadership positions are (1) congressional deputies, (2) women whose titles are equivalent to or higher than section-manager level in private corporations or other bodies, and (3) women who engage in highly professional jobs among special or technical jobs.

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

15 *Concluding observations of the Committee on the Elimination of Discrimination against Women /Japan*, U.N. CEDAW Report (Aug. 7, 2009), http://www2.ohchr.org/english/bodies/cedaw/docs/co/cedaw.c.jpn.co.6.pdf.

16 *Expansion of Women's Participation in Policy and Decision-making Processes in All Fields in Society*, Gender Equality Bureau, http://www.gender.go.jp/english_contents/mge/process/index.html (last visited Sept. 13, 2018).

Proportion of Women for Each Item		Baseline Statistics	Target (Deadline)
National	National public employees through the recruitment examination	26.1% (fiscal 2010)	Approx. 30% (end of fiscal 2015)
	Managers (positions equivalent to or higher than the director of the division and the office in central government ministries)	2.2% (fiscal 2008) (*as of January 2009)	Approx. 5% (end of fiscal 2015)
	Members of national advisory councils and committees	33.8% (2010)	40% - 60% (2020)
Local	Local public employees through recruitment examinations (advanced level examination) for prefectural governments	21.3% (2008)	Approx. 30% (end of fiscal 2015)
	Managers in prefectural governments (positions equivalent to or higher than the director of the division in local governments)	5.7% (2010)	Approx. 10% (end of fiscal 2015)
	Members of prefectural advisory councils and committees	28.4% (2009)	30% (2015)
Private Sector	Section manager or higher in private companies	6.5% (2009)	Approx. 10% (2015)
Education and Research	Managerial positions in primary and secondary educational organizations (assistant principal or higher)	19.9% (2009)	30% (2020)
	University professors (presidents, vice presidents, professors, associate professors, and lecturers)	16.7% (2009)	30% (2020)

However, in 2015, the government's Gender Equality Bureau acknowledged that the 30% female representation goal was unrealistic, and adjusted the target to only 7% female representation in senior jobs for both the private and public sectors.[17]

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. The Third Basic Plan contains four "core concepts": gender equality and freedom from gender-based stereotypes; respect for human rights and dignity; diversity; and international recognition for gender equality.[18] Nevertheless, progress in Japan as a result of the Third Basic Plan has been slow, as the Act does not impose penalties and the targets are nonbinding.

The Fourth Basic Plan, passed in 2017, set specific targets and deadlines for key metrics of women's participation and

17 Steve Mollman, *Japan cut its target for women in leadership positions from 30% to 7%*, Quartz (Dec. 6, 2015), https://qz.com/567026/japan-cut-its-target-for-women-in-leadership-positions-from-30-to-7/.

18 *Summary of Third Basic Plan for Gender Equality (Approved by the Cabinet in December 2010)*, Japan Gender Equality Bureau Cabinet Office, http://www.gender.go.jp/english_contents/about_danjo/whitepaper/pdf/3rd_bpg.pdf.

advancement in society. The government sees not only increasing the percentage of women in positions of power as a goal, but also reforming "male-oriented working styles" and encouraging more men to take childcare leave in order to more equitably split childcare duties among men and women.[19] The Fourth Basic Plan includes a target of 30% women in director positions of private corporations by the end of the 2020 fiscal year; as of 2016, that number was only 10.3, according to the Gender Equality Bureau Cabinet Office.[20] The Plan, however, still does not include penalties for corporations that do not meet the targets.

Other Government Initiatives

In addition to the various initiatives announced by Prime Minister 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 (TSE) have jointly conducted the "Nadeshiko Brand" initiative, which recognizes enterprises that encourage female empowerment.[21] The Ministry of Health, Labor, 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 recommended that member companies promote active participation by women and set quotas regarding the percentage of female managers.[22] By December 2014, more than 300 member companies had revealed their initiatives, including quota policies, on both the KEIDANREN website as well as on their own.[23]

In 2017, KEIDANREN launched "Society 5.0," described as "full-swing Womenomics," which seeks to advance women's status in the workplace through five initiatives:

- *New workstyles*, including the "breakdown of unconscious bias"
- *New markets*, including providing a "wide-ranging mix of products and services . . . to meet the needs of women's diversifying lifestyles"
- *New investments*, encouraging voluntary disclosure of corporate statistics regarding participation by women
- *New diplomacy*, such as initiatives to enhance exchanges among female executives from around the world
- *New lifestyles*, "aiming to help women pursue their aspirations with more tenacity and men live their lives with more freedom"[24]

Corporate Governance Code

In 2013, the TSE changed its disclosure rulings to require listed companies to disclose the number/percentage of female board members in their corporate governance reports.[25] 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.[26] The panel announced its final draft of the Code in December

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19 *Measures for Gender Equality: The Fourth Basic Plan for Gender Equality*, Japan Gender Equality Bureau Cabinet Office (2018), http://www.gender.go.jp/english_contents/pr_act/pub/pamphlet/women-and-men18/pdf/2-3.pdf.

20 *Id.*

21 Deloitte, *supra* note 3.

22 *Id.*

23 *Id.*

24 *"Full-swing" Womenomics*, KEIDANREN (2017), http://www.keidanren.or.jp/en/policy/2017/102_summary.pdf.

25 *Id.*

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

2014.[27] 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."[28]

The new Code encourages an increase in the number of outside directors serving on Japanese boards to at least two.[29] Given the Code's express encouragement of gender diversity, companies are more likely to target female candidates for these positions.[30] 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.[31] 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.[32] These changes have led to an increase in the percentage of listed Japanese companies with outside or independent board members, from only 48.7% in 2010 to 95.8% in 2017.[33] However, the percentage of women board members did not rise as dramatically during that same time period; in 2017, only 3.5% of board members were women, representing an increase of only 1.9% since 2013.

Conclusion

A 2015 Cabinet Office white paper 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."[34] As of 2017, only 3.7% of executives of listed Japanese companies were women, and 73% of Japanese companies have no women at the management level at all.[35] Although the Japanese government supports ideals of gender equality in the workplace, the government's goals could be better achieved in the private sector if the legal framework had mechanisms to penalize companies that fail to meet targets for gender equality and/or reward companies that make strides toward gender equality.

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27 *Id.*

28 *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/corporat-egovernance/20150306-1/01.pdf.

29 *Id.*

30 Deloitte (2015), *supra* note 3.

31 Institutional Shareholder Services, *supra* note 26.

32 *Id.*

33 Deloitte (2017), *supra* note 3, at 6.

34 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.

35 BBC, *supra* note 7.

The Republic of Korea

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Korea's intense corporate culture and its social norms that delegate to women the overriding responsibility of managing the household and raising children drive many Korean women from the workforce once they marry or have children.[1] Working mothers in Korea struggle to balance work life and family life, and this struggle often leaves them with little to no personal time.[2] The Korean government, however, is helping to lead the effort to address these factors and to encourage the advancement of women in the workplace.

Initiatives Underway

The country's Ministry of Gender Equality and Family (MOGEF) was originally established in 2001 to address issues of gender discrimination.[3] MOGEF's present focus is designing policies that promote work-life balance with the goal of enabling women with families to sustain careers, and ultimately to lead to more female executives in top management positions and leadership roles.[4] Despite these initiatives, the employment rate of women within the managerial ranks in Korea remains low, and the pay disparity between men and women is high.

Korea has made some significant breakthroughs in recent years with respect to the presence of women in politics. In 2013, the country swore in its first female president, Park Geun-hye, following a historic election.[5] Park's victory was largely viewed as an endorsement of her economic agenda, however, rather than her proposed agenda for helping women.[6] In spite of initial skepticism, Park pledged to lift the female employment rate from 53.5% to 61.9% by 2018, and her administration initially championed several measures designed to increase female participation in the workforce.[7]

President Park's agenda was cut short when she was impeached by the South Korean Parliament in December 2016, and her powers as president were suspended.[8] Park was officially stripped of her office by South Korea's Constitutional Court, which upheld the Parliament's impeachment, and she was arrested in March 2017 for multiple counts of abuse of power, bribery, and coercion.[9] Former President Park was sentenced to 24 years in prison on April 6, 2018.[10]

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1 Katrin Park, *S. Korea reflects lag in gender equality*, USA Today (Mar. 14, 2015), 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), 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 *Working Mothers Struggle to Meet Demands: Balancing Duties of Home and the Office Come at a Cost*, Korea JoongAng Daily (Apr. 26, 2018), http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3047389.

3 *About MOGEF: History*, http://www.mogef.go.kr/eng/am/eng_am_f005.do (last visited Sept. 13, 2018).

4 Kanga Kong, *Q&A: Minister Emphasizes the Importance of Work-Life Balance*, Wall Street Journal (Jan. 24, 2014), http://blogs.wsj.com/korea-realtime/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 (Feb. 25, 2015), http://www.bloomberg.com/news/articles/2015-02-25/challenging-gender-inequality-in-south-korea.

5 *See Profile: South Korean President Park Geun-hye*, BBC (Nov. 1, 2013), http://www.bbc.com/news/world-asia-20787271; Chico Harlan, *In 'Madam Park,' S. Korea sees its first potential female leader*, 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.

6 *Id.*

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

8 Choe Sang-Hun, *South Korea Removes President Park Geun-hye*, N.Y. Times (Mar. 9, 2017), https://www.nytimes.com/2017/03/09/world/asia/park-geun-hye-impeached-south-korea.html.

9 Paula Hancocks, Yoonjung Seo & James Griffiths, *Former South Korean President Park Sentenced to 24 Years in Prison*, CNN (Apr. 6, 2018), https://www.cnn.com/2018/04/06/asia/south-korea-park-geun-hye-corruption-intl/index.html?no-st=1523429072.

10 *Id.*

Park's successor, President Moon Jae-in, has called for more gender parity in the South Korean corporate and political spheres. After pledging to make women at least 30% of his Cabinet, President Moon fulfilled his promise by appointing six women to minister positions, comprising 32% of the Cabinet, more than any previous administration.[11]

The Statistics

South Korea ranked 118 out of 144 countries in the World Economic Forum's 2017 Gender Gap Index.[12] The country ranked third-to-last out of the 18 countries in the East Asia and Pacific region.[13] Women made up 48.1% of professional and technical workers, but only 10.5% of legislators, senior officials, and managers.[14] According to a 2014 survey by MOGEF, while women in their twenties tend to fare well in labor market participation, the participation rate drops sharply for women in their thirties due in part to marriage, childbirth, and childcare.[15] In fact, 17.8% of women in the workforce were employed part-time in 2017, and 45.4% of women's daily work was unpaid labor (as compared to only 9.6% of men's daily work).[16]

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.[17]

Female executives held 4.1% of board seats in 2017, a number that held steady from 2016, but is a jump from only 2.4% in 2013 and 1.6% in 2014.[18]

Korean women have been represented in the lower ranks of the government bureaucracy over the past two decades. In 1996, the Korean government instituted a quota requiring that women comprise at least 30% of new hires in all government departments (except the police and military).[19] The system was so successful that by 2010 the government began applying a minimum 30% quota to men.[20] In 2017, the South Korean government announced that it was planning to gradually increase women's participation in more senior positions in the government and in public institutions. According to the Minister of Gender Equality and Family, "the government will raise the ratio of female civil servants ranked at grade 4 or higher to 15 percent" by the end of 2017, whereas it stood at 13.5% in 2016.[21] The government also sought to increase the proportion of women on various central government committees to 40%, which is the percentage mandated by South Korean law.[22]

In 2018, Human Rights Watch reported that there was a 37% wage gap between men and women in South Korea.[23] This number has remained steady since 2016, when data published by the OECD showed that South Korea had the highest gender wage gap out of the 34 countries studied, at 36.7%.[24] The average gender wage gap across the 34

11 Jiyeun Lee, *Korea Beats Japan and China to Get Women into Power*, Bloomberg (Sept. 28, 2017), https://www.bloomberg.com/news/articles/2017-09-28/corporate-korea-is-far-behind-moon-s-push-for-gender-equality.

12 *The Global Gender Gap Report 2017*, World Economic Forum 11 (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

13 *Id.* at 16.

14 *Id.* at 198.

15 Taipei Times, *supra* note 7; *see also* Lee Myung-sun, *New paradigm of gender equality starts now*, Korea Herald (July 5, 2015), http://www.koreaherald.com/view.php?ud=20150705000319.

16 World Economic Forum, *supra* note 12, at 199.

17 Kong, *supra* note 4.

18 *Women in the boardroom: A global perspective*, Deloitte 27 (2017), https://www2.deloitte.com/global/en/pages/risk/articles/women-in-the-boardroom5th-edition.html; *The CS Gender 3000: The Reward for Change*, Credit Suisse (2016), https://glg.it/assets/docs/csri-gender-3000.pdf.

19 Sang-Hun, *supra* note 1.

20 *Id.*

21 *Gov't to Expand Women's Presence in High-Level Positions*, Yonhap News (Apr. 17, 2017), http://english.yonhapnews.co.kr/national/2017/04/17/0302000000AEN20170417007400315.html.

22 *Id.*

23 *South Korea*, Human Rights Watch, https://www.hrw.org/world-report/2018/country-chapters/south-korea (last visited Sept. 7, 2018).

24 *Gender wage gap*, OECD (2017), https://data.oecd.org/earnwage/gender-wage-gap.htm (last visited Sept. 13, 2018).

countries, for comparison, was 14.1%.[25] This figure is consistent with the country's low representation of women in senior management positions and on boards.[26] In addition, women who take time off for pregnancy, childbirth, and child care reportedly earn 21.9% less than men when they are reemployed.[27] South Korea does not have a law mandating equal pay for equal work.[28]

The Legal Framework

The Korean Constitution guarantees equality at law for men and women.[29] 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."[30] 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."[31] 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.[32]

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."[33] The Korean National Assembly passed a complete revision of the act on May 2, 2014, with the name changed to the Framework Act on Gender Equality.[34] The focus of the revised Act is on realizing gender equality in practical and measurable ways.[35] The Act, which took effect on July 1, 2015, institutes a quota for women in executive and senior positions aimed at enhancing female representation.[36] According to the South Korean Ministry of Gender Equality and Family, the quotas are evaluated and redeveloped every five years in order to realize the goals of the Act.[37] One result of the Act was the expansion of the Women Leaders Database, a resource for government committees and executive boards of public institutions to identify women with particular talents and career accomplishments.

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.[38] However, many female workers are reluctant to take advantage of this benefit due to the competitive nature of the country's corporate environment, where taking maternity leave is viewed as an impediment to becoming a senior manager.[39]

Corporate Governance Code

There is no standalone corporate governance code in Korea.[40] Corporate governance is mainly regulated by the

25 *Id.*

26 *Id.*

27 Myung-sun, *supra* note 15.

28 Credit Suisse, *supra* note 18, at 199.

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

30 KOREA CONST., art. 11.

31 *Id.* at art. 36(1).

32 *Id.* at arts. 32(4), 34(3).

33 Framework Act on Women's Development, http://www.moleg.go.kr/english/korLawEng?pstSeq=47573 (English translation).

34 Myung-sun, *supra* note 8.

35 *Id.*

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

37 *Gender Equality Policy*, Ministry of Equality and Family, http://www.mogef.go.kr/eng/pc/eng_pc_f001.do (last visited Sept. 7, 2018).

38 Park, *supra* note 1.

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

40 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.

country's Commercial Code and the Financial Investment Services and Capital Markets Act (FISCMA) for listed companies.[41] 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.[42]

Increased Government Support for 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.[43] The task force consists of over 100 organizations from the public and private sectors.[44] 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.[45] 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.[46]

In 2014, former President Park's administration championed a "name-and-shame" policy in which the government publicly identified companies with low female employment levels.[47] The government also stated its intent to give preferential treatment to "family-friendly" companies seeking government contracts.[48] Park's administration 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.[49]

As noted above, President Moon Jae-in has called for more gender parity in the South Korean corporate and political spheres—and has appointed six women to minister positions, comprising 32% of the Cabinet, more than any previous administration.[50] As a result, South Korean women have enjoyed increased political empowerment and control over government functions.

Conclusion

Despite robust support from the government, progress for women in Korea is slow. As a 2017 study by Deloitte notes, a first step toward robust change in Korea would be implementing measures that make it easier to have both a career and a family, such as increasing accessibility for childcare.[51] Women in Korea echo this sentiment.[52] In addition, for gender equity to become a reality, men in Korea "have an important role to play in promoting and advocating for gender equality in the boardroom."[53]

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41 *Id.*

42 *Id.*

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

44 *Id.*

45 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/.

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

47 Taipei Times, *supra* note 7.

48 *Id.*

49 Lee, *supra* note 4.

50 Lee, *supra* note 11.

51 *Deloitte, supra* note 18, at 27.

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

53 *Deloitte, supra* note 18, at 27.

Malaysia

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Although Malaysia boasts one of the highest percentages of female university graduates in Asia,[1] it has historically struggled to find equal representation in the workplace.[2] Obstacles to women entering and remaining in the workforce include traditional familial obligations and inflexible work policies.[3] But, the Malaysian government has taken steps to correct this by promoting gender parity in the workplace, particularly for women in leadership positions.

One way in which the government has promoted female participation is through passing a 2004 policy in which the Malaysian Cabinet called for women to comprise at least 30% of decision-making positions in civil sector employment.[4] This quota succeeded in increasing the number of women in public and administrative decisions from 18.8% in 2004 to 32.3% in 2010.[5] The government later expanded this initiative in 2011 by calling for women to make up 30% of corporate decision-making positions as well. While the Cabinet did not mandate this quota, it encouraged companies to meet this goal by 2016. By the end of 2017, however, few companies had met the 30% goal. Only 14.6% of public company board positions were held by women.[6]

For that reason, Prime Minister Najib Razak announced in late 2017 that his government would publish a list of Malaysian companies with no women on their boards in 2018.[7] Then, in January 2018, the Prime Minister extended the deadline to achieve 30% representation to 2020.[8] At the same time, the Securities Commission published the names of the seven companies in the top 100 listed companies on Bursa Malaysia that had all male boards.[9] Whether this shaming technique succeeds in encouraging those companies to diversify their boards remains to be seen.

Corporate Governance Code

In 2012, following the government's push for 30% female representation in corporate decision-making positions, the Malaysian Securities Commission published its revised Code on Corporate Governance.[10] First published in March 2000, the Code first underwent revision in 2007. The 2012 update aimed at focusing on "strengthening board structure and composition recognizing the role of directors as active and responsible fiduciaries."[11] In addition, the Code recommends that, "[t]he board should establish a policy formalizing its approach to boardroom diversity" and "take

1 *See Women Account for One Quarter of Vietnam's CEOs and Directors*, Consultancy Asia (Jan. 19, 2018), https://www.consultancy.asia/news/245/women-account-for-one-quarter-of-vietnams-ceos-and-directors (reporting that 62% of Malaysia's university graduates are women).

2 The UN Development Program reported that female participation in the labor market was 46.1% compared to 78.7% for men. *See Malaysia 2016 Human Rights Report*, U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, https://www.state.gov/documents/organization/265562.pdf.

3 *Discrimination Keeps Most Malaysian Women Out of Formal Job Market, Says Report*, HR in Asia (Nov. 28, 2014), http://www.hrinasia.com/hr-news/discrimination-keeps-most-malaysian-women-out-of-formal-job-market-says-report/.

4 *Towards Achieving at Least 30 Percent Participation of Women at Decision Making Levels in Malaysia*, UNDP (Nov. 2006), http://www.undp.org/content/dam/malaysia/docs/WomenE/GenderProDocs/Towards%20Achieving%20At%20Least%2030%20Per%20Cent%20Participation%20of%20Women%20at%20Decision%20Making%20Levels%20in%20Malaysia.pdf.

5 Marie-Laurence Guy et al., *Women on Boards: A Conversation with Male Directors*, IFC (2011), https://www.ifc.org/wps/wcm/connect/b51198804b07d3b2acabad77fcc2938e/Focus9_Women_on_Boards.pdf?MOD=AJPERES.

6 Kate Whitehead, *Hong Kong Companies Slow to Add Women Directors to Their Boards – Why It Makes Good Business Sense To Do So*, South China Morning Post (Mar. 8, 2017), http://www.scmp.com/lifestyle/article/2076644/hong-kong-companies-slow-add-women-directors-their-boards-why-it-makes.

7 *Malaysia to Name Firms Lacking Board Diversity*, BBC (Sept. 6, 2017), http://www.bbc.com/news/business-41170149.

8 Ooi Tee Ching, *Malaysia Wants More Women Board Directors on Listed Companies:* PM, NST (Jan. 23, 2018), https://www.nst.com.my/business/2018/01/327938/malaysia-wants-more-women-board-directors-listed-companies-pm.

9 Press Release, Suruhanjaya Sekuriti Securities Commission Malaysia, Positive Progress Made on Gender Diversity (Jan. 21, 2018), https://www.sc.com.my/post_archive/positive-progress-made-on-gender-diversity/.

10 Malaysian Code on Corporate Governance (2012), http://micg.org.my/upload/file/articles/11/CODE-CG-2012.pdf (last visited Apr. 1, 2018).

11 *Id.*

steps to ensure that women candidates are sought as part of its recruitment exercise."[12] The Code also encourages companies to "explicitly disclose in the annual report its gender diversity policies and targets and the measures taken to meet those targets."[13] Although "observance of the [Code] by companies is voluntary," all listed companies must "report on their compliance with the [Code] in their annual reports."[14]

In 2017, the Securities Commission released a new version of the Malaysian Code on Corporate Governance that updated the 2012 version.[15] This updated version contained much of the same language and called for companies to achieve 30% female representation on boards by 2020.[16]

Bursa Malaysia Stock Exchange Listing Requirements

While the Bursa Malaysia stock exchange's listing requirements do not contain a quota for the number of women on boards, they do require companies to disclose 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.[17]

The listing requirements were last updated in January 2018. The updates sought to strengthen investor protection, improve market efficiency, streamline regulatory roles, and ease regulatory burdens.[18] These stock exchange requirements support the government's goal of reaching better gender diversity in the boardroom. If an issuer fails to comply with the requirements, it faces potential de-listing, as "[t]he Exchange may at any time de-list a listed issuer or any listed securities from the Official List in any of the following circumstances: (a) where the listed issuer fails to comply with these Requirements."[19] This encourages transparency in diversity policies through the filing of annual reports with the Exchange.

Public and Private Sector Groups Support

Despite failing to achieve the 30% female board representation goal, the Malaysian corporate sector has seen growth in female leadership. Both government agencies and other organizations have aided this positive trend.

In 2015, the Malaysian chapter of the "30% Club" launched with the goal of helping the country meet its target.[20] This international organization advocates for increasing female representation at all levels[21] and partners with local chapters

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12 *Id.*

13 *Id.*

14 *Id.*

15 Press Release, Securities Commission Malaysia, SC Releases New Malaysian Code on Corporate Governance to Strengthen Corporate Culture (Apr. 26, 2017), https://www.sc.com.my/post_archive/sc-releases-new-malaysian-code-on-corporate-governance-to-strengthen-corporate-culture/.

16 Securities Commission Malaysia, *Malaysian Code on Corporate Governance* (2017), https://www.sc.com.my/wp-content/uploads/eng/html/cg/mccg2017.pdf.

17 Bursa Malaysia Main Market Listing Requirements: Chapter 15.08A(3), http://www.bursamalaysia.com/misc/system/assets/5957/MAIN_Chap15_CA_fair_2Jan2018.pdf *(last visited Apr. 1, 2018).*

18 Yew Yee Tee, *Amendments to Bursa Malaysia Securities Berhad Main Market Listing Requirements ("Main LR" in Relation to Collective Investment Scheem ("CIS") and Business Trust*, Bursa Malaysia (Apr. 2, 2018), http://www.bursamalaysia.com/misc/system/assets/24077/CircularCISMainPLC_2Apr2018.pdf.

19 Bursa Malaysia Main Market Listing Requirements: Chapter 16.11(1)(a), http://www.bursamalaysia.com/misc/system/assets/5001/MAIN_Chap16_CIS_9Apr18.pdf (last visited Aug. 23, 2018).

20 *PM Launches '30% Club' in Bid to Triple Number of Women on Boards*, Malay Mail Online (May 8, 2015), http://www.themalaymailonline.com/malaysia/article/pm-launches-30-club-in-bid-to-triple-number-of-women-in-boards.

21 *Malaysia*, 30% Club, https://30percentclub.org/about/chapters/malaysia (last visited Sept. 12, 2018).

in numerous countries to further this goal.[22] In Malaysia, the 30% Club has also partnered with private companies such as PWC to launch initiatives to empower women. For example, PWC and the 30% Club launched a mentorship program in 2017, which aimed to "provide[ ] a platform for potential women directors to boost their chances of being appointed on boards, by receiving advice and learning first-hand from the experiences of their mentors."[23] Initiatives such as this one help further the government's goal of increasing female participation on boards.

Additional Measures to Improve Gender Parity

The Malaysian government has taken a variety of other steps to improve gender parity and increase female representation on boards to encourage companies to meet its 2020 goal. In 2015, the government allocated RM2.26 billion to the Women, Family and Community Development Ministry for its program promoting women in the workforce.[24] Additionally, the government established a six-month program to support women by assisting them in their career development.[25] In a speech in early 2018, Prime Minister Razak launched the "Women Empowerment Year," which aims to increase the role of women in the economic development of the country more broadly.[26]

Bursa Malaysia has also played a role in promoting women. In December 2014, it announced a new "Environmental, Social and Governance Index," which requires constituents to meet certain criteria. One such criterion includes "the practice of good governance through responsible and ethical decision-making."[27] Shortly after the announcement of the index, Prime Minister Razak announced in May 2015 that listed companies would eventually be required to disclose "the composition and diversity of their boards and top management in terms of gender, ethnicity and age."[28] Although these requirements have yet to come to fruition, the potential expansion of the requirement beyond gender may indicate a willingness to address other inequalities in the future.

Other Diversity Initiatives

Although the Malaysian government has made an effort to increase the number of women on boards, it has not yet explicitly advocated for ethnic diversity on corporate boards in the same way, despite Malaysia's status as an incredibly diverse country. Diversity exists not only ethnically, but also on the basis of religion and language.[29]

There are three main ethnic groups in Malaysia: the Malay, Chinese, and Indians.[30] The Malay people comprise what is considered the most populous ethnic group, the Bumiputera, which includes other smaller indigenous groups, such as Orang Asli.[31] A 2013 study of 125 companies in the plantation and energy sectors found that of all available board seats in Malaysia, only 4% were held by those of Indian descent, while the Chinese ethnic group occupied 42%, and about 46% was occupied by Bumiputera (Malays and other indigenous groups).[32] At that time, most boards in Malaysia had

22 Malay Mail Online, *supra* note 20.

23 *Empowering women through mentorship – Launch of Board mentoring scheme*, PwC Malaysia (July 12, 2017), https://www.pwc.com/my/en/events/women-on-boards-2017.html.

24 *See Women, Family and Community Development Ministry gets RM2.26b to enhance contribution of women*, The Edge Markets (Oct. 10, 2014), http://www.theedgemarkets.com/article/women-family-and-community-development-ministry-gets-rm226b-enhance-contribution-women.

25 *See Women in the boardroom: A global perspective*, Deloitte (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

26 Jonathan Edward, *PM: Women Empowerment Needed to Boost Gender Equality*, Malay Mail Online (Jan. 17, 2018), https://www.malaymail.com/s/1555925/pm-women-empowerment-needed-to-boost-gender-equality.

27 *See Bursa unveils Environmental, Social and Governance Index*, The Star Online (Dec. 24, 2014), http://www.thestar.com.my/Business/Business-News/2014/12/23/Bursa-unveils-Environmental-Social-and-Governance-Index/?style=biz.

28 Malay Mail Online, *supra* note 20.

29 Rohail Hassan & Maran Marimuthu, *Does Corporate Diversity Really Matter in the Plantation Sector? Empirical Evidence from a World Islamic Leading Country and Market Reaction*, INT'L J. FIN. STUDIES 5, 8 (Aug. 25, 2017).

30 *Id.*

31 *World Factbook: Malaysia*, Central Intelligence Agency, https://www.cia.gov/Library/publications/the-world-factbook/geos/my.html (last updated Aug. 22, 2018).

32 Shamsul Nahar Abdullah, *Gender, Ethnic and Age Diversity of the Boards of Large Malaysian Firms and Performance*, J. PENGURUSAN 38, 27-40, 33 (2013).

directors from the two main ethnic groups (Chinese and Malays), but not from the Indian group.[33] Although the same government push has not occurred for ethnic diversity on corporate boards in Malaysia, Bursa Malaysia has led the charge by encouraging the promotion of diversity generally.[34] So far, the government has not echoed these sentiments by specifically calling for higher percentages of ethnic minorities on corporate boards.

Conclusion

Although the Malaysian government has made extensive and increased efforts to promote gender parity in education and the workplace, the country has yet to succeed in reaching its goal of 30% female representation. The government sector leads the corporate sector in appointing women to leadership positions. Despite the efforts of the government, Bursa Malaysia, and private groups, at this time it seems unlikely that companies will satisfy the government's goal of 30% leadership by 2020, despite the four-year extension.

33 *Id.*

34 Dalilawati Zainal et al., *Corporate Board Diversity in Malaysia: A Longitudinal Analysis of Gender and Nationality Diversity*, 3 INT'L J. OF ACADEMIC RESEARCH IN ACCOUNTING, FIN. AND MGMT. 136-148, 141 (Jan. 2013).

Philippines

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For the past 25 years, the Philippines has succeeded in implementing measures to address gender parity. As a result, the Philippines boasts one of the highest percentages of women sitting on corporate boards in Asia, with 10.9% of board seats currently occupied by women.[1]

A 2017 report published by Grant Thornton ranked the Philippines third globally (together with Estonia and Poland) for the highest percentage of senior management positions occupied by women.[2] With 40% of senior management positions held by women, the Philippines trailed only Indonesia and Russia, which had 46% and 47% respectively.

In addition, a November 2014 report from the Asia-Pacific Economic Cooperation (APEC) recognized 50 Asian companies for their work in encouraging and creating economic opportunities for women.[3] Of the 50 companies, six were from the Philippines. Finally, the World Economic Forum's 2017 Global Gender Gap Report ranked the Philippines tenth out of 144 countries; it was the only Asian country to rank in the top ten.[4]

2017 Rank	Country	2016 Rank[5]
1	Iceland	1
2	Norway	3
3	Finland	2
4	Rwanda	5
5	Sweden	4
6	Nicaragua	10
7	Slovenia	8
8	Ireland	6
9	New Zealand	9
10	Philippines	7

As an assessment of how 144 countries divide resources and opportunities among men and women, the Global Gender Gap Report measures the gender inequality gap in the following areas: economic participation and opportunity, educational attainment, political empowerment, and health and survival. The report indicated that the Philippines had succeeded in closing 79% of its overall gender gap.[6] All of these rankings indicate continued growth in promoting women and a willingness to address female empowerment in the workplace.

1 *Women in the boardroom: A global perspective*, Deloitte (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

2 *Women in business: New perspectives on risk and reward*, Grant Thornton (Mar. 2017), https://www.grantthornton.global/globalassets/1.-member-firms/global/insights/article-pdfs/2017/grant-thornton_women-in-business_2017-report.pdf.

3 *50 Leading Companies for Women in APEC*, APEC (Nov. 2014), https://www.apec.org/-/media/APEC/Publications/2014/11/50-Leading-Companies-for-Women-in-APEC/50-Leading-Companies-for-Women-in-APEC.pdf.

4 *The Global Gender Gap Report (2017)*, World Economic Forum (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

5 *Global Gender Gap Report (2016)*, World Economic Forum, http://reports.weforum.org/global-gender-gap-report-2016/rankings/.

6 World Economic Forum, *supra* note 4.

Philippine Legislation on Women

Some of this progress can be attributed to the ratification of human rights treaties and the passing of legislation aimed at fighting discrimination. For example, the Philippines ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a core international human rights treaty, in August 1981.[7] The Constitution itself also addresses equality in the Declaration of Principles and State Policies in Article II by recognizing the role of women in nation-building and ensuring the fundamental equality of women and men before the law.[8] The Constitution further addresses women in the workplace by mandating that, "[t]he State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."[9]

Support of gender equality can be found in other pieces of legislation as well. Passed by the Philippine legislature in 2009, the Magna Carta of Women recognizes and defines the rights of women.[10] It also places the burden on the State to ensure equality of men and women, promote the empowerment of women, and attempt to eliminate discrimination against women in accordance with CEDAW.

The Magna Carta also aimed at increasing the participation of women in decision-making and policy-making processes in government by mandating that the number of women in third-level positions in government achieve a fifty-fifty gender balance by 2014 and requiring at least 40% female membership of all development councils at the regional, provincial, city, municipal, and *barangay*[11] levels. Despite this mandate, the Philippine Commission on Women (the "Commission") noted in August 2018 that this gender balance was still being pursued.[12]

To assess the progress of the Magna Carta, government agencies and local government districts conduct monitoring and submit their findings in annual progress reports to the Commission, which then submits a report to Congress every three years. In 2012, the Commission issued its circular to the Philippine Congress on the implementation of the Magna Carta and its impact on the status and human rights of women in the Philippines.[13] The circular gave additional detailed guidelines for continued implementation of the Magna Carta.

Aside from the Magna Carta, other significant legislation addressing equality includes the Women in Development and Nation Building Act.[14] Published in 1992, the Act promotes the integration of women in development and nation building by providing for equal rights in entering into contracts and loan agreements and joining social and cultural clubs.

The Labor Code of the Philippines, amended in 1989, also seeks to prohibit discrimination against women in employment and promote additional training opportunities for them. Finally, the Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment also addresses discrimination. It even imposes criminal liability on those who pay lesser compensation to female employees than male employees for equal work, as well as those who favor a male employee over a female employee for promotions, training opportunities, study, and scholarship based on gender.[15] Although the Philippine government has yet to implement legislation with

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7 *Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited Apr. 9, 2018).

8 *See* CONST. art. II, § 14 (1987) (Phil.) ("The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.").

9 CONST. art. XIII, § 14.

10 Magna Carta of Women, Rep. Act No. 9710 (Sept. 15, 2009) (Phil.).

11 *Barangay* is the smallest local government unit in the Philippines, similar to a district.

12 *PCW Presents 9 Gains as Nation Celebrates 9th Anniversary of Magna Carta Women*, Philippine Commission on Women (Aug. 24, 2018), http://pcw.gov.ph/article/pcw-presents-9-gains-nation-celebrates-9th-anniversary-magna-carta-women.

13 *PCW-NEDA-DBM Joint Circular No. 2012-01*, Philippine Comm'n on Women (Nov. 2013), http://www.pcw.gov.ph/sites/default/files/documents/resources/pcw-neda-dbm-jc-2012-01.pdf.

14 Women in Development and Nation Building Act, Rep. Act No. 7192 (1992) (Phil.).

15 An Act Strengthening the Prohibition on Discrimination Against Women with respect to Terms and Conditions of Employment, Rep. Act No. 6725 (May 12, 1989) (Phil.).

mandatory quotas for female representation, these laws represent its willingness to address the issue in other ways.

Code of Corporate Governance

Despite the implementation of several laws, the current Code of Corporate Governance (the "Code") does not specifically address female representation on corporate boards of private companies. In 2002, the Philippines Securities and Exchange Commission approved the implementation of the Code, which empowers the board of directors to hold primary responsibility for corporate governance.[16] Most recently updated in 2016, the Code places restrictions on the structure of the board as an independent check on management. For example, the boards of public companies must have at least two independent directors or 20% of the board, whichever is the lesser. Despite provisions such as this one, however, the Code does not contain a provision specific to the empowerment of women to these positions. Instead, the Code calls for boards to create policies on diversity that address not only gender diversity, but also diversity on the basis of age, ethnicity, culture, skills, etc.[17] The Code does not place any goal or mandatory quota on the board.

Non-Governmental Initiatives

Although the Philippines boasts one of the higher percentages of female representation on corporate boards in Asia at 10.9%[18] and a 2018 study revealed that women make up 46.2% of the workforce,[19] there are still many women who have no access to employment opportunities due to more fundamental issues pervading Philippine society. Many women live in poverty, with human trafficking and violence against women exacerbating the issue.[20] As a result, many non-governmental and governmental programs focus on alleviating these issues, as opposed to promoting female empowerment in the corporate setting.

Conclusions

The Philippines is the 13th most populous country in the world,[21] with an annual growth rate of 1.57%[22] and an unemployment rate estimated at 15% in 2017.[23] As of 2018, the female unemployment rate was less than the male unemployment rate and women had a slightly higher literacy rate over men.[24]

Given that the Philippines is still a developing country, the macroeconomic situation has a strong influence on economic opportunities for women. The legislation in place promoting women's positions in society has aided in eliminating discrimination, but remains constrained by current economic conditions. Despite this, the fact that the Philippines has historically been a matriarchal society, coupled with the government's willingness to address gender discrimination issues, could contribute to more women holding corporate board seats in the future.

16 *Memorandum Circular No. 02, series of 2002*, Securities and Exchange Commission (Nov. 6, 2015), http://www.sec.gov.ph/sec-memorandum-circular-no-02-13/.

17 *Memorandum Circular No. 19, series of 2016*, Securities and Exchange Commission (Nov. 22, 2016), http://www.sec.gov.ph/wp-content/uploads/2016/12/2016CodeofCorporateGovernanceFinal.pdf.

18 Deloitte, *supra* note 1.

19 *Factsheet on Women and Men in the Philippines*, Philippine Statistics Authority (Mar. 5, 2018), http://www.psa.gov.ph/gender-stat/wmf.

20 *CEDAW Discusses Situation of Women in the Philippines, Myanmar and France with Civil Society Representatives*, UNHCR (July 4, 2016), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20238&LangID=E.

21 *World Factbook: Philippines*, Central Intelligence Agency, https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html (last updated Aug. 27, 2018).

22 *Id.*

23 *Id.*

24 Philippine Statistics Authority, *supra* note 19.

Singapore

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Introduction

Gender diversity on the boards of Singapore-listed firms has been the subject of much study and analysis in recent years, with a steady increase reported in women's representation since 2011.[1]

A 2016 Korn Ferry study reported that the proportion of female directors across all companies was 7.7%,[2] with other studies showing that companies with all male boards represent between 46%[3] and 52.5% of all companies.[4] In another study, it was reported that, as of June 2017, women held 12.2% of all boardroom positions of listed companies on the Singapore Exchange Limited (SGX) and 10.3% of all companies listed in Singapore.[5]

These figures demonstrate a modest improvement from 8.6% in 2014, 9.5% in 2015, and 10.9% in 2016 of the top 100 primary-listed SGX companies.[6] As of December 2017, women directors increased to 13.1% on boards of the Top 100 primary-listed companies on the SGX.[7] Another study found that the proportion of all male boards fell from 55% three years ago to 50% last year.[8] As of June 2018, the number of top 100 companies with all-male boards had decreased from 50 in 2013 to 27.[9]

The underrepresentation of women on the boards of Singapore-listed firms is more concerning against the backdrop of the general demographics of the Singapore workforce, which would suggest an expectation of greater participation by women:

- 60% of women participate in the labor force[10]
- 46.8% of the non-agricultural workforce is female[11]
- 51% of Singapore's population is female[12]

The lack of gender diversity of boards is particularly surprising given the high levels of educational attainment for women. Singapore is known for its above average education; Singapore ranks first on the Program for International Student Assessment (PISA), a global standardized test of secondary school students administered by the Organisation

1 *Can ASEAN move forward if women are left behind? Women in ASEAN: unlocking possibilities*, Ernst & Young 5 (2017), http://www.ey.com/Publication/vwLUAssets/ey-women-in-asean-unlocking-possibilities/$FILE/ey-women-in-asean-unlocking-possibilities.pdf.

2 *The Diversity Scorecard 2016: Building Diversity in Asia Pacific Boardrooms*, Korn Ferry Institute 5, 7 (2016), https://www.kornferry.com/institute/korn-ferry-diversity-scorecard-2016-building-diversity-in-asia-pacific-boardrooms.

3 *Id. at 5.*

4 *Women on Boards: Tackling the Issues*, Diversity Action Committee 12 (Sept. 2016), http://www.diversityaction.sg/wp-content/uploads/2015/03/a-DAC_Report_Women_On-Boards.pdf.

5 *20 by 2020: Gender Diversity on Singapore Boards, A Path to Action*, Human Capital Leadership Institute & BoardAgender 6 (June 2017), http://www.boardagender.org/files/20_by_2020-A_Path_to_Action-BA_HCLI_2018.pdf.

6 *Statistics, Diversity Action Committee Singapore* (Dec. 31, 2017), http://www.diversityaction.sg/statistics/ (last visited Aug. 27, 2018).

7 *Id.*

8 Rachel Mui, *Higher proportion of women on boards of listed firms in Singapore*, The Straits Times (Feb. 14, 2018), http://www.straitstimes.com/business/companies-markets/higher-proportion-of-women-on-boards-of-listed-firms-here.

9 Livia Yap, *Name-and-Shame Approach Puts More Women on Singapore Boards*, Bloomberg (July 30, 2018), https://www.bloomberg.com/news/articles/2018-07-31/name-and-shame-approach-puts-more-women-on-singapore-boards.

10 Human Capital Leadership Institute, *supra* note 5, at 15.

11 *United Nations Millennium Development Goal Indicators*, http://mdgs.un.org/unsd/mdg/Data.aspx (last visited Aug. 27, 2018).

12 *Population Trends 2017*, Department of Statistics Singapore 6 (2017), https://www.singstat.gov.sg/-/media/files/publications/population/population2017.pdf (last visited Aug. 27, 2018).

for Economic Co-operation and Development (OECD).[13] More than half of university graduates are female.[14]

According to cross-national studies, the underrepresentation of women on corporate boards of directors in Singapore is low, even for the region. According to a Credit Suisse Report comparing representation across the region in 2015, women represented 9.9% of seats on Boards in Singapore, 10.9% in the Philippines, 12.7% in Thailand, and 13.9% in Malaysia (though only 3.5% in Japan, and 4.1% in South Korea).[15] According to Ernst & Young's 2016 study, Singapore was the third lowest in terms of gender representation on corporate boards in the region, ahead of only Japan and South Korea.[16] According to Sustainable Stock Exchanges' Initiatives 2017, Singapore was, in fact, the second to last of countries with international capital markets, with only Japan trailing behind.[17]

Demographic Profile of Singapore Female Directors

The Singapore's Diversity Action Committee has found that women directors in Singapore are, on average, younger than their male counterparts. As of September 2016, most female directors were between 50-59, while most male directors were between 60-69.[18] Male and female directors hold business degrees at about equal rates, although female directors are more likely to have an accounting or law background.[19]

Further, different business sectors reflect varied percentages of representation of women on boards. For example, the materials sector reflects representation at 30%, while the health care sector is 3.7%, energy sector at 3.2%, and information technology at a staggeringly low 0%.[20]

Interesting—and troubling—to note, women's tenure on corporate boards in Singapore tended to be shorter than males' tenures.[21] Male directors serve on boards for an average of 9.4 years; female directors serve for 7.2 years (both among the highest in the region).[22] Thus, a major limiting factor for inclusion of women on boards is the long tenure of Singapore directors. "The low turnover limits opportunities for women to obtain directorships."[23]

The 20 by 2020 initiative cited the entrenchment of board members as an obstacle to increasing female participation: "Entrenchment works against aspiring female directors because it is less likely for entrenched boards to be renewed with new independent directors, and hence, a lower likelihood that aspiring female directors will be considered for board roles over those already appointed."[24]

Gender Equality Under Singapore Law

Singapore Constitution

Article XII of the Singapore Constitution guarantees the equal protection of all people under the law. However, as written, the Constitution does not specifically protect against discrimination on the basis of sex or gender.[25]

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13 Ernst & Young, *supra* note 1, at 11.

14 Yap, *supra* note 9.

15 *The CS Gender 3000: The Reward for Change*, Credit Suisse 8, tbl 1 (2016), https://glg.it/assets/docs/csri-gender-3000.pdf.

16 Ernst & Young, *supra* note 1, at 32.

17 Human Capital Leadership Institute, *supra* note 5, at 6.

18 Diversity Action Committee, *supra* note 4, at 11.

19 *Id.*

20 Korn Ferry Institute, *supra* note 2, at 33.

21 *Id.*

22 *Id.* at 32, App'x 2.

23 *Id.* at 32.

24 Human Capital Leadership Institute, *supra* note 5, at 15.

25 CONST. art. XII, §12 ("[T]here shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment of any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.").

During meetings of the United Nations' Committee on Elimination of Discrimination against Women (CEDAW), delegates of Singapore interpreted Article XII to prevent discrimination based on gender, marital status, age, disability, or other such grounds: "The delegation replied that while Singapore lacked specific legislation prohibiting discrimination based on gender, article XII of its Constitution guaranteed the equal protection of all people under the law and, therefore, prevented discrimination based on gender, marital status, age, disability or other such grounds."[26]

That said, human rights focused organizations continue to recommend that Singapore formally enshrine such protections into the Constitution. In October 2017, the Coalition Report of National NGOs presented a report with the main recommendation that Singapore "[i]ncorporate in the Constitution and legislation a definition of discrimination against women, and prohibit all forms of such discrimination on all grounds."[27] In December 2017, the United Nations' CEDAW recommended that Singapore include a prohibition against discrimination against women in its Constitution.[28]

Women's Charter

In 1961, Singapore adopted the Women's Charter, intended to improve and protect the rights of females in Singapore and to guarantee greater legal equality for married women.[29] The Women's Charter gave equal rights to wives in the management of the homes, created legal recourse for victims of domestic violence, and created punishments for violence against women.[30] In 1997, the Women's Charter was amended to give greater legal protection to women and children, including greater legal rights for women to marital property after a divorce and greater access to protective orders for victims of domestic violence.[31]

In February 2016, the Women's Charter was further amended by the Amendment Bill 2016 to:

- Require marriage counseling to young couples prior to marriage;
- Require mandatory parenting programs for divorcing parents with children;
- Allow men to seek spousal maintenance;
- Better protect survivors of domestic violence, particularly regarding the accessibility of personal protective orders; and
- Restrict online sexual trafficking.[32]

Corporate Governance Code

The Code of Corporate Governance (the "Code") is issued by the Monetary Authority of Singapore (MAS) and the Singapore Exchange LTD. The Code provides that boards and their committees should be comprised of directors who, as a group, provide an appropriate balance and diversity of skills, experience, gender, and knowledge of the company. Gender diversity is included in the MAS Code, but there are no mandatory requirements for gender diversity.[33]

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26 Minutes of the 993rd & 994th Meetings of the Committee on Elimination of Discrimination against Women held on July 22, 2011, http://www.un.org/News/Press/docs/2011/wom1875.doc.htm (last visited Aug. 27, 2018).

27 *Report on CEDAW and the Republic of Singapore: Many Voices, One Movement" Coalition Report of National NGOs* (2017), https://sgcedawcoalition.files.wordpress.com/2017/10/many-voices-one-movement-coalition-report-of-national-ngos-on-singapore.pdf (last visited Aug. 27, 2018).

28 Convention on the Elimination of All Forms of Discrimination against Women, U.N. CEDAW Report (Nov. 21, 2017), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SGP/CO/5&Lang=En.

29 *Legislation, The Women's Charter, Ministry of Social and Family Development*, https://www.msf.gov.sg/policies/Women-Celebrating-Women/Legislation/Pages/default.aspx (last visited Aug. 27, 2018).

30 *Women's Charter, Singapore Council of Women's Organisations*, http://www.scwo.org.sg/resources/womens-charter/ (last visited Aug. 27, 2018).

31 *Id.*

32 *Women's Charter to Support More Complex Family Needs, Ministry of Social and Family Development*, https://www.msf.gov.sg/media-room/Pages/Women%27s-Charter-to-Support-More-Complex-Family-Needs.aspx (last visited Aug. 27, 2018).

33 Korn Ferry Institute, *supra* note 2, at 32.

The Code defines independent directors as those having no relationships that could interfere or be reasonably perceived to interfere with the exercise of his or her judgment. In addition, the independence of any directors who serve more than nine years is subject to rigorous review. Companies must comply with the Code or explain their non-compliance. Despite this rule, Singapore reflects some of the longest tenured directors among peer countries. In the Singapore Directorship Report from 2014, 54.1% of the firms surveyed had at least one independent director who has served for more than nine years on the boards.[34]

Non-Governmental Initiatives

In Singapore, the two leading non-governmental organizations (NGOs) are the Association of Women for Action and Research (AWARE)[35] and BoardAgender.[36] AWARE is Singapore's leading gender equality advocacy group and promotes a wide spectrum of women's rights issues. BoardAgender, an outreach arm of the Singapore Council of Women's Organizations, has a more focused mission: to facilitate discussions and activities on the topic of gender diversity in the workplace and in the boardroom, and to promote economic and commercial advantage for companies in Singapore.

In March 2017, the People's Action Party Women's Wing and BoardAgender, an initiative of the Singapore Council on Women's Organisations, recommended to MAS that it set a 20% by 2020 target, representing at least 20% female directors on boards by 2020.[37] To reach this goal, the authors recommended that "all current female directors must be reappointed annually and approximately 130 new appointments of female directors must be added every year from now till the year 2020. This is an achievable goal if at least half of SGX companies appoint one more female director onto their board…"[38] As of January 2018, in order to reach the 2020 goal, an additional 130 female directors will have to be appointed.[39]

In 2012, AWARE and the National University of Singapore sponsored a conference on the rights of women. The following key recommendations were proposed by the conference delegates:

- Establish a quota of 30% for women in Parliament as recommended by CEDAW, which was ratified by Singapore in 1995
- Amend the Singapore Constitution to prohibit gender discrimination
- Review and remove all gender discriminatory laws, policies, and practices, and replace them with laws, policies, and practices that promote an equitable and sustainable work-life balance for both women and men
- Add gender studies to the core curriculum for all students, as well as in the civil service
- Increase budgetary allocations to health care significantly so as to ensure the good health of older people
- Recognize care-giving (of the young and the elderly) as a gender-neutral skill, and improve the quality of, and access to, care facilities and services for children, elderly, and the disabled[40]

Although the recommendations did not relate directly to increasing board diversity, they indicate a general trend toward creating greater access for women to participate and take on leadership roles in society.

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34 Human Capital Leadership Institute, *supra* note 5, at 23.

35 *Association of Women for Action and Research (AWARE)*, http://www.aware.org.sg (last visited Aug. 27, 2018).

36 *BoardAgender*, http://www.boardagender.org (last visited Aug. 27, 2018).

37 *Singapore Businesses Need to Increase Gender Diversity*, Women's Wing & BoardAgender (Mar. 23, 2017), http://www.boardagender.org/files/PAP_Womens_Wing__BoardAgender_SCWO_Press_Release_Singapore_Businesses_Need_To_Increase_Gender_Diversity.pdf.

38 Human Capital Leadership Institute, *supra* note 5, at 7.

39 Jacqueline Woo, *Singapore must appoint 130 new female directors each year to reach 2020 board diversity goal: Grace Fu*, Business Times (Jan. 27, 2018), http://www.businesstimes.com.sg/government-economy/singapore-must-appoint-130-new-female-directors-each-year-to-reach-2020-board.

40 *AWARE: Prohibit gender discrimination and set quota for women in Parliament*, The Online Citizen (Mar. 9, 2011), http://theonlinecitizen.com/2011/03/aware-prohibit-gender-discrimination-and-set-quota-for-women-in-parliament/.

Another leading non-government group is the Diversity Action Committee.[41] After discovering that 38 of Singapore's 100 biggest companies had entirely male boards in 2016, the Diversity Action Committee began publishing a bi-annual ranking of firms based on gender representation. The Diversity Action Committee is comprised of 18 members, including corporate leaders and business professionals.[42]

Conclusion

The disparity between representation of men and women in positions of leadership in the private sector has been the subject of much debate and discussion in Singapore. Although there has been no institutionalized action or formal proposal undertaken by the Singapore government, various non-profit organizations and interest groups such as AWARE and BoardAgender, have successfully raised this issue to the general public for broader discussion. As Claire Chang, co-founder of Banyan Tree Hotels and Resorts explained: "Having women insufficiently represented on boards is not a woman's problem. It is a talent maximization problem. Women make up 50% of the workforce and are just as qualified and ambitious as men at work."[43]

41 *Diversity Action Committee*, http://www.diversityaction.sg/ (last visited Aug. 27, 2018).

42 Yap, *supra* note 9.

43 Human Capital Leadership Institute, *supra* note 5, at 11.

Taiwan

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In many ways, Taiwan has broken the glass ceiling for gender parity. After the 2016 elections, the country saw a record percentage of female legislators (38%), putting Taiwan far ahead of both other Asian countries and the international average of 22%.[1] Also in 2016, Taiwan elected its first female president, Tsai Ing-Wen.[2] However, women's representation in the boardroom has not matched the gains in political representation. In 2017, just 12.57% of board seats of public companies were held by women, according to Deloitte.[3] Among Taiwan Stock Exchange Corporation (TWSE) listed companies, women comprise 11.90% of corporate board members, and 23.85% of supervisory positions.[4] Although representation of women in the boardroom lags behind representation in public office, Taiwan remains one of the highest-ranking countries in East Asia in terms of women's representation on boards.

Legal and Policy Framework

The Constitution of Taiwan states that, "All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law."[5] In 2002, the Act for Gender Equality in Employment (GEEA) was enacted, which prohibits discrimination on the basis of sex with regard to hiring, training, salary, welfare benefits, remuneration, and other conditions of employment.[6] The GEEA also includes protections against sexual harassment[7] and promotes equality in the workplace through guaranteed maternity and parental leave, and guaranteed child care at employers above a certain threshold. In 2007, Taiwan ratified the U.N. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Although Taiwan's legislature has adopted quotas for political office (stipulating that women must represent half the "at-large" seats in the legislature), currently there is no such requirement with respect to board representation quotas for women on corporate boards.[8]

The Financial Supervisory Commission (FSC)—the government agency responsible for regulating the securities market, banking, and the insurance sector, and the regulator of the TWSE—has taken steps in recent years to address diversity on boards. In 2013, the FSC issued a corporate governance roadmap ("FSC Roadmap"), which sets forth goals to improve corporate governance, with diversity on boards as one of the stated goals. The FSC Roadmap instructs the TWSE and the Gre Tai Securities Market (GTSM) to revise their corporate governance guidelines, entitled the "Corporate Governance Best-Practices Principles for TWSE/GTSM Listed Companies," to encourage companies to consider gender equality in their corporate governance.[9] According to a senior executive vice president of the exchange, the guidance is "an encouragement mechanism, [and] currently it's not enforced or mandatory."[10]

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1 Cindy Sui, *Taiwan, the place to be a woman in politics*, BBC (May 20, 2016), http://www.bbc.com/news/world-asia-36309137.

2 *Tsai Ing-wen elected Taiwan's first female president*, BBC (Jan. 17, 2016), https://www.bbc.com/news/world-asia-35333647.

3 *Women in the boardroom: A global perspective*, Deloitte 31 (2017), https://www2.deloitte.com/content/dam/Deloitte/ch/Documents/risk/ch-en-women-in-boardroom.pdf.

4 *Individual Action Plan for the enhancement of the ratio of women's representation in leadership (2017)*, Gender Equa. Comm. for the Exec. Yuan 2, https://www.gec.ey.gov.tw/en/News.aspx?n=C255A3BC2FF33891&sms=2FAE5A07AE47735C.

5 CONSTITUTION OF THE REPUBLIC OF CHINA, art. 7.

6 Christine Chen, *Employment and employee benefits in Taiwan: overview*, Thomson Reuters, https://uk.practicallaw.thomsonreuters.com/9-633-4823?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1.

7 *Id.*

8 Sui, *supra* note 1.

9 *Corporate Governance Roadmap (2013)*, Financial Supervisory Commission, http://cgc.twse.com.tw/img/Corporate%20Governance%20Road-map%202013.pdf; Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies, art. 20 (amended Dec. 31, 2014), http://eng.selaw.com.tw/LawArticle.aspx?LawID=FL020553&ModifyDate=1031231.

10 Sarah Mishkin, *Taiwan: more women at the top*, Financial Times (Mar. 20, 2013), https://www.ft.com/content/ffb2994a-e2d5-393a-9933-fc8d757f2970.

Another major project set forth in the FSC Roadmap is the implementation of a corporate governance evaluation system that evaluates all listed companies according to a number of corporate governance metrics.[11] Among the approximately 99 indicators are questions that relate to diversity on boards. Two of those indicators require companies to answer whether they adopted and disclosed a board diversity policy, and whether their board of directors included at least one female director in the previous year.[12] Although the body responsible for the evaluations, the TWSE Corporate Governance Center, has released rankings of companies based on the evaluation, publicly available information does not reveal how companies fare in terms of board diversity.

Representation of Women on Boards

Despite the advisory nature of these measures, Taiwan has seen significant progress in women's representation on boards of directors and supervisory committees. In 2016, the percentage of women on boards at TWSE-listed companies was 11.90% (13.10% for GTSM-listed companies).[13] The percentage of women who served as directors of state-owned enterprises has increased from 11.93% in 2013 to 20.12% in 2017.[14] Finally, the percentage of women in supervisor positions at TWSE-listed companies reached 23.8% in 2016 (25.79% for TSM-listed companies).[15]

These statistics align with other reported measures on gender equality. According to Taiwan's Directorate General of Budget, Accounting and Statistics, in 2017 the country ranked 38th out of 187 countries on the Gender Inequality Index.[16] It must be noted, however, that this ranking comes from Taiwan's own self-evaluation based on the survey factors, as Taiwan was not included in the official U.N. ranking conducted by independent evaluators.[17]

Conclusion

The increased focus in Taiwan on the representation of women on boards also includes a number of non-government organizations. Among these are Women on Boards, an organization founded in April 2014 with the express goals of promoting women's involvement in the corporate sector and increasing the number of women on boards and in decision-making positions at the management level.[18] The combination of privately-led movements and government-led efforts is an encouraging sign that Taiwan could continue to build on the gains it has achieved in recent years for the representation of women in both the public and private sectors.

11 *The 2018 Corporate Governance Evaluation System*, TWSE Corporate Governance Center (2018), http://cgc.twse.com.tw/static/20180209/000000006150c00d0161794f01e40005_%E8%8B%B1%E8%AD%AF107%E5%B9%B4%E5%BA%A6%E5%85%AC%E5%8F%B8%E6%B2%BB%E7%90%86%E8%A9%95%E9%91%91%E7%B3%BB%E7%B5%B1%E4%BD%9C%E6%A5%AD%E6%89%8B%E5%86%8A%E5%8F%8A%E6%8C%87%E6%A8%99.pdf.

12 *Id.*

13 Gender Equal. Comm., *supra* note 4, at 2.

14 *Id.*

15 *Id.*

16 Chen Cheng-wei and Y.F. Low, *Taiwan ranks 38th worldwide in gender equality in 2016: DGBAS*, Focus Taiwan (Mar. 21, 2017), http://focustaiwan.tw/news/asoc/201703210032.aspx.

17 *Id.*

18 *WOB touts female participation in business*, Taiwan Today (Apr. 18, 2014), http://taiwantoday.tw/ct.asp?xitem=216541&CtNode=416.

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. There are no gender quotas in Thailand for women on boards.[2]

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 the Credit Suisse Gender 3000 from September 2016, the percentage of women on boards in Thailand was 12.7%.[3] This reflects a positive change of 2.7% since 2013.[4]

Legal and Policy Framework

Constitution

Thailand ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985 and its Optional Protocol in 2000.[5] 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."[6]

Since absolute monarchy was abolished in 1932, Thailand's Constitution has been rewritten and reissued 20 times.[7] In recent years, as further described below, the Constitution has included provisions regarding women's equality. Additionally, the 1997 Thai Constitution explicitly provided that "[m]en and women shall enjoy equal rights"[8] and required the state to promote equality between women and men.[9] The 2007 constitution also had equality[10] and unjust discrimination provisions.[11]

Since the military took control of the country in 2014, the military government has attempted to redraft the

1 *Thai Economic Performance in Q4 and 2017 and Outlook for 2018*, NESDB Economic Report (Feb. 19, 2018), http://www.nesdb.go.th/nesdb_en/ewt_dl_link.php?nid=4360&filename=Macroeconomic_Planning.

2 *Women in the boardroom: A global perspective*, Deloitte 32 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

3 *The CS Gender 3000: The Reward for Change*, Credit Suisse 8, tbl 1 (2016), https://glg.it/assets/docs/csri-gender-3000.pdf.

4 Deloitte, *supra* note 2, at 32; Credit Suisse, *supra* note 3, at 8.

5 *See Thailand*, U.N. Women, http://asiapacific.unwomen.org/en/countries/thailand.

6 *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. CEDAW Report (June 24, 2004), https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/411/30/PDF/N0441130.pdf?OpenElement.

7 *Thailand's new Constitution: What you need to know*, The Straits Times (Apr. 6, 2017), http://www.straitstimes.com/asia/se-asia/thailands-new-constitution-what-you-need-to-know.

8 CONST. § 30 (1997).

9 CONST. § 80 (1997)

10 CONST. § 5 (1997) ("The Thai people, irrespective of their origins, sexes, or religions, shall enjoy equal protection under this Constitution.").

11 CONST. § 30 (2007) ("Unjust discrimination against a person on grounds of difference in origin, race, language, sex, age, physical conditions or health, economic or social status, religious belief, education or constitutionally protected view, which does not contravene the provisions of this Constitution, shall not be permitted.").

Constitution.[12] In early 2015, a member of Thailand's constitution drafting panel confirmed that the panel had approved that the new version of the Thai Constitution would include the term "third gender" for the first time. This would have been a significant step toward empowering transgender and gay communities and ensuring those communities more equitable treatment under Thai law.[13] However, the constitutional redrafting failed in 2015, as the junta itself withdrew the draft of the entire Constitution out of concern that there was not sufficient public support.[14]

In April 2017, Thailand's new king signed the country's latest Constitution, drafted by the military. The Constitution affirms that "men and women shall enjoy equal rights."[15] However, the third gender language was not included. The Constitution also states that unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution, or on any other grounds, shall not be permitted.[16]

Gender Equality Act

In 2015, the Thailand Gender Equality Act was passed.[17] The Act created various committees to promote gender equality. The first committee was the Gender Equality Promotion Committee with authority to establish policies and action plans for the promotion of gender equality. This includes providing the Cabinet with policy recommendations, establishing guidelines to assist victims of gender discrimination, promoting studies on how to prevent gender discrimination, and establishing regulations relating to the supervision and audit of the Committee. The Committee shall adopt measures to "truly promote gender equality," including promoting accessibility to social, economic, and political rights, and improving social practices and cultural norms toward gender equality so as to eliminate bias based on inequality and violence due to gender.[18]

The second committee is the Committee on Consideration of Unfair Gender Discrimination, responsible for deciding complaints of gender discrimination. This law is inclusive of LGBTI (lesbian, gay, bisexual, transgender, and intersex) rights.[19] However, the law states that discrimination "for the compliance with religious principles, or for the national security shall not be deemed unfair gender discrimination."[20]

LGBTI-rights commentators have noted that the law's potential effectiveness suffers from two overbroad exceptions for national security and religion. Various emergency laws allowing the use of martial law, passed ostensibly due to national security concerns, open the door to abuses such as detention without trial for long periods and delayed access to the courts.[21]

As in many countries, some stereotypes and prejudices against women still persist. Women hold only a small fraction (5%) of seats in Thailand's national Parliament.[22] However, Thailand has gained ground in that women comprise a

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12 Jonathan Head, *Thailand's constitution: New era, new uncertainties*, BBC (Apr. 7, 2017), http://www.bbc.com/news/world-asia-39499485 (last visited Aug. 27, 2018).

13 *See* Amy Sawitta Lefevre, *Thailand Will Recognize 'Third Gender' in New Constitution*, Huffington Post (Jan. 15, 2015, updated Feb. 2, 2016), http://www.huffingtonpost.com/2015/01/15/thailand-third-gender-_n_6476582.html.

14 *Id.*

15 CONST. § 27 (2007).

16 *Id.*

17 Thailand Gender Equality Act, B.E. 2558 (2015), https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act (last visited Aug. 27, 2018).

18 Gender Equality Act, ch. 1 § 10.

19 *Gender Equality Act comes into effect in Thailand*, U.N. AIDS (Sept. 9, 2015), https://unaids-ap.org/2015/09/09/gender-equality-act-comes-into-effect-in-thailand/.

20 Gender Equality Act, ch. 3 § 17.

21 *Challenges to gender equality in Thailand*, Bangkok Post (Mar. 8, 2018), https://www.bangkokpost.com/opinion/opinion/1424306/challenges-to-gender-equality-in-thailand.

22 *Proportion of seats held by women in national parliaments (%)*,World Bank, https://data.worldbank.org/indicator/SG.GEN.PARL.ZS (last visited Sept. 12, 2018).

significant portion of the workforce and nearly half of Thai women attend college.[23]

Corporate Governance Standards

Thailand has adopted internationally accepted standards on corporate governance. This includes the Organisation for Economic Cooperation and Development's ("OECD") Principles of Corporate Governance. These principles encompass five core areas: shareholder rights, equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and responsibilities of the board.[24] 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. 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."[25] The amendments to the Securities Exchange Act (SEA) 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.[26]

Most directors are non-executive, and typically at least one-third are independent (i.e., non-management or major shareholders).[27] 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."[28] 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.[29]

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.[30]

Gender Equality in Education and in the Workplace

Statistics on educational attainment in Thailand are varied. In 2015, Thailand ranked 52nd on the Program for International Student Assessment (PISA), a global standardized test of second schools. Ninety percent of teachers in rural Thailand teach subjects in which they have not graduated.[31] The proportion of female secondary students in

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23 *See Liza Romanow, The Women of Thailand*, Global Majority E-Journal, Vol. 3, No. 1, at 44 (June 2012), http://www.bangladeshstudies.org/files/Global_Majority_e_Journal_3_1_Romanow.pdf.

24 OECD Principles of Corporate Governance, OECD (2004), http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf (last visited Aug. 27, 2018).

25 *Corporate Governance Country Assessment, Thailand*, World Bank 1 (Jan. 2013), https://openknowledge.worldbank.org/bitstream/handle/10986/20443/908230ROSC0Box0ailand0201300PUBLIC0.pdf?sequence=1&isAllowed=y (last visited Aug. 27, 2018).

26 *Id.* at 5.

27 *Id.* at 2.

28 *Id.* at 13.

29 *Id.* at 2.

30 *Good Corporate Governance*, Sec. Exch. Comm'n, http://www.sec.or.th/EN/RaisingFunds/EquityDebt/Pages/link-Laws_Regulations/CorporateGovernanceCG.aspx (last visited Aug. 27, 2018).

31 *Can ASEAN move forward if women are left behind? Women in ASEAN: unlocking possibilities*, Ernst & Young 11 (2017), https://www.ey.com/Publication/vwLUAssets/ey-women-in-asean-unlocking-possibilities/$FILE/ey-women-in-asean-unlocking-possibilities.pdf.

Thailand is 65%.[32] Promisingly, Thailand also has the fifth most PhDs awarded to women as compared to men in the world and one of the highest proportions of female science researchers among Asian countries.[33]

Women are, in fact, well represented in the total employment, accounting for 80% in the ten largest export industries and 45% of the manufacturing workforce.[34] Yet, new industries in Thailand also reflect risks for improving the percentage of women in the workplace. For example, women are 1.5 times more likely to occupy jobs at high risk of automation than their male counterparts.[35]

Thailand is drafting the Women's Development Plan in the Twelfth National Economic and Social Development Plan, which seeks to change attitudes toward gender equality.[36] A stated goal of the Plan is to "[c]reate economic and social opportunity, by promoting job- and income-creation and increasing productivity, for the 40% of the population with the lowest income, disadvantaged persons, women, and elderly persons."[37] The Plan notes that the Asia-Pacific Economic Cooperation placed importance on the "sustainable development of [subject matter experts], and opportunities for women and people with disabilities."[38] It also plans for women to "have equal access to public services and equal opportunity to develop themselves to their fullest potential."[39]

Another prominent initiative is the Global Entrepreneurship Thailand (GEN Thailand).[40] GEN Thailand organizes events and activities to equip women entrepreneurs with knowledge, training, coaching, and management tools.[41]

Conclusion

Despite the absence of government-imposed quotas regarding the number of women on corporate boards, Thailand has achieved gains in representation of women on boards up to 12.7%, 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.

32 *Id.* at 6.

33 Jasmine Cha, *The Privileged Lie of Gender Equality in Thailand*, Harvard Int'l Review (Mar. 30, 2016), http://hir.harvard.edu/article/?a=13011.

34 *Id.*

35 Ernst & Young, *supra* note 31, at 9.

36 The Twelfth Nat'l Econ. and Soc. Dev. Plan (2017-2021), at 4.2, http://www.nesdb.go.th/nesdb_en/ewt_w3c/ewt_dl_link.php?nid=4345 (last visited Aug. 27, 2018).

37 *Id.* at 2.2.4(2).

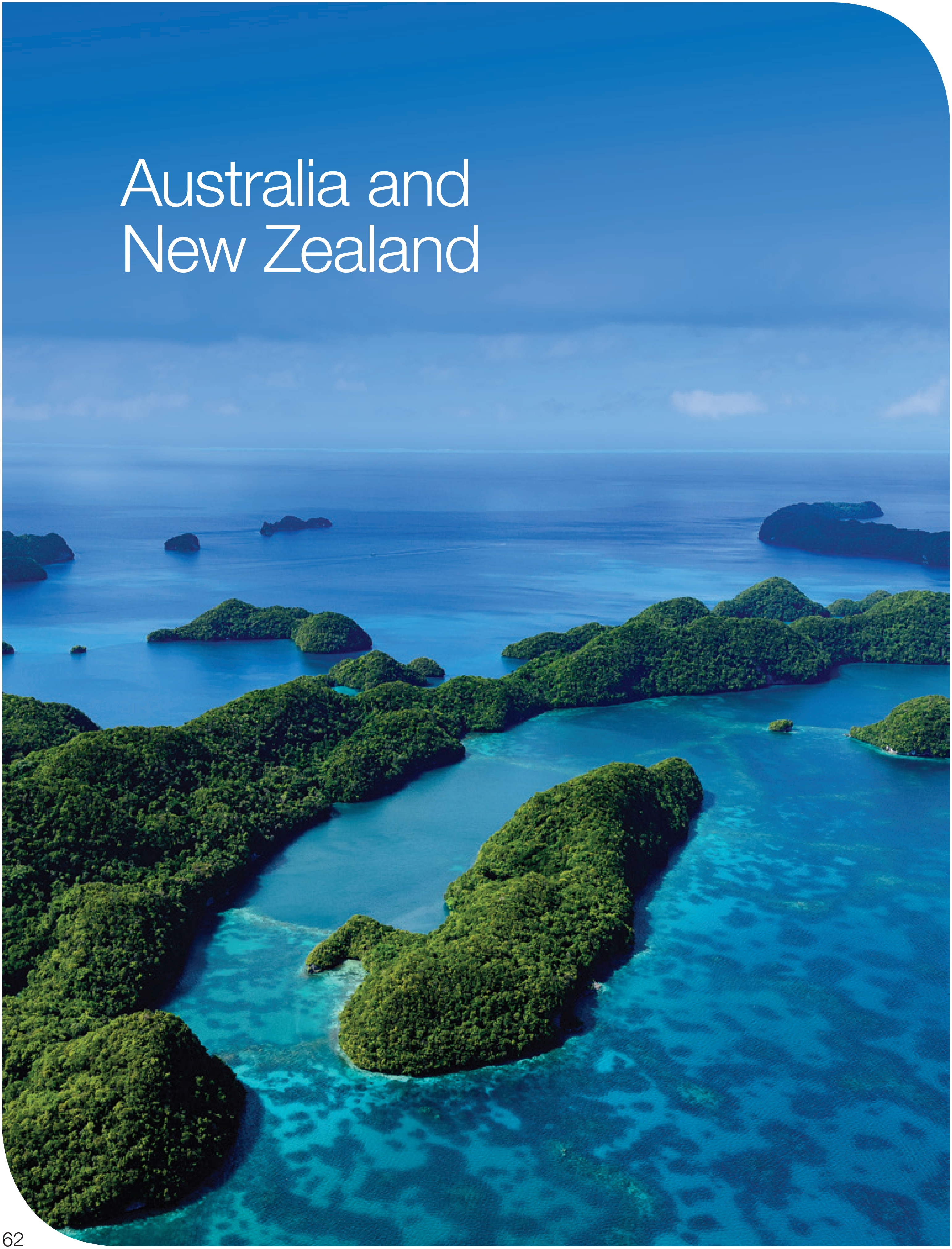
38 *Id.* at 2.7.2(5).

39 *Id.* at 3.2.4.

40 *Global Entrepreneurship Thailand*, https://gethai.org/ (last visited Aug. 27, 2018).

41 Deloitte, *supra* note 2, at 32.

Australia and New Zealand



Australia

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Australian companies lead the way when it comes to women's share of executive roles. As of August 31, 2018, the percentage of women on ASX 200 boards was 28.5%.[1] Additionally, women have comprised 50% of new appointments to ASX 200 boards to date in 2018.[2] This is a significant increase from 2008 when women comprised only 8% of new appointments.[3] This recent progress can be attributed not to legislation or quotas, but to other initiatives implemented by government and non-governmental bodies in the past ten years.

Legislative Initiatives

While there are no mandatory quotas, rules or guidelines, the Australian government has made efforts toward enhancing board diversity. In 2012, Australian government passed The Workplace Gender Equality Act which requires non-public sector employers with 100 or more employees to provide to the Workplace Gender Equality Agency (WGEA) a detailed annual report about gender balance, including information on the gender composition of the workforce and the governing bodies of relevant employers.[4] This reporting framework aims to encourage measures that improve gender equality outcomes, while minimizing the regulatory burden on Australian businesses.

The Australian Government has also sought to lead by example by ensuring gender diversity on its own boards. In 2010, for example, the Australian Government set a target to have a minimum of 40% women on Australian Government Boards by 2015.[5] After successfully reaching that goal, the government then increased its target for female representation across all Australian government boards to 50% in 2016.[6] According to the latest figures, the percentage of women on Australian Government boards is 42.7% as of December 2017.[7] This is the highest percentage of women reported on government boards since the Australian government began tracking such figures in 2010.[8]

Corporate Governance

Both the Australian Securities Exchange (ASX) and the Australian Institute of Company Directors (AICD) have signalled to Australian companies that they expect action on gender diversity. For example, in 2010 the ASX amended its Corporate Governance Principles and Recommendations to include provisions relating to the reporting of diversity ("the Diversity Recommendations").[9] The key elements of the Diversity Recommendations ask that listed companies establish and disclose a board diversity policy that includes establishment, review, and reporting of measurable objectives that apply across organizations, including senior executive and board positions.[10] The ASX takes an "if not then why not" approach, requiring ASX-listed companies to report on their progress in setting policies and achieving

1 Australian Institute of Company Directors, http://aicd.companydirectors.com.au/advocacy/board-diversity/statistics.

2 *Id.*

3 *Id.*

4 Workplace Gender Equality Act (2012), available at https://www.legislation.gov.au/Details/C2015C00088.

5 *Gender Balance on Australian Government Boards Report 2012-13*, 2 (2013), available at https://www.pmc.gov.au/sites/default/files/publications/gender-balance-aus-gov-boards-2012-2013.pdf.

6 *Gender Balance on Australian Government Boards Report 2016-17*, 4 (2017), available at https://www.pmc.gov.au/resource-centre/office-women/gender-balance-australian-government-boards-report-2016-17.

7 *See* Record achievement towards 50/50 women on Government Boards, December 20, 2017, available at https://ministers.pmc.gov.au/cash/2017/5050-women-govt-boards.

8 *Id.*

9 *Breaking the Glass Ceiling: Women in the Boardroom, A Study of Major Global Exchanges,* Paul Hastings 10 (Fall 2014).

10 KPMG, *ASX Corporate Governance Council Principles and Recommendations on Diversity*, 2-5 (2014), available at https://www.asx.com.au/documents/asx-compliance/kpmg-report-diversity-2014.pdf.

objectives, or to explain why they have elected not to do so.[11] Recently, the ASX Corporate Governance Council proposed guidelines to be included in the fourth edition of the ASX Corporate Governance Council Principles and Recommendations that would require each entity listed on the ASX 300 to achieve not less than 30% gender diversity in the composition of its board.[12] It is yet to be seen whether such guidelines will be adopted and enforced moving forward.

Public Advocacy Efforts

The Australian Institute of Company Directors—an Australian organization committed to impacting society and the economy through governance education, director development and advocacy—has also called on boards to embrace the need for change. In 2015, the AICD announced a voluntary target of 30 percent for women serving on all boards, and indicated that ASX 200 companies should reach this target by 2018. As of April 2018, 82 ASX 200 companies have reached the 30% target.[13] Although there are still five companies without any female directors and 87 companies that need at least one female board member to achieve 30% female representation, these statistics mark a "significant lift" from board appointments in previous years.[14] Emboldened by these trends, AICD has just recently set the bar even higher: AICD now calls on all boards making an appointment to have at least a 50/50 candidate list for consideration.[15]

Conclusion

Significant progress has been made in Australia to date, and many other countries look to successes in Australia as an example of what they would like to achieve. In April 2018, for the first time in Australia, more women than men were appointed to the board of Australia's top 200 companies (ASX 200),[16] an encouraging sign for Australia's efforts to reach gender parity. The AICD chairman, Elizabeth Proust, remarked of the recent numbers: "When it comes to increasing gender diversity on Australia's largest boards, we know that it's never been a supply problem, it's been a demand problem... that today's figures hopefully show is that, finally, we are seeing the demand."[17] However, she cautioned that, "[to]day's figures aren't a sign that it's time to take the foot off the brake" and that "[g]reater gender diversity on our boards is crucial to the future of good governance in this country."[18]

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11 *Id.* at 7. *See also* Deloitte, *Women in the Boardroom: A Global Perspective* (2017), available at https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

12 ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*, 12-15 (2018), available at https://www.asx.com.au/documents/asx-compliance/consultation-draft-cgc-4th-edition.pdf.

13 *See* 30% by 2018: Gender diversity progress report, available at http://aicd.companydirectors.com.au/~/media/cd2/resources/advocacy/board-diversity/pdf/06440-1-pol-gender-diversity-quarterly-report-jan18-a4-web.ashx

14 *Id.*

15 *Id.*

16 *Women overtake men for first time in board appointments at Australia's top 200 companies*, The West Australian (Apr. 12, 2018), https://thewest.com.au/business/boards/women-overtake-men-for-first-time-in-board-appointments-at-australias-top-200-companies-ng-b88805259z.

17 *Id.*

18 *Id.*

New Zealand

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New Zealand has historically had a strong record of promoting diversity in its government. New Zealand, which has over 213 ethnicities, is one of the most diverse countries in the world. While New Zealand's corporate governance best practice guidelines have advocated board diversity, corporate boards have been slow in appointing diverse boards. As of 2017, women only held 19% of director positions on companies listed on the New Zealand Stock Exchange (NZX),[1] up from 12% in 2013.[2]

Governmental Initiatives

Although the New Zealand government has not set diversity quotas for Boards in the private sector, it has taken action to increase diversity representation within its own ranks. In 2011, New Zealand's government committed to increasing the number of women on government boards and committees by 2015.[3] To this end, the Ministry for Women nominated female directors to state sector boards and committees, and worked to identify future female leaders. In 2017, Women's Minister Paula Bennett announced that the government had reached its target of appointing 45% of women to state sector boards and committees.[4] New Zealand's government now aims to have 50% female representation on state sector boards by 2021.[5]

NZX – A Change in Approach

The country's private sector has also created initiatives to increase awareness and transparency regarding corporate diversity. Since 2012, for example, the NZX adopted the Diversity Listing Rule, which amended the NSZX/NZDC Listing Rules[6] to require NZX-listed companies to disclose in their Annual Report quantitative data on the gender breakdown of the Directors and Officers, including comparative figures for the prior financial year, and to self-evaluate their performance with respect to their own diversity policies.[7] NZX currently publishes aggregated statistics of this information on its website.

The NZX Corporate Governance Code then built upon these diversity disclosure requirements when it revised the Code in 2017. Under the new Code, NZX-listed companies are now encouraged to have a written diversity policy that requires the board (or a relevant committee of the board) to set measureable objectives, such as specific numerical targets, and annually disclose how the issue is progressing towards its policy goals.[8] The Code's associated commentary makes clear that issuers should consider diversity more broadly than just gender, to ensure that the listed companies get a wide mix of experiences and perspectives on the board and throughout their organisations.[9] As of 2017, 51% of the NZX Main Board issuers reported having a diversity policy.

In addition, listed companies are now required to explain how, and the extent to which, they have followed the diversity recommendations set out in the new Code. If any of the Code's recommendations have not been followed, the issuer

1 *Gender Diversity Statistics*, NZX (Jan. 2018), https://s3-ap-southeast-2.amazonaws.com/nzx-prod-c84t3un4/comfy/cms/files/files/000/003/158/original/Gender_diversity_statistics_as_at_31_December_2017.pdf.

2 *Gender Diversity Annual Statistics*, NZX (March 2014), https://s3-ap-southeast-2.amazonaws.com/nzx-prod-c84t3un4/comfy/cms/files/files/000/000/402/original/Year_ended_31_Dec_2013.pdf.

3 Lucy Bennett, *Government target of 50 per cent women on state sector boards and committees by 2021*, N.Z. Herald (July 6, 2018), https://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=12084138&ref=rss.

4 *See Highest ever percentage of women on state sector boards*, Beehive (May 15, 2016), https://www.beehive.govt.nz/release/highest-ever-percentage-women-state-sector-boards.

5 Bennett, *supra* note 3.

6 The NZSX refers to the New Zealand Stock Exchange's Main Board, and the NZDX refers to the New Zealand Stock Exchange's Debt Market.

7 NZX Limited – NZX Diversity Rule and Its Implementation – July 4, 2012.

8 *See* NZX Corporate Governance Code, Recommendation 2.5 (2017), https://www.nzx.com/files/attachments/257864.pdf.

9 *Id.*

is required to state the period for which the relevant recommendations have not been followed, its reasons for not following the relevant recommendations, and any alternative governance practice adopted.

Public Advocacy Efforts

Non-governmental policy groups also have taken up the cause of increasing diversity in New Zealand's government and corporate boards. For example, in mid-2015, Women on Boards New Zealand was incorporated as a division of Governance New Zealand, an independent body concentrated on governance practices. Women on Boards helps qualified women obtain their first board position by providing tools and trainings.[10]

Conclusion

New Zealand still has a long way to go in getting more women into corporate boardrooms. Although the changes to the NZX Corporate Governance Code represent a positive step forward, many advocates caution that these policies are not yet enough. As Julie Hardaker, chairwoman of Women on Boards New Zealand, explained: "Policies are well and good and important, but they are meaningless unless they are implemented into practice, they are reported on and someone is accountable for their delivery."[11]

10 *See About Women on Boards New Zealand*, https://www.governancenz.org/Category?Action=View&Category_id=538 (last visited Sept. 13, 2018).

11 Julie Iles, *New Zealand ranked among worst in world for women on boards*, Stuff (March 8, 2018), https://i.stuff.co.nz/business/102046471/new-zealand-ranked-among-worst-in-world-for-women-on-boards.

Europe

European Union

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Both gender equality and minority rights are foundational principles of the European Union (EU),[1] as evidenced throughout the EU Commission's recommendations and directives.[2] The Charter of Fundamental Rights of the European Union includes an expansive prohibition on discrimination on *any ground, including "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation."*[3] The Charter is the starting point for a number of the EU Commission's pronouncements and directives to advance equality in European society.

Notwithstanding these overt commitments to advance gender equality, persistent inequality has plagued the EU as a whole, and its Member States individually, due to complex societal and cultural factors. The EU has actively addressed these systemic inequalities through initiatives discussed below and, as a result, has made significant progress in the area of gender equality. However, the EU has been criticized for its lack of policies to promote other types of diversity—including ethnic and racial diversity—within the leadership of its own ranks and to promote equality within its Member States.

EU Gender Equality Initiatives

The Treaty on the Functioning of the European Union (the "EU Treaty") charged Member States with the responsibility of ensuring equal pay between men and women. To act on that commitment, and in response to a long history of gender inequality in the EU, in 2006 the EU Commission launched the "Strategy for Equality between Women and Men 2006-2010" (the "EU First Strategy").[4] The EU First Strategy was the first of several strategies to frame gender equality as a fundamental right within the EU, critical to the EU's broader objectives of "growth, social employment, and social cohesion."[5] The EU releases an updated strategy every five years.

The EU First Strategy identified six strategic priorities for 2006-2010: "equal economic independence for women and men; reconciliation of private and professional life; equal representation in decision-making; eradication of all forms of gender-based violence; elimination of gender stereotypes; [and] promotion of gender equality in external and development policies."[6] For each priority area, the EU First Strategy set forth specific actions. To promote gender equality in decision-making decisions, the EU Commission's commitments focused on information gathering, such as researching and monitoring women's representation in decision-making, establishing a network of women in such positions, and supporting existing EU practices and structures advancing gender equality.[7] The EU First Strategy also recognized the severe gender disparity in corporate decision-making bodies, noting that, at the end of 2004, "in the top 50 publicly quoted companies… women make up 10% of the members and only 3% of the presidents" of those bodies.[8]

1 Article 2 of the European Union Treaty recognizes equality between women and men in the European community, and the respect for the rights of minorities. See Article 21 on Non-discrimination "based on any ground" including, *inter alia*, "sex, race colour, ethnic or social origin, genetic features…[or] membership of a national minority." Article 23 of the Charter of Fundamental Rights of the European Union specifically addresses pay equality between women and men. *See* Treaty on the Functioning of the European Union, art. 157 (addressing equal pay for male and female workers).

2 Council Directive 75/117/EEC (gender equality in pay); Council Directive 76/207/EEC (gender equality in employment, training, and employment opportunities; Council Directive 79/7/EEC (gender equality in access to social security); Council Directive 2000/78/EEC (gender equality in working conditions and treatment at work); Directive of the European Parliament and Council 2006/54/EC (gender equality in employment); and the Recommendations of the EU Commission No. 84/635 (proactive implementation of eliminating gender inequality).

3 2000 O.J. (C 364) 1, art. 23, http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

4 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Roadmap for equality between women and men, 2006-2010*, COM (2006) 92 final, 2 (Jan. 3, 2006), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0092&from=en.

5 *Id.*

6 *Id.*

7 *Id.* at 28.

8 *Id.*, Annex at 9, http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2006/sec_2006_0275_en.pdf.

In December 2006, the EU Commission also adopted a proposal to establish the European Institute for Gender Equality (EIGE).[9] The EIGE furthered the goals of the EU First Strategy by creating an organization that would: collect, analyze, and develop methods to obtain objective data on gender equality; develop tools to integrate gender equality within the EU's institutions; conduct surveys; organize meetings; and raise awareness of gender equality issues.[10] The EIGE management board was nominated by the EU's Member States and began meetings in 2007. The EIGE's management board consists of 18 representatives from Member States (operating on a rotating basis to ensure optimal efficiency and representation), and one representing the European Commission.[11]

The European Commission issued its "Strategy for Equality between Women and Men 2010-2015" (the "EU Second Strategy") on September 21, 2010, providing a framework of objectives and action items for the next five-year period, including recognizing gender inequality on corporate boards.

In light of the lack of women's representation in decision-making, the EU Second Strategy expressly prioritized women's representation on corporate boards of directors.[12] At the time it was released (2010), women represented almost half of the EU's workforce and more than half of its college graduates.[13] Because of this gender imbalance and women's historic lack of economic independence and equality in terms of pay and decision-making representation, the EU Second Strategy set forth a number of action items for the European Commission, Member States, and the EU's business sector, including an express request that publicly listed companies implement measures to advance women's representation on corporate boards.[14]

To advance the EU Second Strategy, the EU Commission published its Green Paper on Corporate Governance (the "Green Paper"), which surveyed Member States, the European Parliament, and EU Committees and stakeholders on corporate governance issues, including the issue of women's underrepresentation on corporate boards. The EU Commission sought feedback on actionable measures it could take to close the gender gap, asking about 1) suggested recruitment policies to ensure a diverse board, 2) whether public companies should be required to disclose diversity policies and gender diversity progress in the company, and 3) whether listed companies should be required to have a balanced gender representation on their boards and, if so, what measures should be taken.[15] Beyond mandatory incentives such as quotas, the Green Paper also sought feedback on whether companies should implement work-life balance initiatives and mentoring and training programs for management positions to address the gender disparity.[16]

Respondents to the survey overwhelmingly expressed views in favor of gender diversity on boards, but varied in their responses as to what measures should be taken to promote diversity.[17] While some supported mandatory "hard" measures such as quotas, most supported some combination of soft measures and self-regulation.[18] Most of the participants considered self-regulation and/or "soft" measures such as an EU recommendation, rather than mandatory directives, while others suggested monitoring the progress of countries without quotas and considering introducing quotas if soft measures fail to yield meaningful progress.[19]

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9 2006 O.J. (L 403) 9, https://web.archive.org/web/20081218165847/http://ec.europa.eu/employment_social/gender_equality/gender_institute/index_en.html.

10 *Id.*, art. II.

11 *Management Board, Eur.* Inst. for Gender Equal., http://eige.europa.eu/about-eige/eiges-structure/management-board (last visited Sept. 3, 2018).

12 *Communication From The Commission to The European Parliament, The European Economic and Social Committee and The Committee of The Regions: Strategy for equality between women and men, 2010-2015*, COM(2010)0491, Sec. 3 (Sept. 9, 2010), https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0491:FIN:EN:PDF.

13 *Id.*

14 *Id.*

15 *See Green Paper: The EU corporate governance framework*, COM (2011) 164 final, Sec. 1.1.3 (Apr. 5, 2011), http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf.

16 *Id.* at 7.

17 *See* responses to the Green Paper at http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/index_en.htm.

18 *See id.*

19 *See Green Paper: The EU corporate governance framework, Euroshareholders reply* (July 22, 2011), http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/individual-replies/euroshareholders_en.pdf.

In March of 2011, Viviane Reding (EU Justice Commissioner) issued a press release challenging EU publicly listed companies to sign on to the "Women on the Board Pledge for Europe."[20] The pledge represents a voluntary commitment targeting an increase to 30% women on boards by 2015 and a 40% target for 2020. Commissioner Reding implored companies to "develop their own credible way to get more women into top jobs," emphasizing that the following 10 months would be a testing period to "give self-regulation a last chance" before regulators would develop their own creative solutions.[21] Later, in November 2011, the EU Commission published its Work Program for 2012, which indicated it was considering "soft" legislative measures to improve gender balance on boards. [22]

On November 14, 2012, the EU Commission issued a legislative proposal setting a minimum objective of 40% of women in non-executive board positions in listed companies in Europe by 2020, and by 2018 for public undertakings (*e.g., companies where Member States exercise a dominant influence through ownership or other control).*[23] The proposal would have applied to around 5,000 listed companies in the EU, leaving the Member States to decide appropriate penalties for failure to meet the objective, but requiring those companies that failed to meet the quota to introduce fair selection procedures to prioritize the selection of qualified female candidates.[24] The proposal was driven by data indicating slow progress in Member States, and its finding that nearly nine out of 10 Europeans agree that women should be equally represented in leadership in such countries, with three-quarters of Europeans in favor of legislation on gender balance on such boards.[25]

In December 2012, shortly after issuing a legislative proposal that would establish targets for women's representation in non-executive board positions (discussed further below), Commissioner Reding published a progress report titled "Women in Economic Decision-making in the EU: Progress Report" (the "Progress Report"), which analyzed the progress of public companies in the EU in advancing gender diversity on boards, and whether self-regulation was working.[26] The Progress Report concluded that 2010 to 2012 evidenced "the best progress in many years" in advancing gender equality on corporate boards.[27] However, it stated that about 40% of the EU-wide change was concentrated in France, which had adopted a legal quota for women's representation on boards (40% representation on boards by 2017) in January 2011.[28] It also represented that this progress (11.8% in 2010 to 13.7% at the beginning of 2012) fell notably short of the 30% target for 2015 that Commissioner Reding announced in 2011 (discussed above), and at that pace, it would take 40 years to achieve gender-balanced boards (at least 40% of each gender).[29]

On November 20, 2013, the European Parliament voted to back the legislative proposal for quotas (discussed above) with strengthened language, including proposed mandatory sanctions and the removal of certain exemptions.[30] In order to be adopted by qualified majority and become law, agreement on the legislation's language among the Member

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20 *Id.*

21 *Id.*

22 *Annex to the Communication From The Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions*, COM/(2011) 777 (Nov. 15, 2011), https://ec.europa.eu/info/sites/info/files/cwp2012_annex_en.pdf ("Following the gender equality strategy, a Recommendation would aim to improve gender balance in company boards. As well as being a fundamental right, gender equality is crucial for the EU's growth and competitiveness.").

23 *Proposal for a Directive of the European Parliament and of the Council on improving gender balance among non-executive directors of companies listed on stock exchanges and related measures*, COM/2012/614 615 final (Nov. 14, 2012), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF /?uri=CELEX:52012PC0614&from=EN. *See* Press Release, *Women on Boards: Commission proposes 40% objective*, European Comm'n (Nov. 14, 2012), http://europa.eu/rapid/press-release_IP-12-1205_en.htm. Public undertakings for purposes of the proposal are defined in Commission Directive on the Transparency of Financial Relations between Member States and Public Undertakings as Well as on Financial Transparency within Certain Undertakings, COM(2006)111 (Nov. 16, 2006), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0111&from=EN.

24 *Id.*

25 *Id.*

26 *Women in economic decision-making in the EU: Progress report*, Directorate—General for Justice (Eur. Comm'n) (Dec. 20, 2012), https://publications.europa.eu/en/publication-detail/-/publication/8832ea16-e2e6-4095-b1eb-cc72a22e28df/language-en.

27 *Id.*

28 *Id.* at 11.

29 *Id.* at 15.

30 European Commission Press Release, *Cracking Europe's Glass Ceiling: European Parliament backs Commission's Women on Boards proposal*, Eur. Comm'n (Nov. 20, 2013), http://europa.eu/rapid/press-release_IP-13-1118_en.htm.

States and the European Parliament must be reached. Despite several pronouncements of continued support, including a 2016 recommendation in the EU Parliament's Work Plan that adopting the directive should be a priority for 2016, the proposal failed to pass.[31]

The Strategic Engagement for Gender Equality 2016-2019 (the "EU Third Strategy") was released on December 12, 2015. While the report touted women's highest employment rate ever recorded at 64% in 2014, it noted "persistent inequality" in other areas, including pay and earnings, and described promoting women to decision-making roles as the area least-addressed by the EU Member States.[32] As of the date of the EU Third Strategy, women comprised only 21% of the board positions of the largest listed companies, 29% of the EU Parliament and national parliament positions in EU Member States, and 27% of Member States' national governments and the European Commission.[33]

Reflecting policy themes from the previous strategies, the EU Third Strategy identified key priorities for 2016-2019, including increasing women's employment, reducing the compensation gap between men and women, advancing equality in decision-making, ending gender-based violence, and advancing gender equality around the world.[34] Key actions to address these priorities include:

- Integrate gender-equality principles into all EU activities
- Ensure equal treatment laws are enforced
- Ensure funding for EU programs aimed at promoting gender equality
- Improve data collection in conjunction with the EIGE and other European entities
- Share best practices among Member States and promote cooperation
- Conduct annual assessments of progress on key actions and gender equality statistics, and determine whether additional action is needed.[35]

With respect to promoting women's access to decision-making positions and representation among leadership positions, the EU Third Strategy identified several key actions specifically with respect to workplace gender balance and representation of women in management:

- Support the 2012 proposed directive discussed above and other targeted policy actions, and facilitate their integration in Member States
- Collect and publish data on gender equality in decision-making positions in cooperation with EIGE
- Guide Member States for consistent implementation of measures to improve gender equality in "decision making positions in research"
- Increase women's representation in the Commission's senior and middle management to 40% by the close of 2019[36]

The EIGE's 2017 gender equality index report, which analyzed data from 2005 to 2015, found only marginal progress toward gender equality generally, with the most significant progress reflected in a growing representation of women on

31 *Gender Balance on Boards*, European Parliament, http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-gender-balance-on-boards (lasted updated July 20, 2018).

32 *Strategic Engagement for Gender Equality 2016-2019*, European Comm'n 6 (2016), https://ec.europa.eu/info/sites/info/files/strategic_engagement_en.pdf.

33 *Id.* at 7.

34 *Id.* at 9.

35 *Id.*

36 *Id.* at 14.

corporate boards.[37] Since 2005, immediately before the formal strategies were introduced, the proportion of women on boards of the largest companies nearly doubled over 10 years (by 2015);[38] 60% of such companies had more than one woman on the board, and the percentage of companies with all male boards dropped to 21% from 50%.[39] The EIGE's latest data, as of October 2017, shows that women account for 25.3% of board members in the largest publicly listed companies in Europe, up from 21% per the EU Third Strategy's released in 2015.[40] The EIGE attributes much of this progress to the imposition of mandatory quotas for board diversity in a number of the most successful Member States.[41] While progress has been made in this area, the EIGE has noted a slowing in the rate at which women are being added to corporate boards of publicly listed companies.[42]

On July 19, 2017, the European Commission issued a new Diversity and Inclusion Charter providing a general commitment to inclusion within the European Commission regardless of gender,[43] and adopting a number of measures to bring female representation in its own management to at least 40% by November 1, 2019. Among the measures are specific targets for leadership in all European Commission departments, and those that fail to achieve their targets may be asked to attract suitable female candidates before appointing department heads.[44]

In November 2017, the European Commission issued the EU's Action Plan 2017-2019 (the "Action Plan"), which reiterates the Commission's commitment to breaking the glass ceiling, and encouraging Member States to adopt strategies with concrete measures to ensure improved gender balance in decision-making.[45]

EU Diversity Initiatives

Beyond gender equality, the Charter of Fundamental Rights of the European Union (the "Charter") discussed above includes an expansive prohibition on discrimination on *any grounds, including "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation."*[46] The European Commission has initiated a number of directives under the Charter intended to protect a broad range of rights, including:

- Non-discrimination on grounds of race and ethnic origin[47]
- Non-discrimination at work on grounds of religion or belief, disability, age or sexual orientation[48]
- Equal treatment for men and women in occupational social security schemes[49]

37 *Gender Equality Index 2017: Measuring gender equality in the European Union 2005-2015*, Eur. Inst. for Gender Equal. 37 (2017), https://eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measuring-gender-equality-european-union-2005-2015-report.

38 *Id.* at 47.

39 *Id.*

40 *2018 Report on equality between women and men in the EU*, Eur. Comm'n 31 (2018), http://ec.europa.eu/newsroom/just/document.cfm?doc_id=50074.

41 *Id.*

42 *Id.* at 32.

43 *EU Commission's new Diversity and Inclusion Charter*, EU Business (July 19, 2017), https://www.eubusiness.com/topics/employment/diversity-inclusion. The charter includes commitments for gender and other types of diversity, as discussed below.

44 *Id.*

45 *Communication From The Commission to The European Parliament, The Council and The European Economic and Social Committee: EU Action Plan 2017-2019, Tackling the gender pay gap*, COM(2017) 678 final (Nov. 20, 2017), https://eur-lex.europa.eu/resource.html?uri=cellar:19320cc0-cde3-11e7-a5d5-01aa75ed71a1.0022.02/DOC_1&format=PDF.

46 Charter of Fundamental Rights of the European Union, art. 23.

47 Directive 2000/43/EC (June 9, 2000), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML.

48 Directive 2000/78/EC (Nov. 27, 2000), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078.

49 Directive 2006/54/EC (July 5, 2006), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054.

- Equal treatment for men and women engaged in an activity in a self-employed capacity[50]
- Protection of pregnant workers, workers who have recently given birth and women who are breastfeeding[51]
- Non-discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace (proposal)[52]
- Equal treatment between men and women in the access to and supply of goods and services[53]

Despite nominally promoting equality of these protected groups, the European Commission has been criticized for a lack of specific commitments for ethnic and racial diversity, and for generally failing to introduce the same kind of targeted data collection and strategic plans that it has implemented to achieve gender equality. As an example, the Diversity and Inclusion Charter of July 2017 discussed above, which focused on the Commission's own management, include specific programs supporting women, disabled staff, LGBTI awareness and bias training, and monitoring age discrimination. Despite references to the European Commission's broad anti-discrimination mandate and Article 21, the Charter failed to identify any meaningful initiatives for racial and ethnic equality and diversity.

Conclusion

The European Commission has signaled its ongoing commitment to achieve gender-balanced boards and, as a result, has had some success in increasing the proportion of women on corporate boards, and more generally, in corporate management. While the European Parliament and certain Member States have advocated for mandatory quotas, and some have implemented them at the Member State level, proposed directives applying mandates at the European level have not passed, although the EIGE's data suggests such "hard" measures have been effective.[54] Despite positive developments over the past 10 years, such measures failed to reach their stated target goals of 30% by 2015, and with a slowing rate of increase, are not on track to achieve 40% by 2020. With respect to other forms of diversity, though the European Commission has implemented certain specific programs, such as supporting workplace diversity for women, the disabled, and the LGBTI community, and monitoring and preventing age discrimination, it has failed to implement meaningful, specific policies in furtherance of its broad conception of diversity enshrined in the Charter.

50 Directive 2010/41/EU (July 7, 2010), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0041.

51 Directive 92/85/EEC (Oct. 19, 1992), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085.

52 Directive Proposal COM/2008/462, http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52008PC0426.

53 Directive 2004/113/EC, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0113.

54 *See* European Parliament, *supra* note 31.

Austria

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Austria has historically struggled to keep up with the rest of the EU in its progress toward gender diversity on boards. As discussed further below, limited soft measures in Austria (and ostensibly general social progress in gender equality) have increased the percentage of women on boards over the past decade. In 2010, only 5.3% of executive board positions were held by women, and women held 9.7% of supervisory seats of the top 200 Austrian companies (by sales).[1] As of January 2018, the proportion of women on the supervisory boards of the top 200 companies in Austria (by sales) was 18.5%, and the proportion of women on boards of Austria's publicly traded companies was 18%.[2] In 2018, taking a cue from other EU countries that have made meaningful progress through the implementation of gender quotas,[3] Austria adopted similar measures. As of January 1, 2018, Austria's "Law on Equality for Women and Men as Non-Executive Directors on Company Boards" took effect, which imposed a mandatory 30% gender quota on the supervisory boards of Austria's largest companies, with appointments made in contravention of the law considered legally void. As one of the most recent adopters of a mandatory quota, Austria will be a country to watch moving forward as a benchmark for the efficacy of such quotas.

Austrian Gender Diversity Laws

Article 7 of the Austrian Federal Constitutional Law requires that "all nationals are equal under the law" and that "privileges based on upon...sex" are prohibited.[4] In 1998, to conform to the UN General Assembly's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 7(2) was added to the Constitution, requiring federal, state, and municipal government to "promote factual equality of women and men, particularly by eliminating actually existing inequalities…"[5] In 2009, Austria amended its Constitution once again to provide for the "equal status of women and men in budgeting."[6]

Austria's Equal Treatment Act was first enacted in 1979 to address the equal treatment of men and women at work,[7] and now includes several later amendments expanding gender equality protections, including prohibition of unequal treatment on the basis of gender.[8] The law originally only addressed the treatment of women and men in employment at private enterprises, but was later expanded to cover areas tangential to and outside of work. [9] The scope of the Equal Treatment Act of 1979 (the "ETAct") prohibits gender discrimination in a wide range of contexts, including hiring and firing employees, promotions, access to job training, access to employees' organizations, self-employment-related activities, and access to public benefits.[10] The prohibition on gender discrimination includes discrimination based on pregnancy.[11] The ETAct does not prohibit positive discrimination, such as providing special training programs for

1 *National Action Plan, Gender Equality in the Labour Market*, Bundeskanzleramt Osterriech 23 (June 2010), https://www.bmgf.gv.at/cms/home/attachments/4/5/7/CH1553/CMS1465832947892/napbericht_en_2011_26512.pdf.

2 *Frauen Management Report 2018*, Abteilung Betriebswirtschaft, AK Wien (2018), https://media.arbeiterkammer.at/wien/PDF/studien/AK.Frauen.Management.Report.2018.pdf.

3 Other countries in the European Union that have adopted mandatory quotas include Belgium, Germany, and France. See the profiles for these countries *infra. See also Women in the boardroom: A global perspective*, Deloitte 46, 52-53 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

4 AUSTRIAN CONSTITUTION OF 1920 (reinstated 1945, amended 2009), https://www.constituteproject.org/constitution/Austria_2009.pdf.

5 *Id.; see Austria*, Eur. Inst. for Gender Equal., http://eige.europa.eu/gender-mainstreaming/countries/austria/about (last visited Aug. 29, 2018).

6 AUSTRIAN CONSTITUTION OF 1920 (reinstated 1945, amended 2009).

7 *Equal Opportunities: Equal Treatment Legislation in Austria*, Fed. Ministry of Labour, Social Affairs & Consumer Protection 6-7 (2016), https://broschuerenservice.sozialministerium.at/Home/Download?publicationId=46.

8 *Id*. In 2008, non-discrimination on the basis of gender was extended to apply beyond the workplace, and in 2011, expanded measures for transparency in gender income disparity were included. Additional measures were added in 2013 to cover self-employment. *Id*. at 7.

9 *Id.* at 11-12.

10 *Id.*

11 *Id.*

underrepresented groups, including training programs to advance women in management.[12] Claims of discrimination under the ETAct are heard before Austria's Equal Treatment Commission.[13]

Federal laws for the promotion of women in the workplace have advanced since the early 2000s. In 2000, the government established the Inter-ministerial Working Group for Gender Mainstreaming to promote gender mainstreaming across Austrian ministries.[14] In 2011, Austria's National Action Plan for Gender Equality in the Labor Market law ("National Action Plan") introduced a number of measures to enhance workplace gender equality to be carried out by various government institutions such as the Federal Ministry of Labor, Social Affairs, and Consumer Protection, and the Federal Chancellery.[15] It further required companies with 1,000 employees or more to publish a report indicating average salaries by gender.[16] Austria also implemented gender quotas for public institutions: 45% for almost all positions in the Austrian Public Broadcasting Service; 40% for members of decision-making committees and boards of Austrian universities; and 50% for federal staff positions. A separate regulation provides that the academic panels at the University of Applied Sciences shall be comprised of 45% women "if possible."[17] While these quotas are laudable, there are no sanctions for failure to comply.[18]

In March 2011, the Austrian government also imposed quotas for corporate boards of directors of majority state-owned companies: they were required to achieve 25% women by 2013, and 35% by December 2018. According to an annual progress report that provides statistics on the law's effectiveness, 2017 was the first year that all 54 companies subject to the rule met the 2013 quota target.[19] Some companies have exceeded the quota: looking at the average across the state-owned companies, women's board representation reached 46.7% in 2017 (a substantial increase compared to the previous year at 40.3%), and 37 companies met or exceeded the 2018 target of 35%.[20] In late 2017, the Austrian finance minister announced a targeted quota of 50% women for supervisory boards of companies associated with the Finance Ministry (which would include state-owned entities, as the federal government has delegated the Finance Ministry authority to manage the government's equity interests in companies).[21] This may have driven the 6.4% increase from 2016 to 2017 in women's board representation at majority state-owned companies.[22] Although meaningful progress has been made, it should be noted that the affected companies—majority state-owned companies—are a small subset of all companies in Austria.

Most recently, on July 26, 2017, Austria adopted the Law on Equality for Women and Men as Non-Executive Directors on Company Boards (the "Law"), which became effective January 1, 2018.[23] The Law requires companies listed on a regulated stock exchange in Austria, the EU, the Economic Area, or any other equivalent market, and those with more than 1000 employees, to have boards comprised of at least 30% women and men.[24] The Law exempts companies

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12 *Id.* at 25.

13 *Id.* at 39.

14 *Austria*, Eur. Inst. for Gender Equal., http://eige.europa.eu/gender-mainstreaming/countries/austria/laws-and-policies (last visited Aug. 31, 2018).

15 *Achievements in Austrian Gender and Social Policy*, Austrian Embassy Washington (June 24, 2015), http://www.austria.org/austrianinformation/2015/6/24/achievements-in-austrian-gender-and-social-policy.

16 *Id.*

17 *Id; see* University of Applied Sciences Act § 10 (2014), https://bmbwf.gv.at/fileadmin/user_upload/E_FHStG.pdf.

18 *Id.; see* Deloitte, supra note 3, at 45.

19 *Fortschrittsbericht 2018 über die Erhöhung des Frauenanteils in den Aufsichtsgremien der Unternehmen mit einem Bundesanteil von 50% und darüber*, Bundeskanzleramt Osterriech (Mar. 1, 2018), https://www.bundeskanzleramt.gv.at/documents/131008/688849/10_5_mrv.pdf/b9d0db13-56a5-45c4-afcc-c6e2af082d32. In 2016, eight companies did not meet the 2013 quota.

20 *Id.*

21 *See Schelling: "Supervisory boards of Finance Ministry associates consist mainly of women" Austrian Finance Minister meets supervisory-board members of BMF-associated companies*, Fed. Ministry Republic of Austria (Oct. 11, 2017), https://english.bmf.gv.at/ministry/press/BMF_female_supervisory_board_members_are_majorityy.html; *Management of State-Owned Enterprises*, Fed. Ministry Republic of Austria (2018), https://english.bmf.gv.at/budget-economic-policy/Management-of-State-Owned-Enterprises.html (last visited Sept. 12, 2018).

22 Bundeskanzleramt Osterriech, *supra* note 19.

23 *Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat* (2017), https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_104/BGBLA_2017_I_104.html.

24 Abteilung Betriebswirtschaft, *supra* note 2, at 16.

with boards of fewer than six members, and companies with less than 20% of total employees of the underrepresented gender, or "single gender" companies.[25] Like similar laws in Europe, including Germany and Belgium, any appointment made in violation of the Law is void.[26] According to information provided by all listed companies, only 31 companies are covered by the new law.

In Austria, companies generally must have a management board, and stock corporations are required to have a two-tier management structure including a management (or executive) board and a supervisory board.[27] As of 2010, before implementation of the National Action Plan, only 5.3% of executive board seats and 9.7% of supervisory board seats were held by women.[28] According to the annual survey of public and top 200 companies in Austria by sales, the proportion of women on the management board of the top 200 companies is currently just 8.4%, and in the supervisory boards, women represent 18.5%.[29] Only 37 of the top 200 companies by sales have women on both the supervisory board and the management board.[30] Only 13 companies, and thus 6.5% of the top 200 companies, report that they have a balanced board (that is, a board where each gender has 40% to 60% board representation).[31] More than a quarter of the top 200 companies surveyed (56 out of 200) did not have a single female member of the Supervisory Board.[32]

In surveys, publicly traded companies fare worse. The proportion of women on the supervisory boards of publicly traded companies (listed on a stock exchange) is lower, at just 18%.[33] Of the 68 companies listed on the Vienna Stock Exchange, only 13 met the criteria stipulated under Austria's new quota system of boards with gender representation of at least 30%, and almost one third of the Supervisory Board committees of listed companies examined are exclusively men.[34]

Corporate Governance Code

In addition to the laws noted above, Austria's Code of Corporate Governance, published by the Austrian Working Group for Corporate Governance, is mandatory for companies listed on the Prime Market of the Vienna Stock Exchange.[35] Section 52 provides that, when new board members are appointed, "reasonable attention is to be given to the aspect of diversity of the supervisory board with respect to the representation of both genders…"[36] The Code also requires transparency measures in company annual reports, including information on the gender compositions of the supervisory boards and management positions, as well as "measures taken to promote women to the management board, supervisory board and to management positions in the company during the reporting year."[37]

General Diversity Initiatives

Austria's Constitution provides in Article 7 that there shall be no privilege on the basis of "birth, sex, estate, class, or religion." Austria's ETAct provides more granularity to this concept of non-discrimination, including prohibitions on

25 *Austria enacts legislation for a 30% quota of women on Supervisory company boards*, Eur. Comm'n (Nov. 23, 2017), https://www.equalitylaw.eu/downloads/4510-austria-austria-enacts-legislation-for-a-30-quota-of-women-on-supervisory-company-boards-pdf-168-kb.

26 *Id.; see 2018 Report on equality between women and men in the EU*, Eur. Comm'n 34 (2018), https://publications.europa.eu/en/publication-detail/-/publication/950dce57-6222-11e8-ab9c-01aa75ed71a1/language-en.

27 Austrian Corporate Governance Code (amended 2015).

28 Bundeskanzleramt Osterriech, *supra* note 1.

29 Abteilung Betriebswirtschaft, *supra* note 2, at 23.

30 *Id.*

31 *Id.* at 24.

32 *Id.* at 26.

33 *Id.* at 30.

34 *Id.*

35 Austrian Corporate Governance Code (amended 2015).

36 *Id.*

37 *Id.*, § VI, Annex 1, Annex 2a.

discrimination on the basis of gender, ethnicity, religion or beliefs, age, or sexual orientation.[38] The prohibition on discrimination on these grounds applies to employment, pay, benefits, training, promotion, working conditions, and termination.[39] Remedies for such discrimination include monetary damages or remediation of the discriminatory practice.[40] Discrimination on the basis of disability is also prohibited under a separate mandate for Equal Treatment of People with Disabilities, enacted in 2006.[41] The protections for individuals with disabilities are in some cases more stringent than those under the Equal Protection Act, but generally overlap with the rights of individuals under the Equal Protection Act.

In addition to these legal protections, Austria also has a Diversity Charter that was established in 2010, initiated by the Austrian Federal Economic Chamber and the Vienna Chamber of Trade and Commerce and a private diversity consultancy (the "Diversity Charter").[42] The Diversity Charter, which has approximately 215 signatures, including both public and private companies,[43] promotes diversity based on the same classes protected under the Equal Treatment Act and mandate for Equal Treatment of People with Disabilities. It is purely voluntary, and signals a public commitment by signatories to diversity principles and advancement of diverse individuals in the workplace.[44]

Conclusion

Over the past decade, Austria has struggled to keep pace with the rest of Europe with respect to women's representation on boards. However, it has signaled a strong commitment to improving the situation by establishing mandatory measures for state-owned companies in 2011, and mandatory quotas for publicly listed and companies with 1,000 or more employees in 2018. Austria's ETAct provides broad legal protections for women and other diversity classes. The measures for state-owned companies have led to meaningful progress toward gender equality on boards of these companies, but not at the pace originally envisioned. Austria's very recent quotas for public and 1,000-plus employee companies may spur an increase in the rate of change, although the quotas apply to a very limited range of companies, and its "single gender" company exception could provide a loophole for companies with the most significant need for equality measures.

38 Fed. Ministry of Labour, Social Affairs & Consumer Protection, *supra* note 7. *Austria*, Eur. Inst. for Gender Equal. (2018), http://eige.europa.eu/gender-mainstreaming/countries/austria/laws-and-policies (last visited Aug. 31, 2018).

39 *Id.*

40 *Id.*

41 *Id.*

42 *See Charter der Vielfalt*, Austrian Econ. Chambers (2018), https://www.wko.at/site/Charta-der-Vielfalt/index.html?shorturl=charta-der-vielfaltat (last visited Sept. 12, 2018).

43 *19 Diversity Charters in the EU*, Equality Strategies (Dec. 19, 2017), https://www.equalitystrategies.com/blog/2017/12/19/19-diversity-charters-in-the-eu/.

44 *See* Austrian Econ. Chambers, *supra* note 42.

Belgium

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Belgian Mandatory Quota

Belgium is one of the few countries that have embraced mandatory quotas for public companies, and is referred to by advocates that support "hard" laws as one example of mandatory quotas working to increase board diversity.[1]

In September of 2011, Belgium adopted the "Act to amend the Act of 21 March 1991 for reform of certain public economic enterprises, public companies and the law of 19 April 2002 on the rationalization of the operation and management of the National Lottery in order to ensure the presence of women on the board of directors of publicly listed companies and the National Lottery" (the "Law"). The Law, which became effective in 2012, requires that Belgium's largest publicly traded companies and certain state-owned or -controlled entities achieve gender parity by requiring that at least one-third of the entity's directors be of a different gender than other members of the board. Companies listed in a regulated market had until fiscal year 2017 to comply, and smaller companies (such as those with less than 250 employees and with lower net sales or balance sheet totals) have until fiscal year 2019. The quotas became immediately effective after the law's publishing for state-owned entities. Functionally, this requires at least one-third of each board to be comprised of women.[2] Under the Law, the legislative chambers will evaluate the effectiveness of the law in 2023 (the twelfth fiscal year after publication).[3]

For state-owned or -controlled entities, the Law provides for certain procedures if the quota is not met. For example, if the board is not composed of at least one-third women, the next appointed director must be a woman. Any appointment made in violation of this Law is void.[4] Unlike the financial penalties imposed on publicly-listed companies (see below), the law does not provide for monetary sanctions for state-owned enterprises or the National Lottery.

For publicly-listed companies, the Law also amended the Belgian Business Code to impose a similar quota and sanctions for boards that did not follow the law,[5] *i.e., boards must have at least one-third of a different gender than the rest of the board.*[6] If the company does not meet the quota at any time after the quota's relevant effective date, the next appointee must be of the underrepresented gender, or the appointment is void. If the board does not meet the quota, it is required to take actions to meet the quota at its next general meeting. Benefits to the directors (*e.g., financial rewards and other benefits) are to be suspended and not to be paid in the future for that period, and such benefits may not recommence until the board is compliant. This creates a strong financial incentive for board members to ensure the quota is met and, by imposing monetary sanctions on directors personally, is one of the more stringent quota-based laws.*[7]

Effectiveness of the Quota

After enactment of the Law, the percentage of female board members increased at a sharply faster rate than in other Member States of the EU that had "soft" laws, e.g., that did not impose quotas and/or involve sanctions for

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1 *See e.g.*, Simona Comi et al., *Quotas Have Led to More Women on Corporate Boards in Europe*, London Sch. of Econ. Bus. Review (Aug. 2016), http://blogs.lse.ac.uk/businessreview/2016/09/30/quotas-have-led-to-more-women-on-corporate-boards-in-europe/; *Women in the boardroom: A global perspective*, Deloitte 46 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

2 For purposes of calculating the quota, the minimum number is rounded to the nearest whole number.

3 Law of 28 July 2011, to ensure that women have a seat on the board of directors of state-owned enterprises, listed companies, and the national lottery, Moniteur Belge, 2 Ed., 59600 (Sept. 14, 2011), art. I (Sept 14, 2011). The law provides nearly identical provisions for the National Lottery.

4 *Id.*

5 The 2009 version of this law recommends that boards of directors reflect gender diversity as a standard practice, but did not include the mandatory quota requirements.

6 Law of 28 July 2011, art. III.

7 *Id.,* ch. 3.

non-compliance.[8] As of October 2017, women represented 30.7% of board members of the largest publicly listed companies in Belgium, exceeding Europe's total percentage of 25.3%.[9] For Belgium, this represents a 20.2% increase from 2010, immediately before the Law took effect.[10] The Law has been extremely effective in closing the gender divide, and is often referenced as an effective model for mandatory standards with meaningful sanctions.

Gender Parity Initiatives

Women on Board is a non-profit association started by women with the goal of "increasing female board representation in Belgian private and public enterprises…."[11] It was launched in 2009, funded in part by the Belgian Institute for Equality of Women and Men.[12] Women on Board's mission is to create a "pool" of qualified women by providing mentoring and training opportunities, and to facilitate relationships with Belgian companies looking for female board directors. Women on Board has introduced a Women Intergenerational Digital Dialogue Program, which aims to provide young high-potential women with mentoring on management and corporate governance, in return for the mentees providing "reverse mentoring" on technology skills.[13] The pool has grown to hundreds of women with high-profile company partners.

General Diversity Laws and Initiatives

Belgian Diversity Laws

Article 10 of the Belgian Constitution provides that "No Class distinctions exist in the State. Belgians are equal before the law" and "[e]quality between women and men is guaranteed." Article 11 provides that the "rights and freedoms recognized for Belgians must be provided without discrimination."[14] However, the Constitution does not provide further detail on the types of diversity it is intended to protect.

More specific prohibitions against discrimination are found in federal legislation. The Gender Act of May 10, 2007 proscribes discrimination on the basis of sex, maternity, pregnancy, and transgender status. The Discrimination in General Act of May 10, 2007 prohibits discrimination based on additional criteria, including sexual orientation, birth, wealth, religious convictions or philosophies, political convictions, health, handicap, union affiliation, language, physical or genetic characteristics. The Race Act of May 10, 2007 prohibits discrimination on the basis of national origin, ethnicity, race, or color. Individuals who have been discriminated against in the course of employment have recourse under civil law to file discrimination charges if they are discriminated against on the basis of any of these characteristics. These laws, which were primarily amendments of previously existing laws, were implemented to meet the requirements of EU directives on the same topics.[15] Various laws covering these same protected classes have also been implemented at the regional level.

Diversity Charters

Companies can also sign voluntary diversity charters issued by regional government entities to demonstrate a commitment to diversity. These charters encourage companies to implement diversity principles and signal a commitment by such companies. For example, the Brussels-Capital Region Diversity Charter (the "Brussels Charter") was implemented in 2005.[16] Those companies signing the Brussels Charter make several commitments to diversity,

8 Comi, *supra* note 1.

9 *2018 Report on Equality Between Women and Men in the EU*, European Commission 31 (2018), http://ec.europa.eu/newsroom/just/document.cfm?doc_id=50074.

10 *Id.* at 32.

11 *Women on Board, About*, http://www.womenonboard.be/about/history (last visited Sept. 12, 2018).

12 *Id.*

13 *Women on Board, Mentoring and Training*, http://www.womenonboard.be/mentoring-training (last visited Sept. 12, 2018).

14 BELGIAN CONSTITUTION. art. 10-11 (English translation), https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf.

15 *Country Report, Non-Discrimination: Belgium*, European Commission (2017), https://www.equalitylaw.eu/downloads/4348-belgium-country-report-non-discrimination-2017-pdf-2-36-mb.

16 *Belgian Diversity Charter*, European Commission, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/tackling-discrimination/diversity-management/diversity-charters-eu-country/belgian-diversity-charter_en (last visited Aug. 29, 2018).

including having a defined diversity plan and promoting diversity principles in human resources. At last count, the Brussels Charter had over 162 signatories. Other diversity charters in Belgium include the Walloon Diversity Charter and the Flemish Action Plan.

Conclusion

As an early adopter of mandatory quota laws, Belgium is cited by advocates of such quotas as an example of how “hard laws” can be effective in advancing gender equality on corporate boards. Belgium’s law not only voids appointments inconsistent with the quota, but provides a financial disincentive for board members who do not bring their boards into compliance. Likely as a result of the strength of this mandate, Belgium has notably exceeded Europe’s pace in advancing board gender equality.

Denmark

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The Danish Corporate Structure

Denmark has a dual-executive system of corporate governance, comprised of two tiers of management: (1) a board of directors (*bestrylse) of three or more board members that is responsible for the company's long-term strategy and (2) a board of managers (direktion) of one or more executives who oversee daily management. Members of the board of directors are selected during annual general shareholder meetings and typically serve one-year appointments, while members of the board of managers are hired by the directors as at-will employees.*[1]

Women

Women in the Workforce and Society

Denmark's female labor participation rate, at 70%, is about 12% higher than the EU average.[2] However, some have argued that Danish social legislation has an effect of perpetuating gender stereotypes, with maternity leave benefits outpacing paternity benefits.[3] Further, it is suggested that Denmark's progressive tax rate may discourage women from working longer hours and assuming extra responsibilities at work because any financial gain from the additional effort is lost to taxes.[4] Though Denmark ranks high in gender equality with respect to education and women's rights against discrimination, career opportunities for women in the political and economic realms lag behind other Nordic countries.[5]

Women in Corporate Leadership

- **The Number of Companies with No Shareholder-Elected Female Directors Remains High:** In 2001, 75% of companies with 100 or more employees had no shareholder-elected female directors, a number that had only fallen to 67% by 2012.[6] Based on a 2015 study of Denmark's 169 largest companies, 43% (73) still did not have a woman on their boards.[7]

- **Greater Gains in Larger and Publicly-Listed Companies:** Female board representation among Danish companies with at least 200 employees increased from 9.6% in 2009 to 17% in 2015; the largest gains were seen in publicly-listed corporations where the share of female board seat participation stood at 23%.[8]

- **Increased Independence of Female Directors:** While 44% of shareholder-elected female directors had a close family relationship to another board member (versus 6% for men), that number fell below 30% by 2012.[9]

- **Greater Demand for Highly Sought After Female Directors:** The number of board seats that female directors held in 2012 versus 2001 increased from three to four, while the median remained unchanged, suggesting that there is a select population of highly sought female directors filling these roles.[10]

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1 Aleksandra Gregoric & Jesper Lau Hansen, *Women's Path to the Boardroom: The Case of Denmark*, Gender Diversity in the Boardroom, Vol. 2: Multiple Approaches Beyond Quotas, 163-64 (2017).

2 *Id.* at 159.

3 Stephen Gadd, *More women in the boardroom, Danish survey reveals*, Copenhagen Post (Sept. 14, 2017), http://cphpost.dk/news/more-women-in-the-boardroom-danish-survey-reveals.html.

4 Gregoric et al., *supra* note 1, at 177.

5 *Id.* at 159-60.

6 *Id.* at 170.

7 Tine Artensen Willumsen, *Developing the Future Generation of Leaders*, AmCham Denmark Event (Mar 1, 2017), http://amcham.dk/files/editor/Presentations/Tine_Arentsen_Willumsen.pdf.

8 Gregoric et al., *supra* note 1, at 170-71.

9 *Id.* at 171.

10 *Id.*

- **Increase in Female CEOs:** As of 2015, women comprised 12% of CEOs at Danish companies with more than 50 employees, a 5% increase from 2004.[11]

- **Gains in Female Executive Directors:** In 2002, 14% of executive directors were women, a number that increased to 21% in 2015.[12]

Legislation

In 2012, Denmark passed the Act on Gender Targets and related policies in an effort to advance the representation of women in company leadership and on boards. The legislation, which went into effect in 2013, requires Denmark's largest private companies (approximately 1,200 employers) to set targets, establish policies and report on results in both management leadership and boards. Unlike other Nordic countries, Denmark has not imposed quotas; however, Denmark is the only Nordic country to require its largest companies to maintain policies on how they will attain executive management-level gender diversity.[13]

Corporate Governance Code

The Danish Business Authority provides guidelines for Denmark's largest companies to improve representation of women in their management bodies.[14] The guidelines define "large" companies as those that satisfy any two of the following criteria for two consecutive financial years: (1) a balance sheet total of DKK 156 million; (2) net revenue of DKK 313 million; and/or (3) an average of 250 full-time employees.[15] Generally, foreign companies that do not have a registered office in Denmark are not subject to the guidelines.[16]

- **Equal Gender Distribution:** Companies that have a ratio of men or women at 40/60% in management and on their boards (or the number closest to 40%; for example, 33.33% when a board is composed of three individuals) are considered to have an equal distribution of men and women and, therefore, are not required to set target figures or establish policies to improve the gender balance.[17]

- **Target Figures for the Board of Directors:** A "target figure" is a goal, not a quota, for companies to obtain an equitable gender distribution in their boards of directors (what is referred to as the "supreme management body") and indicated in their annual reports. The target figures set by companies cover directors who are elected by the shareholders at general meetings but not those directors selected by employees or who are politically appointed. The guidelines require companies to set target figures that may be attainable within four years, the maximum time it takes for shareholders to replace individual board members. The target figures must be specific (*e.g., a fixed number of female board members or as a percentage of the total board members). While the guidelines are meant to be ambitious, they are also intended to be realistic and flexible, taking into consideration industry- and company-specific circumstances. Once a company has attained its target figure, it is not required to establish a new goal.*[18] Companies must publish their target figures and policies to increase equitable gender representation in their annual reports. The reports must indicate the companies' current progress, describe measures taken to achieve the targets set, and explain why the target figure has not yet been reached. However, a company with an equitable gender distribution (*i.e., 40/60%) need only report its figure.*[19]

11 Ben Hamilton, *Danish female board member numbers soar without the need for quotas*, Copenhagen Post (Jan. 19, 2017) http://cphpost.dk/news/business/danish-female-board-member-numbers-soar-without-the-need-for-quotas.html.

12 *Id.*

13 Iselin Løvslett Danbolt, *All About Business: Nordic Women on Boards and in Leadership*, Nordic Council of Ministers (2016), http://norden.diva-portal.org/smash/get/diva2:1045567/FULLTEXT03.pdf.

14 *Guidelines on Target Figures, Policies and Reporting on the Gender Composition of Management*, Danish Business Authority 4 (Mar. 2016), https://danishbusinessauthority.dk/sites/default/files/media/guidance_on_target_figures_policies_and_reporting_on_the_gender_composition_of_management.pdf.

15 *Id.* at 4-5.

16 *Id.* at 6.

17 *Id.* at 7.

18 *Id.* at 8-10.

19 *Id.* at 13-15.

- **Other Management Levels:** Companies with 50 or more employees are required to prepare formal policies for increasing the proportion of the underrepresented gender in other management levels, which includes executives and others in leading positions with responsibility for daily operations. The purpose of the policy of increasing gender diversity at other management levels is to develop a feeder pipeline for board positions. While companies have the discretion to choose the methods for improving gender balance in their management ranks, the guidelines offer as suggestions: mentor programs and networking, development of internal target figures, intra-company collaboration, and adopting employment practices that make manager positions attractive to both men and women.[20] Companies must publish their policies for increasing gender diversity in their annual reports, including concrete steps taken during the financial year and anticipated results of those initiatives in the future.[21]

- **Penalties for Non-Compliance:** Though the guidelines provide companies with discretion to establish their target figures for board gender composition and policies for other management levels, companies that fail to comply with establishing goals are subject to fines under Section 367 of the Danish Companies Act. Moreover, companies that fail to report their target figures and policies are subject to fines under Section 164 of the Financial Statements Act.[22]

In addition, the Danish Ministry of Industry, Business and Financial Affairs' Committee on Corporate Governance has issued a Danish Corporate Governance Code that applies to companies admitted to trading on a Danish regulated market such as the NASDAQ OMX Copenhagen A/S. The revised code, which became effective on January 1, 2018, eliminated a requirement that companies create a specific gender diversity target, instead recommending that they develop and implement a diversity policy that promotes "a relevant degree of diversity."[23]

Private Sector and Public-Private Initiatives

The Danish Advisory Council (DDC) is a partnership of the Danish Foreign Ministry, academic institutions and leading companies like McKinsey & Company, Maersk, PwC, and Microsoft. The DDC aims to increase the number of women in top Danish leadership positions through such efforts as leadership programs and mentorships with female role models in order to build a long-term pipeline of women in leadership roles.[24]

The Boston Consulting Group and the United Nations Women Nordic Office sponsor the Gender Diversity Roundtable (GDR), an initiative consisting of 15 Danish business and other organizational leaders, to share their experiences on advancing gender diversity in management ranks. The GDR also produces publications to influence policymakers on efforts to increase female management participation.[25]

Non-Ethnically Danish Workers

Historical Backdrop

Like its other Scandinavian counterparts, Denmark remained fairly ethnically homogeneous before the 1950s, with a minority German presence in the southern part of the country.[26] The first wave of foreign workers came to Denmark in the 1960s from Turkey to fill labor shortages associated with the post-war boom.[27] Denmark viewed workers from other countries as "guests" or "visitors" until the late 1970s.[28] As of 2013, two out of every three immigrants to Denmark have come from EU Member States, Norway or other western nations like the United States; its largest ethnic minority groups today are from Turkey, Poland and Germany.[29] Denmark's non-Danish ethnic population stood at 11.3% in

20 *Id.* at 12.

21 *Id.* at 15.

22 *Id.* at 18.

23 *Recommendations on Corporate Governance*, Comm. on Corporate Governance 13 (Nov. 2017) https://corporategovernance.dk/sites/default/files/clean_recommendations_version211217-7_002_0.pdf.

24 *The DDC Structure*, www.diversitycouncil.dk/structure.

25 *Gender Diversity Roundtable Denmark*, https://www.genderdiversity.dk/ (last visited Sept. 12, 2018).

26 Management and Diversity: Perspectives from Different National Contexts 263 (Mustafa Özbilgin et al. eds. 2017).

27 *Id.*

28 Research Handbook of International and Comparative Perspectives on Diversity Management 25 (Alain Klarsfeld et al. eds. 2016).

29 Management and Diversity, *supra note 26.*

2013.[30] By 2030, it is projected that 20% of individuals in Denmark between the ages of 20 to 69 years old will either be an immigrant or the child of an immigrant.[31]

Corporate Governance Code

The Danish Business Authority does not track the gender or ethnic composition of non-Danish citizens who sit on Danish companies' boards of directors or boards of management.[32] Data suggests that around 4% of directors are ethnically non-Danish (immigrants or their descendants), while about 3% of C-suite members are non-Danish.[33] The Danish Corporate Governance Code recommends that, at least once a year, companies' board of directors discuss efforts to ensure relevant diversity at management levels and adopt a diversity policy that is published on their websites.[34]

Legislation

Denmark passed an Act on Ethnic and Equal Treatment in 2003, which bars discrimination on the basis of race or ethnicity.[35] However, Denmark does not offer "positive action" (*i.e., affirmative action) based on race or ethnicity.*[36]

Conclusion

Denmark still has far to go to improve its gender equality gap; it ranks 80th in the world on the World Economic Forum's gender gap in leadership scale and 39th in wage equality for the performance of similar work.[37] And between 1995 and 2015, the number of female top executives at Danish companies only grew from 10% to 15%, while only 6% of all chairpersons are women.[38] Yet one of Denmark's leading employer organizations, the Confederation of Danish Industry (DI), is optimistic.

Charlotte Rønhof, DI's deputy director, has praised Denmark's incremental improvements. "She emphasises that the Danish legislation on the issue provides the basis to further the development. 'It is worth noting that Norwegian companies, who have had mandatory quotas for women on boards for the past 10 years, have not got more female chief executives. Meanwhile, in Denmark we can celebrate the fact that the proportion of women has increased—both in corporate management and in boardrooms,' said Rønhof."[39]

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30 Research Handbook of International and Comparative Perspectives on Diversity Management, *supra note 28, at 25.*

31 Stephen Gadd, *Immigrant population numbers to rise steeply compared to ethnic Danes*, Copenhagen Post (Jan. 5, 2018), http://cphpost.dk/news/danish-news-in-brief-immigrant-population-numbers-to-rise-steeply-compared-to-ethnic-danes.html.

32 Gregoric et al., *supra* note 1, at 169.

33 Lotte Hjortlund Andersen & Morten Kamp Andersen, *ISS Whitepaper: A diverse leadership yields higher earnings* 14 (Jan. 2016), https://rm.coe.int/16806b0928.

34 Comm. on Corporate Governance, *supra* note 23.

35 Erin Tolley, *Multiculturalism Policy Index: Immigrant Minority Policies*, Queens Univ. (2016), http://www.queensu.ca/mcp/sites/webpublish.queensu.ca.mcpwww/files/files/immigrantminorities/evidence/ImmigrantMinoritiesEvidence2016web(1).pdf.

36 *New Policies to Promote Youth Inclusion: Accommodation of diversity in the Nordic Welfare States* 65-66 (Rune Halvorsen and Bjørn Hvinden, Nordisk Ministerråd, 2015).

37 *The Global Gender Gap Report 2017*, World Economic Forum (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

38 Bodil Nordestgaard Ismiris, *Denmark Has Great Maternity Leave and Child Care Policies. So Why Aren't More Women Advancing?*, Harvard Bus. Review (May 11, 2018), https://hbr.org/2018/05/denmark-has-great-maternity-leave-and-child-care-policies-so-why-arent-more-women-advancing.

39 *More Danish boardroom jobs going to women: DI*, The Local DK (Sept. 25, 2017), https://www.thelocal.dk/20170925/more-women-in-danish-boardrooms-di.

Finland

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As the first country in the world to grant full political rights to women in 1906, Finland has remained a prominent figure in the development of women's rights in the decades that followed.[1] According to the World Economic Forum's 2017 Global Gender Gap Report, Finland ranked as the third most gender-equal country in the world.[2] In fact, Finland has landed a spot in the Report's top ten since 2006. One focus has been increasing female representation on corporate boards and in executive positions. Finland is one of only ten European countries where women hold at least a quarter of corporate board positions.[3] Despite this advancement, Finland still has room to grow in order to achieve gender parity, especially as it pertains to corporate and executive diversity.

Constitution and Legislation

The Finnish government has addressed discrimination in several ways. First, the Constitution itself contains a provision mandating that, "[e]veryone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person."[4] In addition, the Constitution also calls for the promotion of equality in societal activities and working life.[5]

Second, the Finnish Parliament has passed a number of pieces of legislation focused on promoting equality. For example, the Finnish Act on Equality between Women and Men seeks to address sex discrimination more broadly. Published in 1987, the Act seeks "to prevent discrimination based on gender, to promote equality between women and men, and to improve the status of women, particularly in working life."[6] In furtherance of this goal, the Act includes language requiring female representation on public bodies. Specifically, Section 4a mandates that, "[t]he proportion of both women and men in government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of inter-municipal cooperation, but excluding municipal councils, must be at least 40 per cent, unless there are special reasons to the contrary."[7] The Act calls for both a man and woman to be appointed into positions in these bodies wherever possible.[8] The Act does not just focus on diversity in public governing bodies. Instead, it contains sections addressing gender equality in education, working life, pay, and the workplace generally.

The Norwegian Parliament has also passed the Non-Discrimination Act, which seeks to "promote equality and prevent discrimination as well as to enhance the protection provided by law to those who have been discriminated against."[9] This Act applies broadly to both private and public institutions, and contains provisions addressing the promotion of equality in areas such as compensation, discriminatory contract terms, and education.[10]

To ensure compliance with the Equality Act and the Non-Discrimination Act, Finland has appointed two ombudsmen. The Ombudsman for Equality, part of the Ministry of Justice, oversees compliance with the Equality Act by providing

1 *Finland: Pioneer in Gender Equality*, Int'l Gender Equal. Prize, https://genderequalityprize.fi/en/finland-gender-equality.

2 *The Global Gender Gap Report 2017*, World Economic Forum (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

3 Vera Jourova, *Gender Balance on Corporate Boards: Europe is Cracking the Glass Ceiling*, European Commission, www.ec.europa.eu/newsroom/document.cfm?doc_id=46280.

4 SUOMEN PERUSTUSLAKI [CONSTITUTION] June 11, 1999 (Fin.), http://finlex.fi/en/laki/kaannokset/1999/en19990731_20111112.pdf.

5 *Finnish Ministry of Social Affairs and Health*, https://stm.fi/en/gender-equality/legislation (last visited Sept. 12, 2018).

6 *The Act on Equality Between Women and Men 2015*, Ministry of Social Affairs and Health Booklet 7 (2016), https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75131/Act_on%20Equality_between_women_and_men_2015_FINAL.pdf?sequence=1.

7 The Act on Equality Between Women and Men (Fin.) https://www.finlex.fi/fi/laki/kaannokset/1986/en19860609.pdf.

8 *Id.*

9 Non-discrimination Act (Fin.), https://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf.

10 *Id.*

guidance.[11] The Non-Discrimination Ombudsman, also part of the Ministry of Justice, oversees compliance with the Non-Discrimination Act.[12] Those who feel a violation of either the Equality or Non-Discrimination Acts has occurred can seek to have their cases heard before the National Non-Discrimination and Equality Tribunal, which aims to "give legal protection to those who consider they have been discriminated against or victimized."[13] The Ombudsmen and Tribunal assist in ensuring that progress is made in accordance with the Equality and Non-Discrimination Acts.

On the international level, Finland has also ratified human rights treaties aimed at addressing inequality. For example, Finland ratified the Convention on the Elimination of Discrimination against Women (CEDAW) on September 4, 1986.[14] As part of its duties under CEDAW, Finland submits periodic reports addressing related issues. The 2014 report noted that though "the proportion of women among the members of parliament, ministers in the government, municipal councilors and EU parliamentarians is approximately 40%," there was still room to grow.[15]

Although Finland has incorporated anti-discrimination language into its Constitution and other pieces of legislation, it has not passed legislation requiring a certain quota of women to be represented on corporate boards unlike some of its Nordic neighbors. Instead, the focus has remained on eliminating discrimination and promoting women more broadly.

Since 2004, however, the Finnish government has published objectives for state-owned companies, which includes the goal of 40% representation of men and women on their boards. This action plan is not mandatory and there is no reporting mechanism related to implementing this quota. The Finnish government recognizes the achievement of relatively high female representation on boards as meaningful, because "the record figures have been achieved via companies' own initiative and self-regulation as opposed to mandatory guidance of the authorities or new legislation."[16] Noting that quotas "do not fix the reasons behind the development," Finland has focused on the preparation and promotion of women in order to achieve gender parity.[17]

Corporate Governance Code

Although no legislation exists that mandates quotas for private corporate board diversity, Finland has updated its Corporate Governance Code to include recommendations on gender diversity in the corporate setting. Applicable to all companies listed on the Helsinki Stock Exchange, the Finnish Corporate Governance Code recommends that, "[b]oth genders shall be represented on the board."[18] Language regarding the inclusion of both men and women on corporate boards first appeared in the Code in 2003. Later revisions in 2008 strengthened the language, calling for all companies to include both genders on their boards.[19]

The Code requires that all companies adhere to the Code on a "comply or explain" basis, meaning that if a company fails to comply with the provisions of the Code, it must publish the reason for the deviation on its website and in the required annual Corporate Governance Statement.[20] For example, companies with all-male boards are required to issue a public statement with this information.[21] This grants companies some leeway in complying with each provision. As of 2012, the majority of the departures from the Code related to recommendation 9 (gender representation

11 *Ombudsman for Equality*, TASA-ARVO, https://www.tasa-arvo.fi/web/EN/.

12 *Non-Discrimination Ombudsman*, SYRJINTA, https://www.syrjinta.fi/en/web/EN/frontpage.

13 *National Non-Discrimination and Equality Tribunal*, YVTLTK, http://yvtltk.fi/en/index.html.

14 *Convention on the Elimination of All Forms of Discrimination Against Women*, U.N., https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited July 5, 2018).

15 *Submission to the United Nation's Committee on the Convention on the Elimination of All Forms of Discrimination against Women*, NYTKIS (Jan. 2014), http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/FIN/INT_CEDAW_NGO_FIN_16086_E.pdf.

16 *Record Number of Women Directors in Finnish Listed Companies*, Finncham Women Leaders Program 8 (2017), https://naisjohtajat.fi/wp-content/uploads/sites/28/2016/05/eng-keskuskauppakamarin-naisjohtajaselvitys-2017.pdf.

17 *Id.*

18 *Id.; see also The Corporate Governance Code* (Fin.), Sec. Market Ass'n, https://cgfinland.fi/en/corporate-governance-code/.

19 Finncham Women Leaders Program, *supra* note 16.

20 *Finnish Corporate Governance Code, 2015*, Sec. Market Ass'n, https://cgfinland.fi/wp-content/uploads/sites/39/2018/04/hallinnointikoodi-2015eng.pdf.

21 Finncham Women Leaders Program, *supra* note 16.

on the Board), recommendation 10 (term of directors), and recommendations 14 and 26 (independence of Board and Committee members).[22] The Securities Market Association has signaled that some of the departures from recommendation 9 (gender representation on boards) have given insufficient explanation.[23] Yet, the "comply or explain" strategy remains in place.

Other Areas of Government Involved

Other branches of the Finnish government have also addressed these issues. The Chamber of Commerce hosts a Women Leaders Program, which regularly issues reports on the status of female directors in Finnish companies. The 2017 report, titled *Record Number of Women Directors in Finnish Listed Companies,* noted that *the increased number of women board members—27% of board seats of listed companies are now held by women—has been obtained without the use of quota legislation.*[24] Instead of focusing on quotas, Finland has focused on creating programs that encourage and develop women, so as to prepare them for board membership. In addition, the Chamber of Commerce also hosts a mentoring program that provides both seminars and one-on-one sessions to women in middle-management positions seeking to expand their opportunities.[25] The goal of this program is to prepare women for positions both on boards and in executive roles.

The Ministry of Social Affairs and Health also implements a government action plan for gender equality. The plan for 2016-2019, adopted on May 4, 2016, contains about 30 measures aimed at ensuring that all governmental ministries take gender equality into consideration when making decisions.[26] They specifically target areas such as equal pay, immigrant reception, education, working life, and violence against women. One of the long-term objectives contained in the plan states that, "[b]y 2020, women and men will be equally represented (40-60%) on the boards of listed and state-owned companies."[27]

These objectives, though not mandatory, apply to state-owned companies and companies in which the government has a majority holding; companies with a direct or indirect government minority holding must "promote gender equality by nominating candidates for board members in a manner that is consistent with gender equality objectives."[28] By establishing these goals, the Finnish government seeks to "ensure development that will lead into equal representation of women and men on the boards of large and medium-sized listed companies. The Government will continue the ongoing programme to ensure the equal representation of women and men on state-owned company executive boards. The programme will also be extended to include other publicly owned companies."[29] As part of this process, the government will monitor companies' progress and determine whether legislation is required in the fall of 2018.[30] The Finnish government also plans to continue to monitor the program aimed at increasing female representation in state-owned companies to determine whether the Code and action plans have encouraged enough improvement in female representation.

European Union/European Commission

Finland is also a member of the European Union (EU), which has contemplated issuing a directive regarding gender quotas for years. In 2017, the European Commission contemplated requiring companies with a 60% male executive

22 *Comply or Explain: Departure from the Recommendations of the Finnish Corporate Governance Code*, Sec. Market Ass'n (Jan. 20, 2012), https://cgfinland2.fi/wp-content/uploads/sites/6/2012/01/Guideline_comply-or-explain_en.pdf.

23 *Id.*

24 Finncham Women Leaders Program, *supra* note 16.

25 *Mentoring Program – Taking Top Women to the Top*, Women Leaders Program, https://naisjohtajat.fi/en/mentoring-programme-2/.

26 *Government Action Plan for Gender Equality 2016-2019*, Ministry of Social Affairs and Health (2017), http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/79305/03_2017_Tasa-arvo-ohjelma_Enkku_kansilla.pdf.

27 *Id.* at 9.

28 *Id.* at 20.

29 *Id.*

30 *Id.* at 10.

leadership to prioritize female candidates for board positions.[31] Critics of such a directive have argued that this encroaches on businesses' decision-making authority and autonomy. Regardless, a 2012 EU directive called for all members to aim to achieve 40% female representation on corporate boards.[32]

In comparison to its EU neighbors, however, Finland maintains a high percentage of female representation on corporate boards. A 2016 study revealed that the average European country had 23% women on companies' boards, while Finland had 29.2%.[33]

Conclusion

Although Finland has championed women's rights for decades, it still has room to grow to achieve true equality. Finland has achieved its rapid increase in female representation on corporate boards through its Corporate Governance Code and government-sponsored programs aimed at preparing and mentoring women to take on these and other top positions. In the past, the government has refrained from passing legislation requiring certain quotas of female representation on boards. Whether that will continue remains to be seen, as the government plans to revisit whether legislation is necessary in the fall of 2018.

31 Daniel Boffey, *EU to Push for 40% Quota for Women on Company Boards*, The Guardian (Nov. 20, 2017), https://www.theguardian.com/world/2017/nov/20/eu-to-push-for-40-quota-for-women-on-company-boards.

32 *Proposal for a Directive of the European Parliament and of the Council on Improving the Gender Balance Among Non-executive Directors of Companies Listed on Stock Exchanges and Related Measures*, European Commission 5 (Nov. 14, 2012), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0614&from=EN.

33 *Women in the boardroom: A global perspective*, Deloitte 44, 51 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

France

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

In 2010, the proportion of women serving on corporate boards in France's CAC 40 listed companies was 15%, while there was only 9.5% female participation on the boards in a sample of 103 listed companies. Further, there were few indications that this trend would change. However, as shown below, that number has significantly increased with women now comprising 42% of board members in France's 40 largest companies as of March 2017. What created the change?

In light of the stagnation of progress under the voluntary approach, the French Parliament decided to implement a mandatory regulatory approach in order to give France's largest companies a serious and immediate incentive to change their behavior. After passing gender quota legislation in 2011, the proportion of female non-executive directors at France's top listed companies rose to 42% in 2017.

The French Constitution

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

Voluntary Approach: Corporate Governance Code

After the revision of the French Constitution, a new law was proposed in 2009 by two French deputies, Jean-François Copé and Marie-Jo Zimmerman, aimed at establishing quotas for women on corporate boards. One of the main French employer's organizations, the AFEP-MEDEF, anticipated this legislative move and advocated for a voluntary approach. In 2010, the AFEP-MEDEF amended its voluntary corporate governance code applicable to companies whose securities are traded on a regulated market. Pursuant to the revised Article 6-3 of the Code, "Each Board should consider what would be the desirable balance within its membership…in particular as regards the representation of men and women."[2] To reach this goal, the AFEP-MEDEF Code states that each board should "reach and maintain a percentage of at least 20 of women within a period of three years and at least 40 of women within a period of six years, from the date of publication of this recommendation or from the date of the listing of the company's shares on a regulated market, whichever is later."[3] Boards of directors that are elected are not included in the quotas.

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

1 The formal text reads: "la loi favorise l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives ainsi qu'aux responsabilités sociales et professionnelles."

2 *See Corporate Governance Code of Listed Corporations*, AFEP-MEDEF (Amended Apr. 2010) (English language version can be found at www.ecgi.org/code (last visited Apr. 9, 2018)).

3 *See* Code, Section 6.3.

appointing a new female board member or by replacing a male board member whose mandate is expiring.[4] Six years from the date of publication of the Code, for boards that have fewer than nine administrators, the difference between the number of male and female board members should not be greater than two.

The AFEP-MEDEF Code also requires that one-half or one-third of the members of the board of widely held and controlled companies, respectively, must be independent. In establishing criteria to assess "independence", the Code states that, in order to remain independent, a director must "not … have been a director of the corporation for more than twelve years."[5] As such, this tenure restriction should facilitate further turnover in board seats.

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

New Law Implements Gender Quotas

On January 27, 2011, after more than a year of discussions, the French National Assembly ("Assemblée nationale") and the French Congress (Sénat) passed legislation aimed at improving the representation of women on corporate boards, the Copé-Zimmermann Law. Copé -Zimmermann covers both listed companies whose shares are admitted to trading on a regulated market, and non-listed companies with revenues or total assets over 50 million euros or employing at least 500 persons for the last three years.

During the transition period, which ran for three years beginning in 2011, corporate boards that did not include any women should have appointed a female board member when replacing a male board member whose mandate was expiring on the date of the next general assembly of shareholders. Additionally, by the end of these first three years, the percentage of directors of each gender could not be less than 20%. After the transition period, the law is similar to the AFEP-MEDEF Code, except that it is accompanied with effective sanctions.

Under Copé-Zimmermann, the percentage of female and male directors should not be below 40% in both listed and non-listed companies beginning in January 2017. In addition, when there are no more than eight directors on a corporate board, the difference between the number of directors of each gender should not be greater than two. It is important to note that Copé-Zimmermann imposes absolute gender quotas. This means that quotas must be reached regardless of available talent, although it is stated that the appointments should be done in accordance with the social interest of the company.

In imposing sanctions for non-compliance, the French legislature chose not to adopt any pecuniary sanctions, identifying them as being too easy to bypass for top-listed companies. One main sanction when breaching the law is the nullity of the non-compliant appointment.[6] Any company that does not have the requisite 40% must only make changes that positively contribute toward getting the company to that goal.[7] A second sanction that may be imposed is that compensation for directors in the form of attendance fees are suspended until the board is compliant with the law.[8]

Two laws were built onto the scope of the Copé-Zimmermann law. In 2012, the Sauvadet law extended the percentage requirement to government bodies.[9] Two years later, the Vallaud Belkacem law further extended the scope of the laws into other governmental institutions and the cultural arena.[10]

Progress

The Law has an anecdotally important effect on this progress: the rate of women on boards in countries with binding

4 *Id.*

5 *See Code*, Section 8.4.

6 *Board-Level Gender Quotas in the UK, France, and Germany*, Hegeler Mueller, Partnerschaft von Rechtsanwälten mbB 8 (Aug. 2016), https://www.hengeler.com/fileadmin/news/BF_Letter/14_Board-LevelGenderQuotas_2016-08.PDF.

7 *Id.*

8 *Id.*

9 *Women in the boardroom: A global perspective*, Deloitte 52 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

10 *Id.*

legislation rose by almost triple the rate of countries without such binding legislation.[11] France is making tremendous progress.

Data from October 2016 demonstrates that France leads the European Union in gender balance among board members, chairs, and CEOs of large, listed companies; women comprised 41.2% of these roles at the time of the European Commission study.[12] As of March 2017, women comprised 42% of board members in France's 40 largest companies by market capitalization (CAC 40).[13]

French companies worked hard to meet the statutorily required goal. Within the first three months of 2016, women accounted for 28 out of 44 CAC 40 boards.[14] As companies sought to comply with the 40% requirement now in place, the women on France's boards are becoming more diverse themselves. As of March 2016, approximately 30% of all board members in some of France's biggest companies are not French natives.[15] Women are now, on average, six years younger than their male counterparts and have more international experience.[16]

Although the numbers are vastly improved, data shows that there is still more compliance needed. As of January 2017—the effective date of Copé-Zimmerman—many companies still had not yet hit the threshold. In fact, only 65% of the companies comprising the CAC 40 had a board of at least 40% women.[17] Yet gender equality has recently found a spotlight in France as President Emanuel Macron declared it the "grande cause nationale" of his presidency.[18] President Macron, who has vowed to end the gender pay gap, has appointed a Minister of Gender Equality, Marlène Schiappa, who has spoken of creating gender equality in corporate leadership.[19] With a President dedicated to eradicating gender inequality and a Minister of Gender Equality whose new tenure has already included participation in the Women in Corporate Leadership Initiative, the number of companies in compliance, and those who promote women in leadership, is expected to increase.

Conclusion

In recent years, the French government has adopted increasingly stringent measures to achieve gender parity on corporate boards. While certain organizations have advocated for self-regulation, the French government enacted more stringent legislation imposing quotas after it appeared that a voluntary approach did not significantly increase gender diversity on corporate boards. The legislation's requirements were implemented over a multiyear period ending in 2017 and may be enforced by nullification of board appointments for companies that are not in compliance.

France is the European Member State that has had the most dramatic increase since the new law was enacted in 2011. Additionally, there has been progress in cultivating women for board positions. In 2012, the European PWN-Paris published a guide entitled *Administrateur(e) Au Feminin, written by Miriam Garnier, Co-Vice President of Women on Board & Executive Forum to assist women in becoming board-ready.*[20] The purpose of the guide is to "help others get an idea of what [is] ahead when joining a board" in order to be better prepared and to be effective board members.

The effect of the Copé-Zimmermann Law is substantial. Whereas women only accounted for 8% of board members in 2006, a dozen years and one law imposing mandatory quotas later, that number has skyrocketed. With the significant progress made in France in the past five years, all eyes continue to watch to see whether the tide in France will ripple across other European Member States who currently lag behind.

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11 *2017 Report on Equality Between Women and Men in the EU*, European Union 28 (2017), https://eeas.europa.eu/sites/eeas/files/2017_report_equality_women_men_in_the_eu_en.pdf.

12 *Id.* at 29.

13 Deloitte, *supra* note 9.

14 Adam Thomson, *French Boards Rush to Meet Quotas for Female Membership*, Fin. Times (Mar. 22, 2016), https://www.ft.com/content/5b542782-ee9e-11e5-aff5-19b4e253664a.

15 *Id.*

16 Deloitte, *supra* note 9.

17 Institut du Capitalisme Responsable, *L'Indice Zimmermann et les Grands Prix de la Mixité*, http://www.capitalisme-responsable.com/indice-de-la-mixite/ (last visited Apr. 9, 2018).

18 *See* Anne-Sylvaine Chassany, *Macron Prepares to Act on France's Gender Pay Gap*, Fin. Times (Mar. 7. 2018), https://www.ft.com/content/7644706a-06ac-11e8-9e12-af73e8db3c71.

19 Marlène Schiappa, Minister of Gender Equality, Address at the New York Stock Exchange (Jan. 31, 2018).

20 Miriam Garnier, Administrateur(e) Au Feminin (European PWN-Paris 2012), http://www.votre-administrateur.com/wp-content/uploads/2012/07/EPWN-book.pdf (last visited Apr. 10, 2018).

Germany

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In the European Union, mandatory gender quotas for boards of directors are becoming increasingly the norm. The latest country, and largest economy, to join the ranks of requiring gender diversity on boards is Germany. After a decade of voluntary suggestions of increasing women's shares on boards, Germany passed a two-tiered law. This law applies rigid requirements to approximately 100 of the country's largest companies, while compelling over 3,500 other companies to set voluntary standards to which they are held accountable.

Germany's gender quota law has now been in effect for two full years and the numbers are improving. As the requirements of the law become the norm, Germany hopes to see increased gender diversity in all companies.

Gender Quota Law of 2015

In November 2014, Germany's coalition government proposed a law that would apply beginning in 2016, and was ultimately passed in 2015.[1] This law requires that large, publicly listed companies subject to employee participation on boards ("co-determination") have 30% of their supervisory board seats filled by women.[2] The law initially faced significant pushback from industry leaders. Companies such as Daimler and Bayer made statements asserting the law did not have support in the workplace and indicated that positions needed to be filled based on experience, not gender.[3] Some companies though embraced the legislation. Deutsche Telkom publicly committed to meet the 30% quota a year early (by 2015) and by the end of 2015 had a Supervisory Board comprised 40% of women.[4]

The law persevered and was passed by the German Parliament in March 2015.[5] In addition to the requirement imposed on over 100 companies that 30% of supervisory board seats must be filled by women, an additional 3,500 companies who are listed or subject to mandatory co-determination were given until September 30, 2015 to submit a business plan to designate a percentage of women in top positions.[6] The targets set by these additional companies were voluntary, but if the actual percentage of women was less than 30% at the time the standards were set, the company was not permitted to set a standard of less than the then-current percentage.[7] Unfortunately, several companies who had zero women in board positions set their target to 0% as that was not technically less than the then-current percentage.[8]

If a company subject to the 30% quota fails to comply with the law, then any vacated board member seat must remain vacant until it is filled with a woman to achieve the target goal.[9] If a company that set voluntary targets does not meet its quota, then an administrative fine can be assessed of up to €50,000.[10]

1 Justin Huggler, *German Boardrooms to Introduce Female Quotas*, Telegraph (Nov. 24, 2014), https://www.telegraph.co.uk/news/worldnews/europe/germany/11255970/German-boardrooms-to-introduce-female-quotas.html.

2 *Id.*

3 *Id.*

4 Jenny Hill, *Germany Wants More Women in Boardroom*, BBC (Dec. 22, 2014), http://www.bbc.com/news/world-europe-30476373.

5 *See Caroline Copley, German Parliament Approves Legal Quotas for Women on Company Boards*, Reuters (Mar. 6, 2015), https://www.reuters.com/article/us-germany-women-quotas/german-parliament-approves-legal-quotas-for-women-on-company-boards-idUSKBN0M214S20150306; see also Women in Management, Deutsche Telekom (Feb. 25, 2016), https://www.telekom.com/en/company/human-resources/content/women-in-management-362636.

6 Alison Smale & Claire Cain Miller, *Germany Sets Gender Quota in Boardrooms*, N.Y. Times (Mar. 6, 2015), https://www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporate-boards.html.

7 Bredin Prat et al., *Board-Level Gender Quotas in the UK, France, and Germany 4* (Aug. 2016), https://www.hengeler.com/fileadmin/news/BF_Letter/14_Board-LevelGenderQuotas_2016-08.PDF.

8 *Id.*

9 *Id.* at 5.

10 *Id.*

Corporate Governance Code

On February 26, 2002 the Government Commission on the German Corporate Governance Code (the "Commission") adopted the German Corporate Governance Code (the "Code"), enacted under the statutory authority of Article 161 of the Stock Corporate Act as amended by the Transparency and Disclosure Law.[11] The Code, which is reviewed annually, is intended to make Germany's corporate governance rules "transparent and understandable…[and] to promote the trust of international and national investors, customers, employees and the general public in the management and supervision of listed German stock corporations."[12]

Germany has a dual board system: the Management Board is responsible for managing the business; the Supervisory Board is responsible for appointing, supervising and advising members of the Management Board and is "directly involved in decisions of fundamental importance to the enterprise."[13] Pursuant to Article 5 of the Code, the Supervisory Board appoints and dismisses the members of the Management Board of a listed company in Germany.

The Code has been amended to reflect the 2015 gender quota laws. The Code reiterates the requirements of the 30% quota and the individual targets for percentage of seats allotted to female directors.[14] The Code also provides that when appointing the Management Board, the Supervisory Board "shall take diversity into account" and it also "determines targets for the share of female Management Board members."[15] Finally, the Code puts into place measures to increase the share of women included in succession planning. The Code recommends that the Management Board sets targets designed to increase the percentage of women in management two levels below the Management Board.[16]

Progress

Although there is a debate over the effectiveness of the 2015 gender quota law[17], the trend of gender diversity on boards is certainly heading in the right direction. According to the European Union, in 2010, women only comprised 12.6% of board seats of large, publicly traded companies in Germany.[18] By 2016, that number had risen to 29.5%.[19] This number outpaces the trend of Europe as a whole, which has seen an increase from 11.9% to 23.9% during the same period.[20]

Numbers of women on management boards not subject to the 2015 quotas are also increasing, although the numbers are still low.[21] Approximately 10% of management board seats of DAX 30 companies, the largest 30 companies in Germany by market capitalization, are held by women.[22] This number is significant though, when compared to the fact that the figure was only 2% in 2011.[23]

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11 German Corporate Governance Code, as amended on Feb. 7, 2017, can be found at http://www.dcgk.de/en/code.html (last visited Aug. 26, 2018) (hereinafter "the Code").

12 *Id.* at art. 1.

13 *Id.* at art. 1.

14 *Id.* at art. 5.4.1.

15 *Id.* at art. 5.1.2.

16 *Id.* at art. 4.1.5.

17 *Compare* Renuka Rayasam, *Why Germany's New Quota for Women on Boards Looks Like a Bust*, Fortune (Mar. 11, 2016), http://fortune.com/2016/03/11/germany-board-quota-women, *with* Oliver Staley, *You Know Those Quotas for Female Board Members in Europe? They're Working*, Quartz (May 3, 2016), https://qz.com/674276/you-know-those-quotas-for-female-board-members-in-europe-theyre-working/.

18 *2017 Report on Equality Between Women and Men in the EU*, EUROPEAN UNION 61 (2017), https://eeas.europa.eu/sites/eeas/files/2017_report_equality_women_men_in_the_eu_en.pdf.

19 *Id.*

20 *Id.*

21 *Women in the boardroom: A global perspective*, Deloitte 53 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

22 *Id.*

23 *Id.*

However, progress is still slow at companies who are not required to hit the 30% quota.[24] Large companies, such as Volkswagen, ThyssenKrupp, and Commerzbank set their 2015 gender quota goals to zero as permitted by the law that requires the percentage of women not be less than the then-current percentage.[25] These companies faced no consequences and there has been little public backlash.[26]

Conclusion

As consideration of the issue of gender parity on corporate boards continues at both the European Union and Member States levels, the discussion regarding gender parity on corporate boards becomes increasingly focused in Germany. Both listed companies and the government are actively promoting increased representation of women in upper management and on Supervisory Boards. Though ethnic and racial diversity is not yet explicitly contemplated in German corporate governance, that too may change as a lack of representative diversity in Germany's latest cabinet has not gone unnoticed.

In June 2012, the Commission held its 11th Corporate Governance Conference which included a discussion by Schröder on "A fair chance for women in good corporate management: On the importance of transparency and competition".[27] Since that time, a new law has been enacted requiring companies to comply with gender quotas and threatening their board with vacancies if they fail to meet these standards.

But is that price enough? Some members of the new coalition government do not think so. Buried in the 177-page agreement to form a new coalition government is a clause that could punish companies who fail to comply with the gender quota with fines up to €10 million.[28] Such sanctions on non-compliant companies could help achieve gender parity in the country, but it remains to be seen what will come of this provision.

24 Barbara Gillmann, *German Companies That Don't Try Harder at Gender Equity Could Be Fined Millions*, Handelsblatt Global (Feb. 26, 2018), https://global.handelsblatt.com/companies/germany-companies-dont-try-harder-gender-equity-fined-millions-891848.

25 *Id.*

26 *See* Myfanwy Craigie, *Despite Appearances, Women Don't Rule in Germany*, Politico (May 10, 2018), https://www.politico.eu/article/despite-appearances-women-dont-rule-in-germany/.

27 Press Release, 11th Corporate Governance Conference, 13 & 14 June 2012, Supervisory Board Members and Executive Board Members Will Discuss the Topic of "Good Corporate Governance: Trust Through Transparency and Clarity of Information" (June 6, 2012), http://www.dcgk.de/en/press/details/id-11th-corporate-governance-conference-13-and-14-june-2012-berlin.html (last visited Apr. 10, 2018).

28 Barbara Gillmann, *supra* note 24.

Italy

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While only 8 years ago, gender diversity on corporate boards in Italy was extremely low, today that number has increased dramatically, as a result of proactive steps taken by the Italian government. In 2009, only 4% of Italian public companies had at least one woman on their boards of directors.[1] Although the representation of women on boards of larger Italian public companies was ten percentage points higher, research from the EU Commission showed that among European Member States, Italy's percentages of gender diversity on boards was among the lowest.[2]

That started to change in 2011 when Italy passed a law mandating a quota for gender diversity. Since then, the percentage of female directors on boards has skyrocketed. As of December 2016, Italy was second only to France with a staggering 31.4% of female directors. By June 2017, that number had grown even higher.

Italy's Gender Parity Law and Consob Regulations

On June 28, 2011, the Italian Parliament passed with a supermajority vote[3] a mandatory, albeit temporary, gender quota law (Law No. 120/2011) (the "Gender Parity Law"),[4] which applies to public companies with shares traded on the Italian Stock Exchange, Italian companies listed in EU stock markets, and Italian state-owned enterprises ("SOEs"). The Gender Parity Law requires these companies to have gender parity on their boards of directors and boards of statutory auditors starting from the first renewal occurring one year after enactment, e.g., August 2012.[5]

The Gender Parity Law as written will only apply to three renewals of the boards of directors and the boards of statutory auditors. Because such boards can be appointed for a maximum period of three years, the law will be effective, with respect to each listed company, for up to nine years from the first renewal of the respective board – at most, then, for 10 years following enactment of the law. Pursuant to the Gender Parity Law, Italian public companies are required to change their bylaws to ensure that the underrepresented gender (whether men or women) receive at least 20% of the director positions and statutory auditor positions in the first renewal of the board of directors. For the second and third renewals, the Gender Parity Law requires that at least 33% of the board and statutory auditor positions must be filled by the underrepresented gender.

Commissione Nazionale per la Società e la Borsa ("Consob")[6] and the Gender Parity Law also addressed the issue of gender balance in cases of staggered boards. The gender balance not only has to be respected for three consecutive renewals of each portion of the board, but also in relation to the entire board. Assume, for example, that a board is composed of nine members and each year three members of the board have to be appointed or renewed for a three-year period. In this scenario, the quota requirement of 20% (for the first renewal) and 30% (for the second and third renewal) must be applied both in relation to three board members to be appointed or renewed each year and in relation to the composition of the board as a whole.

In the event that public companies fail to comply with the mandatory quota rule, a multi-tier sanctioning scheme would apply. First, Consob would issue a notice warning such companies to comply with the Gender Parity Law within four months from notification. If the legal quota is not met within such four month period, any such noncompliant companies will be charged a fine of up to €1,000,000 or €200,000 depending on whether the violation concerns, respectively, the

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

2 *More women in senior positions, key to economic stability and growth*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G1, 2010.

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

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

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

6 Commissione Nazionale per la Società e la Borsa (Consob) is the Italian equivalent of the United States Securities and Exchange Commission (SEC).

board of directors or the board of statutory auditors. There is currently little information available regarding the financial penalty's role in compliance, or even if any fines have formally been assessed.

In addition, Consob will issue another formal warning directing noncompliant companies to comply with the mandatory quota within a subsequent three-month period; in the event such companies again fail to comply, the election of the board of directors and/or the board of statutory auditors, as the case may be, will be null and void and all elected members will be removed from their positions.

The Gender Parity Law also instructed Consob to issue detailed regulations addressing areas including gender quota breaches and implementation of and compliance with the law.[7] In accordance with this instruction, on February 8, 2012, Consob issued a final rule that introduced a new Article 144-undecies.1 in the Consob Regulation No. 11971 of May 14, 1999. This rule requires public company bylaws to include:

i. the criteria for the formation of the slates of candidates and ancillary criteria for identifying individual members to the board of directors and board of statutory auditors designed to create a balance between genders (recognizing that bylaws shall not require slates with fewer than three candidates in order to respect the criterion of balance between genders); [8]

ii. taking into account the gender balance goal, the procedures for replacing members of the board of directors and board of statutory auditors in the event of vacancies; and

iii. procedures for exercising the rights of appointment in a way that does not conflict with the goal to keep balance between genders.

Corporate Governance Code

The Italian Stock Exchange, the Borsa Italiana S.p.A. stock exchange (the "Borsa"), also addresses the issue of gender balance on corporate boards in its "Public Companies' Corporate Governance Code," most recently modified in July 2018 (the "Italian Corporate Governance Code"). In particular, the Italian Corporate Governance Code was amended in July 2018 to "safeguard the positive effects of the" Gender Parity Law.[9] The amendments address each of the three sections of the Code: principles, criteria, and comment. The first, amended "principle" section recommends companies apply diversity criteria, inclusive of gender diversity, to the board of directors and board of statutory auditors. The second, "criterion" section suggests a one-third quota of the lesser represented gender on boards, on a voluntary basis. This second section is designed to have the effect of "promoting the preservation" of the Gender Parity Law. The third, "comment" section provides a number of tools designed to achieve the one-third quota, including bylaw provisions, diversity policies, and board guidelines to shareholders, among others.

The Italian Corporate Governance Code also requires that boards of directors conduct self-assessments, with particular reference to the size, composition, and functioning of both the entire body and its committees. In evaluating its composition, the board must verify that all different members as well as professional and managerial skills are adequately represented, "taking into account the benefits that may result from the presence on the board of different gender, age and seniority."[10]

Consob Study on Women on Boards in Italy

In October 2011, just a few months after the introduction of the Gender Parity Law, Consob published "Women on boards in Italy," a case study investigating the state of women's representation on Italian corporate boards (the "Consob Study"). The Consob Study is the first paper issued by Consob addressing the relationship between women's

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

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

9 Press Release, Italian Corporate Governance Committee, New Corporate Governance Code Recommendations on Diversity, Including by Gender, for Listed Companies (July 17, 2018), https://www.borsaitaliana.it/comitato-corporate-governance/codice/comunicato2018eng.en.pdf.

10 *Id.* at Comment to Article 1.

representation on boards and good governance and performance results.[11] Since that time, Consob has authored additional studies regarding board performance in Italy; diversity has been addressed in both studies and is discussed below as indices of progress.

According to the Consob Study, the female presence on boards "*still concerns the minority of companies (mainly the smaller ones). When women are present, in most cases they are alone*."[12] In particular, the research shows that the participation of women in Italian boardrooms is often due to family ties with the controlling shareholder ("Family-Affiliated Women").[13] Moreover, an analysis of the composition of boards revealed that:

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

Progress

The changes based on the Gender Parity Law did not occur all at once as only around one third of public companies were expected to renew or reappoint directors and statutory auditors in 2012, and therefore were required to implement the 20% threshold in 2013. For the remaining public companies subject to the Gender Parity Law, the boards of directors and boards of statutory auditors expired either in 2013 or in 2014. Therefore, those companies were required to implement the 20% threshold in 2014 and 2015, respectively.

Progress has been dramatic since implementation of the Gender Parity Law. Companies in Italy now have a higher share of female directors, the average education level of the board as a whole has increased, and the ages of the directors are now lower.[14] The share of women on boards improved 13.3% between 2013 and 2016, to over 30%.[15] At the end of 2016, foreign directors comprised 10% of executive director positions and 15% of non-executive director positions.[16]

As of June 2017, Consob reported that women represent over one-third of all board members; this figure is the highest ever recorded in Italy.[17] Furthermore, each company that has undergone a second or third renewal of its board under

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

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

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

14 Giulia Ferrari et al., *Gender Quotas: Challenging the Boards, Performance, and Stock Market*, IZA Discussion Paper 10239 5 (Sept. 2016), http://ftp.iza.org/dp10239.pdf.

15 The level of women on boards as of September 2016 was 30.8%. *Women in the boardroom: A global perspective*, Deloitte 59 (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

16 A. Ciavarella, *Board Diversity and Firm Performance Across Europe*, Commissione Nazionale per la Società e la Borsa (Dec. 2017), http://www.consob.it/documents/46180/46181/qdf85.pdf/0f2ee77d-4f3a-420b-b7cd-36f227d0d74c.

17 *Report on Corporate Governance of Italian Listed Companies*, Commissione Nazionale per la Società e la Borsa 16 (Dec. 2017), http://www.consob.it/documents/46180/46181/rcg2017.pdf/7846a42b-1688-4f45-8437-40aceaa2b0e3.

the Gender Parity Law has exceeded the one-third share quota.[18] In the majority of newly listed companies, women account for twenty-nine percent of the boards.[19]

Conclusion

Beginning in 2010, the issue of gender representation in boardrooms was given a high priority in Italy. After the introduction of the Gender Parity Law, public companies are now obligated to comply with the 30% threshold with each renewal of their boards of directors and boards of statutory auditors. The result has rippled throughout the country. Interestingly, since the increase in numbers of female directors, there has been a reduced variability in the stock prices of these Italian companies.[20]

But for those companies whose first renewal occurred in 2012, the third term is approaching. As the Gender Parity Law begins to expire, it remains to be seen if this approach was successful at reforming culture, or if companies only complied due to the legal requirements thrust upon them. The most recent Consob report pointed to the former, with women holding an average of three seats on newly listed companies not subject to the Gender Parity Law.[21] Hopefully future director appointments will continue that narrative, particularly under the guidelines set forth by the Borsa in its latest revisions of the Italian Corporate Governance Code.

18 *Id.* Consob reports that companies that have undergone two board renewals have 36.5% female directors, and companies who have undergone two board renewals have 38.7% female directors.

19 *Id.*

20 Ferrari et al., *supra* note 14, at 5-6.

21 *Report on Corporate Governance of Italian Listed Companies*, *supra* note 17.

Netherlands

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Consistent with its European neighbors, the Netherlands has seen an increased focus on achieving greater gender diversity on corporate boards. Following Norway's legislation in 2003 requiring 40% female board members by 2008, the Dutch Parliament similarly enacted legislation in 2013, mandating 30% of board seats to be filled by women. However, despite recent efforts to achieve gender parity on boards through legislation as well as the Dutch Corporate Governance Code, statistics reveal that progress has been slow, particularly in recent years.

Between 2010 and 2014, the percentage of women on boards gradually increased each year (although short of the 30% target), suggesting a trend toward increasing gender diversity on boards.[1] However, this increase came to a halt when the percentage of women on boards dropped from 26.4% in 2014, to 26.2% in 2015 and to 26% in 2016.[2] Moreover, when looking at the 85 Dutch companies listed on Euronext Amsterdam, women accounted for only 6.2% of directors on management boards as of August 31, 2017.[3] This number was down from 7.1% in 2016 and 7.8% in 2015.[4] Further, only 6 of the 85 Dutch companies listed on Euronext met the statutory quota discussed below of having at least 30% women on both the management and supervisory boards.[5]

Quota Legislation: The Dutch Management and Supervisory Act

Dutch companies typically have a two-tier board structure, comprising a management board and a supervisory board. The management board consists of executives who are responsible for the management of the business and the affairs of the company. The supervisory board consists of non-executives who are responsible for monitoring and advising the management board.

On January 1, 2013, new legislation came into force in the Netherlands to increase the representation of women on both management and supervisory boards. The Dutch Parliament passed the Dutch Management and Supervisory Act (the "Act") amending the rules on management and supervision within public limited liability companies (N.V.) and private limited liability companies (B.V.). Under the Act, Dutch N.V.s and B.V.s that qualify as "large companies" (as defined by the Act) set, on a temporary basis, a target of 30% of the seats of the company's management and supervisory boards to be held by both women and men. The Act thus imposed for the first time a specific target for the participation of women on corporate boards.

Notably, this target was not made mandatory and was implemented on a "comply or explain" basis. A company could either comply and meet the 30% target or, in the case of non-compliance, explain in its annual reports (i) the reasons why the composition of its boards is not in compliance with the gender diversity requirement; (ii) the measures that the company has taken to achieve compliance; and (iii) the measures which the company is planning to take to ensure future compliance.

These statutory provisions under the Act were expected to cease to be in force on January 1, 2016, but the Dutch Parliament extended them in early 2017 under the same terms. The government set a target for women to make up at least 30% of management and supervisory boards by 2020. The Parliament has stated that this is the last attempt to push for gender parity, and if the target is not met, it will implement a mandatory quota.[6]

1 *The CS Gender 3000: The Reward for Change*, Credit Suisse 8 (2016), https://glg.it/assets/docs/csri-gender-3000.pdf.

2 *Id.; Women in the boardroom: A global perspective*, Deloitte 61 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

3 *The Dutch Female Board Index 2017*, TIAS School for Business and Society (2017), https://www.tias.edu/docs/default-source/Kennisartikelen/rapport-female-board-index-2017.pdf?Status=Temp&sfvrsn=2; Emma Portier Davis, *Dutch company boards failing to meet female quotas*, Board Agenda (Sept. 6, 2017), http://boardagenda.com/2017/09/06-dutch-company-boards-female-quotas/.

4 TIAS, *supra* note 3.

5 *Id.*

6 Deloitte, *supra* note 2.

Corporate Governance Code

In addition to the Act, listed Dutch companies are subject to the Dutch Corporate Governance Code (the "Code"), which was first released in 2003. The Code contains principles and best practices on a wide range of corporate governance topics within listed companies.

In 2008, the Code was updated to include Principle III.3.1, providing that a supervisory board must aim to achieve gender and age diversity, and disclose its approach and efforts in this regard. Principle III.3.1 did not mention any specific quotas and also did not contain any diversity requirements for the management boards of Dutch listed companies. Moreover, the provisions were non-binding in nature. Companies could either comply or, in case of non-compliance, include an explanation in their annual reports as to why they do not comply with those provisions of the Code. As further discussed below, an independent monitoring committee (the "Monitoring Committee"), appointed by the Dutch government to serve four-year terms, is charged with publishing annual reports on overall compliance in the marketplace.[7]

It was not until the Code was updated in 2016 that it stipulated that diversity (in terms of the male-to-female ratio and in terms of expertise, background, and competencies) must be taken into account in both the supervisory and management boards, not just the former. Best-practice provision 2.1.6 also provides that, if the composition of the management board and the supervisory board diverges from the targets stipulated in the company's diversity policy and/or the statutory target, the current state of affairs should be outlined in the corporate governance statement, along with an explanation as to what is being done to attain the intended target and by when this is likely to be achieved.[8]

Therefore, like the Act, the provisions of the Code remain non-binding in nature. Companies can either comply or, in case of non-compliance, include an explanation in their annual reports as to why they do not comply with those provisions of the Code.

The Monitoring Committee has not yet issued a report on overall compliance with the Code since it was updated in 2016. However, according to a survey that the Monitoring Committee commissioned to establish the extent to which companies use diversity targets for management board members, approximately two-thirds of companies use diversity targets.[9] Notably, of the companies that indicated that they do not use diversity targets for their management boards, only one-quarter indicated plans to set such targets in 2017.[10] It is not yet clear how many of these companies have actually set such targets. Moreover, nearly 20% of companies reported during the survey that they are experiencing difficulties meeting diversity targets. Roughly half of these companies indicated that the biggest challenge in doing so was recruiting women with the requisite talent and experience.[11]

Conclusion

The Netherlands certainly has taken measures in recent years to increase the percentage of women represented on company boards. However, women continue to be underrepresented, and the large majority of companies have fallen short of meeting diversity targets. This may be attributable, in part, to the fact that such targets have been implemented on a "comply or explain" basis and without actual consequences for noncompliance. As noted above, the Dutch Parliament has indicated that if women do not comprise at least 30% of management and supervisory boards by 2020, then it will implement a mandatory quota. It remains to be seen whether Dutch companies will be successful in moving from 26% to 30% by 2020, and if not, whether the Parliament will make good on its promise.

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7 Monitoring Committee Corporate Governance Code, The Dutch Corporate Governance Code (2008), https://www.mccg.nl/dutch-corporate-governance-code.

8 Monitoring Committee Corporate Governance Code, The Dutch Corporate Governance Code (Dec. 2016), https://www.mccg.nl/?page=4738.

9 Monitoring Committee Corporate Governance Code, Final Document (unofficial translation) 21 (Dec. 2017), https://www.mccg.nl/?page=5787.

10 *Id.* at 21-22.

11 *Id.* at 22.

Norway

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Norway has long had a reputation for spearheading the gender equality movement, especially as it pertains to equal representation in politics. In fact, Norway was the fourth country and first sovereign state in the world to give women the right to vote in 1913.[1] The first female member of Norway's Parliament was elected the following decade in 1922.[2] Today, 70 out of 169 of the Parliament seats—or 41%—are held by women.[3] In fact, the three most senior cabinet positions in Norway are currently held by women.[4]

According to the World Economic Forum's 2017 Global Gender Gap Report, Norway ranked as the second most gender-equal country in the world.[5] The Norwegian government can attribute this success to its dedication to promoting women's equality though economic opportunity, education, health, and political empowerment.[6] These advancements have started to extend to the private sector, where we have seen an increase in the number of women on corporate boards. Although Norway has not attained complete gender parity, it has progressed swiftly through the use of legislation and other government action.

Legislation, Quotas, and History

Norway has long fought gender discrimination and encouraged the promotion of women. The push for equal political representation for women began decades ago. The use of gender quotas to support this push began as early as 1975, when one Norwegian political party instituted a quota for representation of both sexes in its party's positions.[7] Although the Norwegian Constitution does not contain any provisions specifically aimed at gender equality, it does contain a general non-discrimination provision. Article 98 mandates that "[a]ll are equal before the law. No person must be subject to unfair or unreasonable discrimination."[8] In addition, the Norwegian Parliament has passed several pieces of legislation that address gender equality directly. These laws have aimed to regulate both government entities and corporations and have been on both the local and national levels. They vary from more general laws such as the Gender Equality Act to more specific ones such as the Public Limited Liability Companies Act, which specifically addresses gender diversity on public companies' boards.

The Gender Equality Act aims to promote gender equality and advance the status of women.[9] Passed by the Norwegian Parliament in 1978 and revised in 2013, the Gender Equality Act calls for equal opportunities for men and women in education, employment, and beyond.[10] Specifically, Article 3 notes that "[d]ifferential treatment of women and men is not permitted" and Article 21 calls for each public body committee, governing board and council to have each sex represented.[11] To ensure compliance with the Gender Equality Act, the Act grants power to the King to appoint

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1 Tanya Heglund, *100 Years of Women's Right to Vote in Norway*, Oslo Bus. Region (Mar. 6, 2013), http://www.oslobusinessregion.no/100-years-womens-right-vote-norway/.

2 *Id.*

3 *Gender Quotas Database: Norway*, IDEA, https://www.idea.int/data-tools/data/gender-quotas/country-view/228/35 (last updated Mar. 22, 2018); *Proportion of seats held by women in national parliaments (%)*, World Bank, https://data.worldbank.org/indicator/SG.GEN.PARL.ZS (last visited Sept. 12, 2018).

4 Molly Fleming, *Women Now Occupy Three Most Senior Roles in Norway's Government*, Independent (Oct. 21, 2017), https://www.independent.co.uk/news/world/politics/norway-government-latest-women-three-most-senior-roles-ine-eriksen-s-reide-erna-solberg-siv-jensen-a8012396.html.

5 *The Global Gender Gap Report 2017*, World Economic Forum (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

6 *Id.* at 10.

7 The Socialist Left Party instituted a quota of 40% representation for both sexes in 1975. IDEA, *supra* note 3.

8 KONGERIKET NORGES GRUNNLOV [CONSTITUTION] (Nor.), https://www.constituteproject.org/constitution/Norway_2014.pdf.

9 *National Legislation*, Information and Resources on Gender Equality and Gender Research in Norway, Gender in Norway, http://www.gender.no/Legislation/National_legislation (last visited July 6, 2018).

10 *Id.*

11 Act No. 45 on Gender Equality (Nor.), http://www.ilo.org/dyn/natlex/docs/WEBTEXT/12790/64813/E78NOR01.htm.

an Equality and Anti-discrimination Ombud and a Board who will work collaboratively to ensure implementation of the Act's provisions.[12] The Ombud's purview extends beyond gender discrimination, however, and includes discrimination on other bases such as ethnicity, religion, sexual orientation, gender identity, gender expression, and age.[13] As a public agency under the Ministry of Children and Equality, the Ombud's goal is to address all protected grounds in all areas of society.

With the help of the Ombud and the passing of legislation, Norway has succeeded in increasing the number of women involved in politics and business. The 1997 Norwegian Public Limited Liability Companies Act, amended in 2003, aids this goal by establishing the quota requirements for gender diversity on the board of directors in public companies. As defined in Section 1-1, the Act applies to all public limited liability companies which are registered as such in the Register of Business Enterprises.[14] Article 6-11a specifies the number of spots that must be held by each gender depending on the size of the board. For example, if the board has only two or three members, both sexes must be represented.[15] But if a board contains more than nine members, then at least 40% must be women.[16]

Total Number of Directors on the Board	Minimum Representation of Each Gender[17]
2 or 3	At least one of each
4 or 5	At least two of each
6 to 8	At least three of each
9	At least four of each
10+	At least 40%

This 2003 revision of the Public Limited Liability Companies Act establishing gender quotas drew criticism and sparked controversy. Norway was the first country ever to introduce a gender quota in boardrooms.[18] Norway required public companies to comply fully with the quota by 2008.[19] Companies that did not comply could face dire consequences, as Section 16-15 grants the District Court the power to dissolve the company if it fails to comply with the gender quota.[20] By February 2008, however, all public companies had come into compliance with the new law. Although several countries have continued to criticize Norway's use of quotas, this early initiation has proved successful, as Norway now has one of the highest rates of female board representation in the world, at 40.5%.[21] This is a large increase from 2002, before the revision, when only 6% of board positions were held by women.[22]

Norway has also addressed gender quotas in the Code of Practice for Corporate Governance, which is issued by the Norwegian Corporate Governance Board and contains guidance for companies required to report on their policies

12 The Anti-Discrimination Ombud Act (Nor.) (Feb. 20, 2007), https://www.regjeringen.no/en/dokumenter/The-Act-on-the-Equality-and-Anti-Discrim/id451952/.

13 *Norway: Equality and Anti-Discrimination Ombud*, Equinet European Network of Equality Bodies, http://www.equineteurope.org/Equality-and-Anti-Discrimination-Ombud-LDO (last visited July 6, 2018).

14 Public Limited Liability Companies Act (Nor.), https://www.oslobors.no/ob_eng/obnewsletter/download/20fd77664bccdf3f6b8cb0dc95eeb7bb/file/file/Norwegian%20Public%20Limited%20Liability%20Companies%20Act.pdf.

15 *Id.*

16 *Id.*

17 *Id.*

18 Taylor Fox-Smith, *Corporate Governance and Statecraft: The Gender Nexus of Policy*, Centre for Feminist Foreign Policy (Mar. 17, 2018), https://centreforfeministforeignpolicy.org/journal/2018/3/12/corporate-governance-and-statecraft-the-gender-nexus-of-policy.

19 Douglas M. Branson, *Initiatives to Place Women on Corporate Boards of Directors – A Global Snapshot*, 37 J. CORP. L. 793, 803 (2012).

20 Public Limited Liability Companies Act, *supra* note 14.

21 Fox-Smith, *supra* note 18.

22 *Sharing Norway's Experience with Gender Quotas for Boards*, Mission of Norway to the EU (Oct. 17, 2017), https://www.norway.no/en/missions/eu/about-the-mission/news-events-statements/news2/sharing-norways-experience-with-gender-quotas-for-boards (last visited Sept. 12, 2018).

and practices for corporate governance by the Norwegian Accounting Act.[23] While not binding, the Code does require adherence through a "comply or explain" program, calling for all companies to either comply with the Code or publish reasons for failing to do so.[24] The Code addresses gender equality by noting that "composition of the board of directors as a whole should represent sufficient diversity of background and expertise to help ensure that the board carries out its work in a satisfactory manner. In this respect due attention should be paid to the balance between male and female members of the board."[25] While the Code encourages diversity, its "comply or explain" requirement exerts less pressure on companies to increase female participation in the board room.

In addition to the national pieces of legislation, the Norwegian Parliament has also passed legislation aimed at local government bodies. For example, the Local Government Act of 2005 strives for representation of both sexes at the local and municipal level by noting that "gender should be a consideration when the body is established."[26] This aims to increase female representation on the local and county levels, with county chief administrative officers holding the power to enforce these provisions.[27]

Although the quotas have succeeded in increasing the number of women on corporate boards in Norway, they have had less of an effect on the number of women holding executive positions.[28] In addition, while improvements have been made in public companies, private companies have had less success. A February 2016 UN report noted that "[a] mong private limited companies, which make up the majority of Norwegian companies, 18 per cent of board members are women."[29] The bulk of the advancement here has taken place in government and public companies, with much less progress in other arenas.

Conclusion

Although Norway has drawn criticism for its use of gender quotas on boards, it has succeeded in increasing the number of women on boards, especially on the boards of public companies. In addition, it has succeeded in encouraging and promoting women in politics, with women holding the top three seats and a Parliament approaching 50-50 representation. In order to reach complete gender parity, improvements still need to be made in top positions in management and in private companies. Whether Norway will institute additional quotas to achieve this goal remains to be seen.

23 The Norwegian Code of Practice for Corporate Governance, NUES (Oct. 30, 2014).

24 *Id.*

25 *Id.*

26 Gender in Norway, *supra* note 9.

27 *Id.*

28 *Consideration of reports submitted by States parties under article 18 of the Convention, Ninth periodic report of States parties due in 2016: Norway*, U.N. Comm. on the Elimination of Discrimination Against Women (CEDAW) 7 (June 1, 2016), http://www.refworld.org/docid/582d7ead4.html.

29 *Id.*

Sweden

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Sweden has long been a global leader in the fight for gender equality. Women have advanced, particularly in the public sector, with the help of decades of work to combat gender discrimination. In fact, the World Economic Forum's 2017 Global Gender Gap Report ranked Sweden as the fifth most gender-equal country in the world, noting that it was one of only 13 countries that had closed more than 80% of its gender gap.[1]

While Sweden has successfully increased female participation in politics, the private sector has lagged behind. This has led to an ongoing debate on whether Sweden should follow the lead of other countries in implementing mandatory quotas. As of summer 2018, Sweden had declined to do so, but it remains a large topic of debate.

The Constitution and Anti-Discrimination Legislation

Although Sweden has not instituted mandatory quotas, it has integrated anti-discrimination language into its Constitution, as well as several pieces of legislation. Article 13 of the Swedish Constitution notes that "[n]o act of law or other provision may imply the unfavourable treatment of anyone on grounds of gender, unless the provision forms part of efforts to promote equality between men and women or relates to compulsory military service or other equivalent official duties."[2]

In addition, the Swedish Parliament has passed legislation supporting this goal. For example, the Discrimination Act, passed in 2008, seeks to combat discrimination based on sex, gender identity, ethnicity, religious belief, disability, sexual orientation, and age.[3] The Discrimination Act addresses many areas, including education and the workplace. Section 13 specifically outlines the requirement that employers with 25 employees or more must create plans for implementing the measures addressed in the Discrimination Act in their workplace, which includes demands for equal pay for men and women.[4] The Discrimination Act also calls for the establishment of an Equality Ombudsman and a Board against Discrimination working together to supervise compliance with the law, review complaints, and ensure that discrimination does not occur.[5]

In the past, several draft bills requiring mandatory quotas have been introduced in Parliament, but have never passed. For example, in 2006, the Social Democrats proposed requiring a minimum of 40% of each sex to be represented on boards.[6] The bill never advanced, but the topic still attracted attention until the Conservative Party General Assembly rejected the mandatory quota proposal. In 2016, this issue gained more attention, as the government again drafted legislation requiring 40% representation by 2019.[7] In early 2017, however, the government again dropped the legislation.[8]

Swedish Parliament and Political Parties

Although the Swedish Parliament has passed legislation aimed at eliminating gender discrimination, its efforts to create

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1 *The Global Gender Gap Report 2017*, World Economic Forum 8 (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

2 CONSTITUTION OF SWEDEN: THE FUNDAMENTAL LAWS AND THE RIKSDAG ACT [CONSTITUTION] 2016, art. 13, http://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf.

3 Discrimination Act, 2008:567 (Swed.), https://www.government.se/information-material/2015/09/discrimination-act-2008567/.

4 *Id.*

5 Act Concerning the Equality Ombudsman, 2008:568 (Swed.), http://www.do.se/other-languages/english/act-concerning-the-equality-ombudsman/.

6 Ann Numhauser-Henning, *The Policy on Gender Equality in Sweden*, EUROPEAN PARLIAMENT (2015), http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510011/IPOL_STU(2015)510011_EN.pdf.

7 Vilhelm Carlström, *The Swedish Government Just Proposed a Law for Gender Quotas on Corporate Boards*, Nordic Business Insider (Sept. 9, 2016), https://nordic.businessinsider.com/the-swedish-government-just-proposed-a-law-for-gender-quotas-on-corporate-boards-2016-9/.

8 Cynthia Kroet, *Sweden Drops Female Board Members Quota*, Politico (Jan. 12, 2017), https://www.politico.eu/article/sweden-drops-female-board-members-quota/.

mandatory quotas have failed. Instead, some political parties have resorted to implementing their own quotas.[9] For example, the Social Democratic Party has had internal quotas since 1978.[10] At least three other political parties, including the Left Party, Green Party, and Moderate Party, have also implemented internal quotas, such as a "zipper system," which requires that the sexes alternate on party lists.[11]

With the help of these internal quotas, the Swedish Parliament has seen a tremendous increase in the number of female politicians since the 1970s, when the number of Swedish women participating generally in the labor market started to increase substantially.[12] Much of the advancement of women in the workplace has occurred in politics rather than business. For example, "[i]n 2015, 97 women and 102 men were heads of Sweden's public agencies—positions appointed by the government, which also sets the salaries for these."[13] In 2017, 44% of seats of the Swedish Parliament were held by women.[14] This shows substantial growth since 1957, when women only comprised 10% of Parliament.[15] Since the early 1990s, the number of positions held by women has stayed above 40%.[16]

Swedish Corporate Governance Code[17]

Although much of its success has stemmed from advancing women in politics, Sweden still leads globally in equal representation on corporate boards.[18] This has occurred through the use of both legislation to promote equality generally and other mechanisms that target corporate boards specifically. For example, the Swedish Corporate Governance Code ("the Code"), which applies to both listed private and public companies, sets gender balance on boards as a goal for all companies.

The Swedish Corporate Governance Board ("Governance Board") monitors adherence to the Code, which operates on a "comply or explain" basis. The Governance Board has explained that "companies are not obliged to comply with every rule in the Code at all times, but are allowed the freedom to choose alternative solutions which they feel are better suited to their particular circumstances."[19] This grants companies some flexibility, "as long as they openly report every deviation, describe the alternative solution they have chosen and explain their reasons for doing so."[20] In regards to representation on corporate boards, the Code notes in Article 4.1 that "[t]he company is to strive for gender balance on the board."[21] This requires companies to either comply or explain why their boards have not reached equal representation.

Since the Code has been in place, private companies have seen an increase in the number of women on boards. In fact, 33.9% of the companies listed on the Nasdaq Stockholm Index have at least one woman on their boards.[22] State-owned and large cap companies have paved the way, with state-owned companies having at least 50% female representation since June 2003,[23] and large cap companies currently having 37.7% of their board seats occupied by

9 *Gender Quotas Database: Sweden*, IDEA, https://www.idea.int/data-tools/data/gender-quotas/country-view/261/35 (last updated Mar. 22, 2018).

10 *Id.*

11 *Id.*

12 Numhauser-Henning, *supra* note 6.

13 *Gender Equality in Sweden*, https://sweden.se/society/gender-equality-in-sweden/ (last updated June 28, 2018).

14 *Proportion of Seats Held by Women in National Parliaments (%)*, World Bank, https://data.worldbank.org/indicator/SG.GEN.PARL.ZS (last visited Sept. 12, 2018).

15 Numhauser-Henning, *supra* note 6.

16 *Id.*

17 Swedish Corporate Governance Code (Dec. 1, 2016), http://www.corporategovernanceboard.se/UserFiles/Archive/496/The_Swedish_Corporate_Governance_Code_1_December_2016.pdf.

18 Institutional Shareholder Services, Inc., *Gender Parity on Boards Around the World*, Harv. L. School F. on Corp. Governance and Fin. Reg. (Jan. 5, 2017), https://corpgov.law.harvard.edu/2017/01/05/gender-parity-on-boards-around-the-world/.

19 Swedish Corporate Governance Code, *supra* note 17.

20 *Id.*

21 *Id.* at 4.1.

22 Asset Management Culture, *Swedish Companies Boost Gender Diversity for Leaders*, Chief Investment Officer (June 14, 2018), https://www.ai-cio.com/news/swedish-companies-boost-gender-diversity-leaders/.

23 Numhauser-Henning, *supra* note 6.

women.[24] In addition, "44.9% of newly elected board members today are women."[25]

Despite these advancements, there is still room to grow. If the improvements were to continue at the same pace they have held for the last five years, "it will take 12 years for boards to comprise 50% women, and 24 years for 50% of executive positions to be filled by women."[26] This pace, while positive, has prompted questions of whether instituting mandatory gender quotas would hasten the process. The Governance Board has weighed in on the controversy, noting that "[i]t would be a serious restriction of proprietary rights if legislators began to decide on the composition of the boards of individual companies."[27]

The Code was last updated in 2015, when it underwent a comprehensive review after soliciting responses on a draft published on June 5, 2015.[28] During that time, the Governance Board considered whether quotas would benefit the cause. Ultimately, however, the Governance Board concluded that "[g]iven a choice, we would not like to see any legislation that restricts proprietary rights. It must be the shareholders, i.e. the owners, of each individual company to decide who is to represent them on the board and manage their property."[29] Whether the Parliament will continue to agree with the Governance Board and refrain from passing mandatory quota legislation remains to be seen.

EU Guidance

Finally, as a member of the European Union (EU), Sweden must also take into consideration its directives. In 2012, the European Commission issued a directive calling for all EU members to achieve 40% female representation on corporate boards by 2020.[30] Despite coming close, Sweden currently falls short of this goal, with only 32% of board positions in listed companies held by women.[31] Despite being shy of the 2020 goal, Sweden remains one of the EU countries with the highest percentage of female representation.

Conclusion

As one of the most gender-equal countries in the world, Sweden has succeeded in increasing the number of women involved in politics and business. Despite these advancements, however, women still make up less than 40% of corporate boards. This has fueled the ongoing debate on whether to implement mandatory quotas for corporate boards. In the past, the Swedish government has rejected all movements for implementing mandatory quotas, most recently in 2017.[32] As 2020 nears, the Swedish Parliament may again revisit this issue in order to attain the 40% goal discussed in the EU directive.

24 *The Proportion of Women on the Boards and in Executive Positions at Listed Companies Continues to Increase and Large Caps are Leading the Way*, Andra AP-fonden/AP2 (June 11, 2018), http://www.ap2.se/en/news-reports/news/2018/the-proportion-of-women-on-the-boards-and-in-executive-positions-at-listed-companies-continues-to-increase-and-large-caps-are-leading-the-way/.

25 *Id.*

26 *Id.*

27 Swedish Corporate Governance Board, *Questions and Answers Regarding the Swedish Corporate Governance Board's Efforts to Improve Gender Balance on the Boards of Listed Companies* (May 30, 2014), http://www.corporategovernanceboard.se/UserFiles/Archive/334/gender_qa.pdf.

28 Swedish Corporate Governance Code, *supra* note 17.

29 Swedish Corporate Governance Board, *supra* note 27.

30 *Proposal for a Directive of the European Parliament and of the Council on Improving the Gender Balance Among Non-executive Directors of Companies Listed on Stock Exchanges and Related Measures*, EUROPEAN COMMISSION (Nov. 14, 2012), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0614&from=EN.

31 Agence France-Presse, *Sweden Rejects Quotas for Women on Boards of Listed Companies*, The Guardian (Jan. 12, 2017), https://www.theguardian.com/world/2017/jan/12/sweden-rejects-quotas-women-boardroom-listed-companies.

32 *Id.*

United Kingdom

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In the United Kingdom, Financial Times Stock Exchange (FTSE)[1] index companies have made significant improvements toward achieving gender equality on corporate boards, particularly in the FTSE 100. For over 20 years, Cranfield School of Management has collected data on board gender equality of FTSE listed companies and issued an annual report ("Cranfield Report"). According to Cranfield, the percentage of female held directorships on FTSE 100 boards rose to 27.7% in 2017[2] (compared with 10.5% in 2005[3] and 12.5% in 2010[4]), and 9.8% of executive directorships were held by women, with six women holding chair positions.[5] The percentage of female held directorships on FTSE 100 boards increased to 29% in 2018, with a significant increase in the number of women holding non-executive director positions (35.4%).[6]

While the percentage of women on boards within the FTSE 100 has increased dramatically since 2010, FTSE 250 companies have not been keeping pace. Between 2017 and 2018, the percentage of women on boards of FTSE 250 companies increased by less than 1%, from 22.8% to 23.7%.[7] The FTSE 250 has slowed growth and even dropped by other metrics that measure gender equality.[8] For example, in the FTSE 250, the percentage of female held executive directorships decreased from 7.7% in 2017 to 6.4% in 2018 (from 38 directors in 2017 to 30 directors in 2018).[9] This suggests a disconnect among efforts between the top 100 companies and those that fall below.

UK Initiatives to Promote Gender Diversity on Boards

In February 2011, Business Minister Lord Davies commissioned a report on the gender imbalance on corporate boards (the "Davies Report") which found that FTSE 100 boards were only composed of 12.5% women directors at the time.[10] The Davies Report noted that, at the then-current rate of improvement, it would take 70 years to achieve gender equality on the boards of UK companies.[11] The Davies Report stated that women often succeed early in their careers, "but attrition rates increase as they progress through an organisation."[12] It also emphasized the business case for incorporating more women on boards, citing studies that greater gender diversity correlated with better performance.[13]

The report did not just collect statistics, but aimed to provide actionable solutions and goals for companies to do better. Specifically, the Davies Report set the following goals:[14]

1. By September 2011, chairmen of FTSE 350 companies should announce goals for the percentage of women they intend to include on boards in 2013 and 2015, specifying that FTSE 100 boards should set a goal of a minimum of 25% female representation by 2015.

2. There should be requirements for quoted companies to make public their proportion of women in senior

1 The FTSE is a subsidiary of the London Stock Exchange (LSE) that ranks companies by market value.

2 *The Female FTSE Board Report 2017*, Cranfield Univ. Sch. of Mgmt. 1 (2017), https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index (hereinafter "Cranfield Report 2017").

3 *The Female FTSE Board Report* (2005), Cranfield Univ. Sch. of Mgmt. 4 (2005).

4 *The Female FTSE Board Report* (2010), Cranfield Univ. Sch. of Mgmt. 8 (2010).

5 *Cranfield Report 2017, supra* note 2.

6 *The Female FTSE Board Report 2018*, Cranfield Univ. Sch. of Mgmt. 7 (2018), https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index (hereinafter "Cranfield Report 2018").

7 *Id.*

8 *Id.* at 7-8.

9 *Id.* at 7.

10 *Independent Review into Women on Boards*, Dep't for Bus., Innovation, & Skills 3 (Feb. 2011), https://www.gov.uk/government/news/women-on-boards.

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.* at 4-5.

executive positions, women employees, and women on their boards.

3. The Financial Reporting Council should revise the UK Corporate Governance Code to add requirements for listed companies to establish a board diversity policy.
4. Even if regulations have not been revised, companies should report on the matters above in their 2012 Corporate Governance Statements.
5. Pursuant to the UK Corporate Governance Code, annual reports should include information about processes for board appointment and how they address diversity.
6. Investors should consider the above recommendations in board appointments and reporting.
7. Companies should advertise for non-executive positions on the board to facilitate a diverse pool of applicants.
8. A voluntary code of conduct for executive search firms should be drafted to address diversity and related search criteria.
9. Individuals and companies should develop the following groups of women qualified to sit on boards: 1) women from within the corporate mainstream with access to training opportunities, and 2) women outside the corporate sector, "including entrepreneurs, academics, civil servants and senior women with professional backgrounds, for whom there are many fewer opportunities to take up corporate board positions."[15]
10. Further meetings of the steering board should be held to assess the success of these recommendations.

Though Lord Davies did not support a quota system, the report stated that "more prescriptive" methods may be necessary if "the business-led approach does not achieve significant change."[16] The report emphasized the need for cooperation across sectors, including corporations, executive search firms, and government.[17]

In October 2015, Cranfield in coordination with the UK government released a five-year review of the Davies recommendations (the "Cranfield Review"). The Cranfield Review noted that the presence of women on FTSE boards more than doubled since 2011—with 26.1% on FTSE 100 boards and 19.6% on FTSE 250 boards as of October 2015.[18] FTSE 100 boards had not only achieved, but had exceeded, the 25% goal set forth in the Davies Report—a milestone acknowledged by then-Prime Minister David Cameron.[19] It also noted a significant reduction in the number of all-male boards—152 in 2011, with no all-male boards in the FTSE 100 and only 15 in the FTSE 250 as of the date of the Review.[20] The Cranfield Review credits this progress to communicating the business case for board diversity, proposing a voluntary approach with defined targets, and engaging key stakeholders.[21]

The Cranfield Review recommended five next steps:

1. Maintain a voluntary business-led approach for a further five year period.
2. Raise the voluntary target for Boards of FTSE 350 companies, to a minimum of 33% female representation within five years, with all FTSE listed companies assessing the gender balance on their Boards and taking action on any shortfall.
3. Extend the best practice seen at the board level to improve gender balance and look to fundamentally improve the representation of women on Executive Committees and senior-most leadership positions.
4. Develop an independent steering body, comprised of business and subject matter experts to maintain and monitor progress, reporting periodically.

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15 *Id.* at 5.

16 *Id.* at 2.

17 *Id.* at 3.

18 *Improving the Gender Balance on British Boards*, Women on Boards Davies Review – Five Year Summary 34 (Oct. 2015), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482059/BIS-15-585-women-on-boards-davies-review-5-year-summary-october-2015.pdf (hereinafter "Cranfield Review").

19 *Influencing national policy on gender diversity on top corporate boards*, Cranfield Univ. Sch. of Mgmt., https://www.cranfield.ac.uk/som/case-studies/women-on-boards-ftse-research (last visited Aug. 27, 2018).

20 Cranfield Review, *supra* note 8, at 6.

21 *Id.* at 9-14.

5. Have the steering body review the above four recommendations and in consultation with stakeholders develop further detailed comments.[22]

The Hampton-Alexander Review on FTSE Women Leaders (the "Hampton-Alexander Review"), commissioned by the UK Government and first published in November of 2016, builds on the progress achieved under the Davies Report by soliciting voluntary self-reported information from FTSE companies and providing annual progress reports on gender diversity in the FTSE 350. The Hampton-Alexander Review develops recommendations for advancing gender diversity on corporate boards and sets new goals for women's representation in corporate leadership. The Hampton-Alexander Review goes beyond the Davies Report in "extending the scope to include FTSE 350 Executive Committees and the Direct Reports to the Executive Committees."[23]

The Hampton-Alexander Review introduced a new target of 33% women in FTSE 100 leadership teams (going beyond the 2015 Davies recommendation by including executive committees and their direct reports in this target) and 33% women on FTSE 350 boards by 2020.[24] The Hampton-Alexander Review provided a "How-To" guide for companies to reference in pursuing these targets, which included information on assessing an organization's leadership pipeline, establishing the business case for gender diversity in leadership within the organization, and measuring progress.[25] Despite some slowed progress in the 12 months leading up to the Hampton-Alexander Review,[26] it continued to support the voluntary business led approach established in the Davies Report.[27]

The Hampton Alexander Review: 2017 ("2017 Review") introduced the additional goal of extending the 33% target for women in leadership to FTSE 250 companies (from the FTSE 100 set in 2016).[28] Though the 2017 Review reported only nominal progress in women's representation in corporate leadership (*e.g.*, women were 25.1% of executive committees and their direct reports in 2016 and 25.2% in 2017), it noted improvements in participation of companies in the Review's voluntary data collection, including a number of companies that were collecting gender diversity data for the first time—itself an accomplishment.[29] The 2017 Review named companies that did not provide information to the Review, encouraging them to participate in the future, and profiled companies that had made significant progress.[30] The 2017 Review reported that the rate of progress was picking back up, with women's representation on boards at 27.7% among the FTSE 100, 22.8% in the FTSE 250, and 24.5% in the FTSE 350.[31]

The Cranfield 2018 Report estimates that the UK is on-track to meet the Cranfield Review's 33% target for women in the FTSE 100, and 32 of the FTSE 100 have already reached a target of 33% within their organizations.[32] However, Cranfield suggests that, due in part to a lack of accountability in management and lack of meaningful developmental opportunities for women, the FSTE 250 and 350 have lagged notably behind the FTSE 100. For example, in 2018, there was an increase of all-male boards of FTSE 250 companies to ten, and a decrease in female executive directors (7.7% to 6.4%) from 2017.[33]

Voluntary Code of Executive Search Firms

In response to the Davies Report, in 2011 twenty top UK executive search firms announced a new voluntary code of conduct (the "Code"), which has been revised over the years. In 2014, the UK instituted an accreditation process and related criteria to recognize those search firms that have successfully implemented the Code, and those that work with

22 *Id.* at 7.

23 *Improving gender balance in FTSE Leadership*, Hampton-Alexander Review: FTSE Women Leaders 8 (Nov. 2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/613085/ftse-women-leaders-hampton-alexander-review.pdf.

24 *Id.* at 5.

25 *Id.* at 16-17.

26 *Id.* at 32.

27 *Id.* at 2.

28 *Improving gender balance in FTSE Leadership*, Hampton-Alexander Review: FTSE Women Leaders 8 (Nov. 2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/658126/Hampton_Alexander_Review_report_FINAL_8.11.17.pdf.

29 *Id.*

30 *Id.* at 16-19.

31 *Id.* at 23-25.

32 Cranfield Report 2018, *supra* note 6.

33 *Id.*

corporations outside of the FTSE 350 to voluntarily adopt practices to promote diversity.[34]

The most current version available of the Code sets out the following key principles of best practices:

- Board and Executive Succession Planning: Develop "medium-term succession plans" that incorporate the mix of skills and experience needed to maximize effectiveness, with a two to three year time horizon.
- Diversity Goals: Consider the company's current board composition and goals when searching for candidates and explore with the company whether diversity is a priority in general and with respect to the specific search.
- Defining Briefs: Work with boards to ensure that significant weight is given to relevant skills and intrinsic personal qualities, not just career experience.
- Long Lists/Shortlists: Ensure that, when presenting their long lists of potential board candidates, at least 30% are women, with at least one woman the search firm would "strongly recommend."
- Candidate Support: Provide appropriate support, especially to first-time candidates.
- Supporting Selection: Provide support for candidate selection, including a monitoring process to ensure that companies evaluate intrinsic qualities and minimize unconscious bias.
- Induction: Advise clients on best practices in the on-boarding process to help new board members.
- Embedding Best Practices: Support clients in documentation and internal adoption of best practices for eliminating unconscious bias and supporting diversity.
- Signaling Commitment: Include gender diversity on boards and in senior roles in marketing messaging and publicly share data on successes and case studies.
- Broadening the Candidate Pool: Broaden the search firms' network and develop relationships with a diverse candidate pool.[35]

UK Government Laws and Intervention

The United Kingdom Financial Reporting Counsel (FRC) regulates corporate governance and reporting, and has established a Corporate Governance Code ("FRC Code") that "sets standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders."[36] The latest version of the FRC Code, to become effective in 2019, advances a number of principles and related procedures to promote diversity on boards, including that the annual report should include a company's "policy on diversity and inclusion."[37] For example, board appointments should, in addition to considering merit-based criteria, "promote diversity of gender…," and each company should prepare annually an evaluation of its diversity.[38]

Regulations enacted in 2013 under the Companies Act 2006 (Strategic Report and Directors' Report) introduced new reporting requirements intended to collect data on gender equality in workplace leadership, to provide transparency and hold companies responsible for their progress. The regulations "require all quoted companies to include, as part of their strategic report, a breakdown showing: the number of persons of each sex who were directors of the company; the number of persons of each sex who were senior managers of the company; and the number of persons of each sex who were employees of the company."[39]

In addition to initiatives specifically aimed at women in the workplace, the UK also has general legal protections that

34 *Voluntary Code of Conduct for Executive Search Firms* (Nov. 2017), https://ftsewomenleaders.com/wp-content/uploads/2015/07/VOLUNTARY-CODE-OF-CONDUCT-FOR-SEARCH-FIRMS-NOVEMBER-2017.pdf.

35 *Id.*

36 *UK Corporate Governance Code*, Fin. Reporting Couns., https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code (last visited Sept. 14, 2018).

37 *UK Corporate Governance Code*, Fin. Reporting Couns. 9 (Jul. 2018), https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf.

38 *Id.* at 8.

39 *Id.* (*citing* The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 No. 1970 (internal citations omitted)), https://www.legislation.gov.uk/uksi/2013/1970/contents/made.

may be utilized to thwart discrimination in the workplace. The Equality Act of 2010 makes it unlawful to discriminate against people who are or wish to become office holders on the basis of sex or maternity.

London Stock Exchange

The LSE does not enforce any independent mandatory diversity requirements as a condition of listing,[40] but has informally endorsed diversity policies and voluntary compliance with the FRC Code which, as discussed above, includes recommendations on the development and reporting of board appointment policies. Referencing the Davies Report, the LSE's 2012 report on corporate governance recognized with respect to effective board structure that "diversity is now commonly agreed to be a characteristic of effective boards" to ensure a range of skills and to avoid "group think" within the board.[41] The London Stock Exchange Group ("LSE Group"), which operates the LSE, issued its first "UK Gender Pay Gap Report" in 2018, affirming its commitment "to improving diversity and inclusion, not only within the LSE Group, but across the financial services industry and in the communities" in which it operates.[42] This report outlined the LSE Group's efforts to address the gender pay gap, including its establishment of a Diversity and Inclusion Committee and signing the Treasury's Women in Finance charter, which sets a goal of 40% female representation by 2020.[43] In addition, companies with "Premium Listing" shares *must* include an explanation of how they have complied with the FRC Code, including with respect to board diversity policies and reporting in their annual reports pursuant to the Listing Rules of the Financial Conduct Authority.[44] Premium Listings are generally expected to maintain a higher standard of corporate governance than Standard Listings, which may boost investor confidence and lead to a lower cost of capital.[45]

Private Sector Gender Diversity Initiatives

In May 2010, in response to the Davies Report and the reality that very few women were making it into top positions at UK corporations, Helena Morrissey (the then-CEO of Newton Investment Management) and Labour peer Mary Goudie formed the 30 Percent Club to galvanize the business community into action. The 30 Percent Club and its member corporations work with company board chairs to appoint more women to their boards; assist companies in trying to improve their diversity and with women seeking board appointments; liaise with related groups, including executive search firms, to improve boardroom diversity; influence the political agenda and garner increased media coverage; and track progress toward the 30% goal.[46]

Since its launch in the UK, the 30 Percent Club has established chapters in 11 countries and has launched the "Future Boards Scheme"—a program aimed at FTSE 350 companies designed to get women the board experience necessary to advance their careers, providing some participants 12 months of experience on a major board.[47] The Department for Business, Energy and Industrial Strategy, in conjunction with UK Government Investments (a UK Government-owned company that executes government asset sales and operates as a shareholder for government-managed businesses such as banks and the postal service) is actively participating in the Future Boards Scheme.[48]

UK Initiatives Addressing Ethnic Diversity

The UK's laws provide protection to diverse groups from discrimination on a number of protected characteristics,

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40 London Stock Exchange Admission and Disclosure Standards, London Stock Exchange, (Oct. 1, 2018), https://www.londonstockexchange.com/companies-and-advisors/main-market/documents/admission-and-disclosure-standards-new2018.pdf.

41 *Corporate Governance: For Main Market and AIM Companies*, London Stock Exchange, 69 (2012).

42 *UK Gender Pay Gap Report*, London Stock Exchange Group, 1 (Mar. 2018) , https://www.lseg.com/sites/default/files/content/documents/CR_documents/2018/LSEG_UK_Gender_Pay_Gap_Report.pdf.

43 *Id.,* at 3

44 *UK Corporate Governance Code*, Fin. Reporting Couns., https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code (last visited Sept. 14, 2018). *See* FCA Handbook, Fin. Conduct Auth., https://www.handbook.fca.org.uk/handbook/LR/1/?view=chapter

45 *Listing Regime*, London Stock Exchange, https://www.londonstockexchange.com/companies-and-advisors/main-market/companies/primary-and-secondary-listing/listing-categories.htm (last visited Oct. 1, 2018).

46 *See 30% Club*, www.30percentclub.org.uk (last visited Aug. 27, 2018).

47 *The Future Boards Scheme*, 30% Club, https://30percentclub.org/initiatives/the-future-boards-scheme (last visited Aug. 27, 2018).

48 *Corporate governance reform: The Government response to the green paper consultation*, Dep't Bus., Energy & Indus. Strategy 49 (Aug. 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/640631/corporate-governance-reform-government-response.pdf.

including age; disability; gender reassignment; race; religion or belief; sex; sexual orientation; marriage and civil partnership.[49]

To advance ethnic diversity, the government has provided support to the Parker Review Committee, a business-driven review chaired by Sir John Parker, a well-known British businessman. Created in 2015, the Parker Review Committee addresses the obstacles to ethnic and cultural diversity among the largest British companies. In 2017, after extensive review and data collection, the Parker Review Committee issued its Final Report[50] urging business leaders to improve the ethnic and cultural diversity of UK Boards to better reflect their employee base and the communities they serve. The report found some remarkable statistics about a startling lack of ethno-cultural diversity among Britain's largest companies. An examination of the FTSE 100 revealed that, out of 1,050 director positions:

- 51 FTSE 100 companies had no directors of color,
- There were 85 directors of color (four holding two board positions),
- Only seven companies accounted for over 40% of these directors of color, five of which were headquartered outside of the UK, and
- Six people of color were chair or CEO.[51]

The report set forth the following targets with recommendations to accomplish each one: 1) have at least one director from an ethnic minority background by 2021 for the FTSE 100 and for each FTSE 250 Board to do the same by 2024, 2) develop mentoring and succession programs to develop diverse candidates, and 3) enhance transparency and disclosure to record and track progress.[52]

Former UK Business Secretary Sajid Javid commissioned Baroness Ruby McGregor-Smith to prepare a report reviewing obstacles to Black or Minority Ethnic (BME) talent and provide recommendations (the "Baroness McGregor-Smith Report"). The Baroness McGregor-Smith Report produced a wealth of data supporting the same types of conclusions as the Parker Report: that diversity is woefully lacking on UK's corporate boards.[53] The Baroness McGregor-Smith Report set forth 26 recommendations for the government to advance opportunities in the workplace for ethnic minorities. The recommendations included: government support to encourage or require opportunities for unconscious bias training across all levels of an organization; formal mentorship programs and networking; diversity policies; diverse interview panels; and published goal setting.[54] The government issued an official response reacting positively to the recommendations, but for the most part, placed the onus on businesses to advance workplace diversity.[55] The official response described its support to ensure companies devote resources toward diversity programs, further voluntary business-led efforts to enhance transparency, and promote the business case for diversity and inclusion programs.[56]

Conclusion

The UK has made substantial progress toward gender diversity on boards, particularly among the UK's largest companies, but less so among the FTSE 350. The UK also struggles with racial and ethnic diversity on boards and in the workplace generally, and resources have only recently been devoted to advance ethnic diversity in the private sector. Given that the Baroness McGregor-Smith Report's targets and recommendations were only published in 2017, it remains to be seen whether the UK will witness similar progress for ethnic diversity as it has seen for gender diversity.

49 *See Discrimination: your rights*, https://www.gov.uk/discrimination-your-rights (last visited Sept. 14, 2018).

50 *A Report into the Ethnic Diversity of UK Boards*, Sir John Parker: The Parker Review Committee (Oct. 12, 2017), https://www.ey.com/Publication/vwLUAssets/The_Parker_Review/$FILE/EY-Parker-Review-2017-FINAL%20REPORT.pdf.

51 *Id.* at 7.

52 *Id.* at 11.

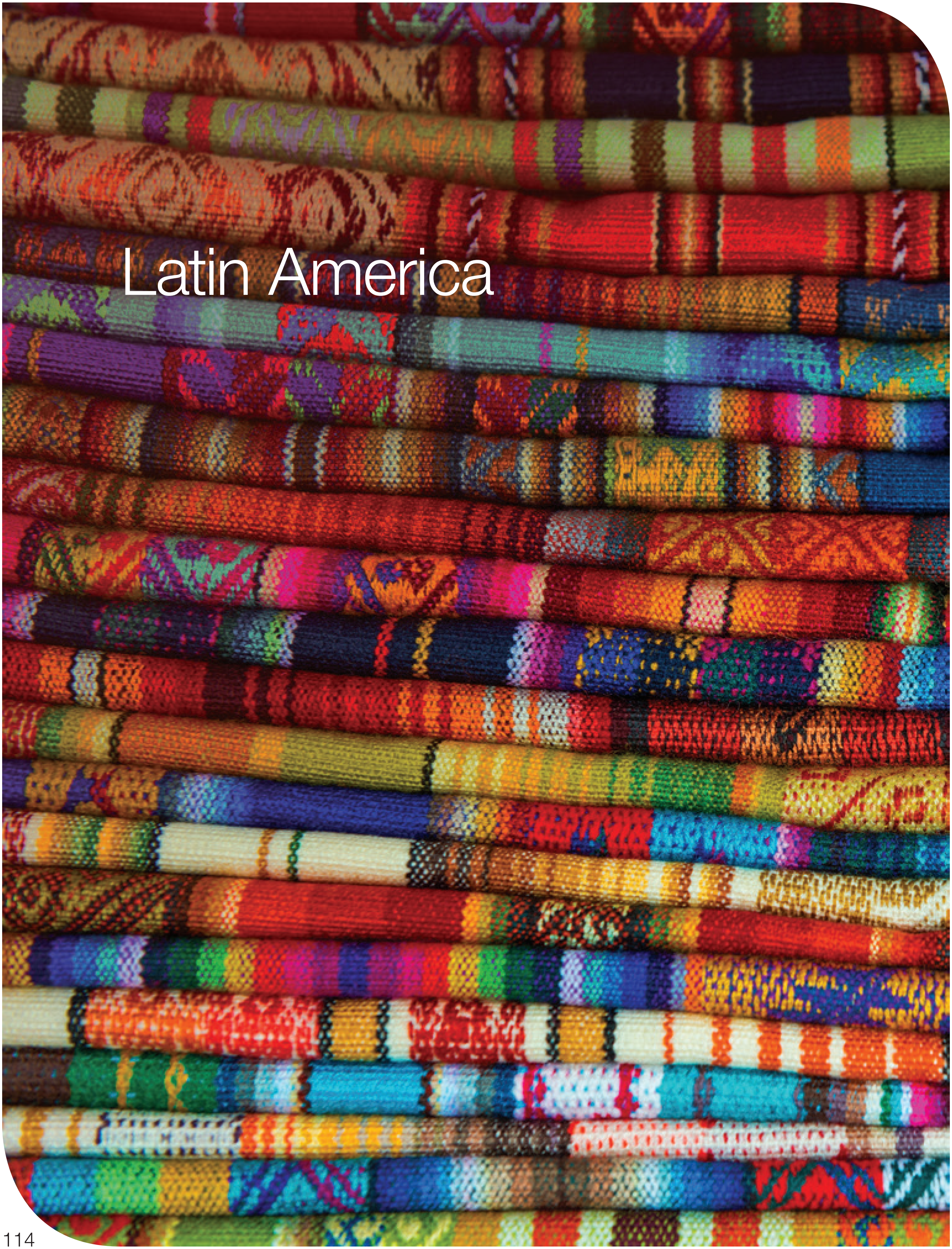
53 *Race in the Workplace: The McGregor-Smith Review* (Feb. 2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf.

54 *Id.* at 32.

55 *Government Response to Baroness McGregor Smith*, Dep't Bus., Energy & Indus. Strategy, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594365/race-in-workplace-mcgregor-smith-review-response.pdf.

56 *Id.*

Latin America



Argentina

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Introduction

Although gender equality appears to be at the forefront of political and social issues in Argentina, the country still experiences significant gender inequalities in large corporations. Notably, Argentina was the first country in Latin America to adopt a system of political quotas requiring all political parties to include a minimum of 30% female candidates on ballot lists in national elections.[2] Argentina also made history in 1974 when Isabel Peron succeeded her husband to become the world's first female president.[3] Then, in 2007 and 2011, Argentina elected and then re-elected its first female president, Cristina Fernandez de Kircher.[4]

The country's achievements in gender equality have not been as impressive in the private sector, however. Although the percentage of board positions held by women in Argentina has grown since 2012, that growth staggers in comparison to international averages and other Latin American countries like Chile and Brazil.[5] According to one board diversity report published by Egon Zhender, women held only 6.8% of board positions in Argentina in 2016.[6] Moreover, a 2017 Global Gender Gap analysis of gender equality worldwide rated Argentina at only 0.55 out of a 1-point rating system for women's ability to advance into leadership roles in the economy.[7]

The greatest obstacle to women's advancement in the business sector in Argentina appears to be the male-dominated work culture, rather than the country's legal landscape. While Argentina's government, judiciary, and various private enterprises have worked to create significant opportunities for women to participate and succeed in the economy, there are currently no large-scale movements or codified efforts that specifically address gender inequality in the corporate boardroom. However, Argentine law and society appear to be evolving in the direction of greater equality for women in corporations.

The Stats

According to the 2017 Grant Thornton International Business Report, 15% of senior management team members in Argentina are female.[8] Although this percentage reflects an improvement from 2007, when women occupied only 10% of senior management positions, it also reflects a notable decline from 2013, when women held 18% of senior management positions in the country.[9] When focusing exclusively on large Argentine companies, the percentage declines even further: one study from 2011 found that women represent only 4.4% of senior management, 6% of board

1 With thanks to the previous author, Melissa Kessler.

2 *Detrás del Numero (Behind the Numbers)*, Equipo Latinamericano de Justicia y Género, www.ela.org.ar (last visited Mar. 18, 2018). *See also* Leslie A. Schwindt-Bayer, *Making Quotas Work: The Effect of Gender Quota Laws on the Election of Women*, Legislative Studies Quarterly, XXXIV, 1 (Feb. 2009) ("…the Argentine law was the first by a democratic state that applied to all political parties and, consequently, offered the greatest opportunity to increase women's representation in the entire legislature, not merely in one political party's legislative delegation.")

3 Rachel Kubi, *Female Leadership in Latin America*, Politic (Feb. 26, 2012), http://thepolitic.org/the-anomaly-of-female-leadership-in-latin-america/.

4 Mark P. Jones, *Cristina Fernández de Kirchner*, ENCYCLOPEDIA BRITANNICA (Feb. 14, 2018), https://www.britannica.com/biography/Cristina-Fernandez-de-Kirchner; Mimi Whitefield, *Women Still Face Gender Gap in Latin American, Caribbean Politics*, Miami Herald (Oct. 20, 2011), www.miamiherald.com.

5 *2016 Global Board Diversity Analysis*, Egon Zehnder 5, https://www.egonzehnder.com/gbda.

6 *Id.*

7 *The Global Gender Gap Report 2017*, World Economic Forum 65 (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

8 *Women in business: New perspectives on risk and reward*, Grant Thornton 10 (Mar. 2017), https://www.grantthornton.global/globalassets/1.-member-firms/global/insights/article-pdfs/2017/grant-thornton_women-in-business_2017-report.pdf.

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

seats and 3% of general management positions in Argentina.[10] As previously mentioned, these statistics have not improved much in the last few years; as of 2016, women still held only 6.8% of board positions in Argentina.[11]

Legislative Framework

Argentina does have legislation that protects and promotes equality for women in the labor market.[12] Although it does not specifically mention women, the Argentine Constitution provides for equality in access to work and employment for all people.[13] In addition, Argentina considers international treaties to be controlling law in the legal hierarchy just below the National Constitution, and therefore women benefit from Argentina's membership in international conventions, such as the UN Convention on the Elimination of All Forms of Discrimination against Women.[14] These international conventions focus on improving "the de facto position of women" by requiring member parties to ensure there is no direct or indirect discrimination against women in their laws and to ensure that women are protected against discrimination in both public and private contexts.[15] Although these conventions ensure that women are guaranteed certain legal rights, such as the right to work and the right to equal pay, they do not typically mandate specific protections against gender discrimination in the workplace. At best, they broadly encourage member states like Argentina to implement "preferential treatment or quota systems to advance women's integration into … the economy … and employment."[16] However, Argentina has yet to heed that advice.

Title VII of Argentina's national labor law also provides a number of specific rights for women, including protection against termination for change in marital status and pregnancy, provisions for child care leave, and prohibitions on women working from home so that women are not required to work instead of caring for children.[17] Unfortunately, these legal protections often have an opposite effect. For example, an employer is required to provide a woman with paid maternity leave both 45 days before and 45 days after the birth of her child and is required to keep the woman's job open in anticipation of her return.[18] The employer faces harsh penalties if he or she fails to do either.[19] Because of these costly provisions, employers tend to avoid hiring women altogether.[20]

Additionally, the Comprehensive Protection Act prohibits violence and discrimination against women in all areas of a woman's life.[21] The law is aimed at multiple facets of inequality, including discrimination in the workplace, that threaten a woman's access to employment, recruitment, promotion, and job stability through change in marital status and pregnancy.[22] Not only does this legislation carry penalties for acts of discrimination, but its presence promotes awareness of the obstacles faced by women in the labor market.

In 1991, Argentina received worldwide praise for its decision to impose a political quota that resulted in greater

10 *Sexo y Poder (Sex and Power)*, Equipo Latinamericano de Justicia y Género, Publicaciones, www.ela.org.ar (last visited January 18, 2012).

11 Egon Zhender, *supra* note 5.

12 *See* Gabriela T. Mastaglia & Valerie Oosterveld, *Women's Rights Under Labor Law: A Comparative Study of Argentina and Canada*, 19 LOY. L.A. INT'L & COMP. L.J. 915, 919-923 (1997).

13 *Id.* at 919.

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

15 *See, e.g., General recommendation No. 25*, UN Convention on the Elimination of All Forms of Discrimination against Women (thirteenth session, 2004), http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf.

16 *General recommendation No. 5*, UN Convention on the Elimination of All Forms of Discrimination against Women (seventh session, 1998), http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom5.

17 Mastaglia & Oosterveld, *supra* note 12, at 928-32.

18 Arturo Bronstein, *National Labour Law Profile: Republic of Argentina*, ILO, http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158890/lang--en/index.htm (last visited Aug. 30, 2018).

19 Mastaglia & Oosterveld, *supra* note 12, at 930-31.

20 *Id.* at 934-36.

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

22 Enrique Caviglia, *Reglamentación de la Ley de Protección de las Mujeres* (Regulation of the Law on Protection of Women), Cronista (Sept. 27, 2010), http://www.cronista.com/contenidos/2010/09/27/noticia_0004.html.

participation of women in local politics.[23] Then, in 2017, the Argentine National Congress passed a law requiring all future lists of candidates for Congress to alternate male and female candidates.[24] This initiative, combined with the system of political quotas already in place, confirms the legislature's commitment to pursuing gender equality. And although these legislative actions will only impact equal opportunity in Argentina's houses of Congress, they may signal the potential for greater or perhaps broader legislative focus on gender equality in the future.[25]

Unfortunately, similar legislative quotas do not yet exist for women in executive leadership in public or private corporations.[26] While Argentina does have a voluntary Corporate Governance Code, it does not contain any provisions addressing gender equity in the boardroom.[27] It does, however, impose a voluntary "reply or explain" disclosure, which requires listed companies to include with their annual report a separate report on their level of compliance with the voluntary Code and how they are achieving its recommendations. The purpose of the Code and the reporting requirement is to further the goals of enhancing transparency in Argentine companies, imposing greater responsibility on directors and managers, and ensuring equitable treatment of minority shareholders.[28]

Cultural and Societal Influences

Despite this legal backdrop, certain cultural and societal norms still influence women's access to and opportunity for advancement in the workplace. As has also been the case in other nations, traditionally men have been viewed as "breadwinners" and women as "homemakers" throughout Argentina's history.[29] These same attitudes and patriarchal tendencies still persist today.[30] Indeed, according to one 2012 study, 59% of Argentine men and 36.9% of Argentine women believe that women should take care of household chores, children, or the elderly.[31]

In many ways, these gender norms and stereotypes seep into cultural attitudes regarding women at work. In fact, social norms often prevent women from even entering the workforce in the first place. For example, women make up only 40% of Argentina's labor force[32] despite equaling men in terms of total population.[33] Moreover, the Equipo Latinamericano de Justicia y Género (Latin America's Team of Justice and Gender), a Latin American organization that supports gender equality, reported in 2011 that only 4.4% of applicants to large corporations were women.[34] Thus, as

23 *The Global Gender Gap Report 2017, supra* note 7 (explaining that Argentina has a legislated candidate quota of 30% on all ballots, as well as voluntary political party quotas).

24 Daniel Gutman, *In a Historic Step, Lawmakers Impose Gender Parity in Argentina's Congress*, Wire (Dec. 1, 2017), https://thewire.in/external-affairs/historic-step-lawmakers-impose-gender-parity-argentinas-congress.

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

26 *Women in the boardroom: A global perspective*, Deloitte 14 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf (noting that Argentina has no gender quotas in effect for women on boards).

27 *See Synthesis Report: Voluntary Corporate Governance Codes in Latin America*, The 2007 Meeting of the Latin Am. Corp. Governance Roundtable, Organisation for Econ. Co-Operation & Dev. (Oct. 2007) *and Argentina Approves Corporate Governance Code*, Latin Am. Priv. Equity & Venture Cap. Ass'n (Dec. 10, 2007), http://lavca.org/2007/12/10/argentina-approves-corporate-governance-code/.

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

29 Carol Marina Tojeiro, *The Key to Unlocking Argentina's Economic Potential? Women's Inclusion in the Labor Force*, CORNELL POLICY REV. (April 4, 2018), http://www.cornellpolicyreview.com/argentinas-economic-potential-womens-inclusion-labor-force/#post-4184-footnote-1.

30 *UN Special rapporteur challenges Argentina to step up protection of women in "machismo culture"*, UN Human Rights, Office of the High Commissioner (Nov. 21, 2016), https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20903&LangID=E.

31 Tojeiro, *supra* note 29.

32 *Labor force, female (percent of total labor force)*, World Bank, https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS (last updated Nov. 2017).

33 *The World Factbook: South America: Argentina*, CIA (demonstrating that as of 2017, 50% of Argentina's population aged 15-64 was female and 50% of the population was male) (data as of Aug. 20, 2018).

34 *Sexo y Poder (Sex and Power), supra* note 10, at *3.

one publication observed: "The main problems concerning labor discrimination against women in Argentina are not legal, but are social and economic…. [M]ost problems arise before a woman is even hired. These problems are less visible, harder to fix, and manifest themselves more broadly within societal and economic prejudices against women workers."[35]

With such entrenched gender stereotypes, and a general lack of private initiatives designed to support women's employment, women in Argentina surely face a number of barriers both in entering and advancing in the workplace.

Private Sector Initiatives

Although political quotas and the voluntary Corporate Governance Code may be the impetus for further regulation of Argentine companies, it appears that there is only nominal legislative focus on creating gender equality in corporate board rooms in Argentina. That said, there have been small steps by individual Argentine corporations that indicate a trend favoring gender equality.

Private companies and non-profit organizations are undertaking efforts to achieve gender equity. For example, in 2010 the World Bank partnered with 11 large corporations, including Coca-Cola Argentina, Avon Argentina, and Wal-Mart Argentina, to design and implement a program focused on gender equity.[36] The program targeted gender equity in human resources policies, such as recruitment, promotion, and training, as well as professional development, work-life balance policies, sexual harassment, and a non-sexist company image.[37] The benefits of this World Bank program were two-fold. Not only did the perceptions of gender equality improve at these 11 companies, but the program developed a clear, exportable model for other private companies in Argentina to address obstacles specific to the law and culture of Argentina.[38] As these types of projects expand, more private companies may seek to achieve gender equality on their own initiative without government intervention.

Conclusion

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

35 Mastaglia & Oosterveld, *supra* note 12, at 935-36.

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

37 *Id.* at 16.

38 *Id.* at 22.

Brazil

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Brazil is an economic powerhouse, boasting the world's eighth-largest economy and a GDP of $3.219 trillion in 2017.[1] The country is incredibly ethnically diverse, with the largest black population outside of Africa, which makes up 50.7% of the total population.[2] Women represent more than half of the population (50.85%), but women—especially women of color—remain severely underrepresented in the corporate world despite a newly adopted inclusive corporate governance code and proposed legislation.[3]

Former President Dilma Rousseff's election as the first female Brazilian president in 2010 marked a milestone for the country. Her election was promising for the increased participation of women in both the public and private spheres. She declared in her opening speech before the UN General Assembly that "[t]his is the century of women."[4] Indeed, former President Rousseff populated almost a third of her cabinet with women, and in February 2012 appointed a woman to serve as CEO of the country's largest state-owned enterprise, the energy conglomerate Petrobras.

Yet Rousseff's initial rhetoric and women-centric appointments during her six-year tenure proved to be largely symbolic and fleeting. During her administration, Rousseff appointed 92 political leaders to ministerial roles and posts with the same status—including the BCB governor and the Attorney General. Only 15 of those appointed were women (16%).[5] In the judicial branch, Rousseff appointed a total of 16 ministers, only three of whom were women. Of the 18 total women Rousseff appointed, only two were black, and both were appointed to positions in the Department of Racial Equality Policies.

In August 2016, Rousseff was impeached. Brazil's current president, Michel Temer, maintains a paternalistic and stereotypical outlook on the economic empowerment of Brazilian women. He declared in a speech on March 8, 2017—International Women's Day—that women's economic empowerment is good, so that they can actually know the price of the products that are being sold in the supermarket.[6] To that end, Temer made no initial effort to include women in Brazil's 24 ministries. Only after extensive national criticism did he nominate two female ministers for those two dozen ministerial positions.

Corporate Governance Code and Brazilian Women in the Boardroom

The Brazilian Institute of Corporate Governance's (IBGC's) Code of Best Practices of Corporate Governance, first published in 1999 and most recently updated in 2015, is the most established and comprehensive code relating to corporate governance in Brazil.[7] The IBGC, a non-profit organization founded in 1995 that promotes corporate governance in Brazilian companies, has been the central forum for the introduction and dissemination of corporate governance concepts in Brazil. The IBGC's most recently updated code expressly encourages companies to consider gender diversity when evaluating potential board members. Section 2.2(a) provides:

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1 *World Factbook: Brazil*, Central Intelligence Agency, https://www.cia.gov/library/publications/the-world-factbook/geos/br.html (last updated Aug. 23, 2018).

2 According to the study "Projeção da População do Brasil por Sexo e Idade para o período 200/2060 e Projeção da População das Unidades da Federação Por Sexo e Idade para o período 2000/2030" [Projection of Population of Brazil by Sex and Age for the period 2000/2060 and Projection of Population of Units of the Federation by Sex and Age for the period 2000/2030], of the Instituto Brasileiro de Geografia e Estatística (IBGE or Brazilian Institute of Geography and Statistics).

3 *Brazil – Population, female (percent of total)*, Trading Economics, https://tradingeconomics.com/brazil/population-female-percent-of-total-wb-data.html (last visited Aug. 29, 2018).

4 Luisita Lopez Torregrosa, *Paving a Way for Women in Brazil*, N.Y. Times (Nov. 15, 2011), https://www.nytimes.com/2011/11/16/world/americas/16iht-letter16.html.

5 *Why has Dilma Rousseff promoted so few women?*, The Conversation (Mar. 20, 2015), http://theconversation.com/why-has-dilma-rousseff-promoted-so-few-women-38935.

6 Speech available at http://oglobo.globo.com/brasil/temer-diz-que-mulheres-analisam-melhor-precos-de-supermercado-21032564 (last visited Mar. 27, 2017).

7 IBGC Code of Best Practices of Corporate Governance (2015), http://www.ibgc.org.br/userfiles/files/2014/files/CMPGEN.pdf.

> The composition of the board of directors must consider diversity of knowledge, experiences, behaviors, cultural aspects, age *and gender. The directors must ensure that the executive management defines and promotes policies that provide equal opportunities for women to access high leadership positions within the organization.*[8]

While the IBGC Code is voluntary for companies, that Brazil's most influential corporate governance code at last recognizes gender parity is of consequence and will influence companies, and ideally improve Brazilian women's low participation in the corporate world.

Women's participation on corporate boards in Brazil has changed little over the past several years. In 2010, of a total of 2,647 board seats of listed companies, 7.71% were held by women.[9] This number decreased slightly to 7.10% in 2011 according to a survey managed by the IBGC.[10] A 2016 Spencer Stuart Board Services study demonstrated that, even years later, women continue to be underrepresented in Brazilian boardrooms. Women represented just 7.3% of all members, nearly unchanged from 2015 (7.2%).[11] Moreover, 2017 data provides that women *still represent less than 8% of board members (7.7%), and the data provides no indices of the percentage of black women board members.*[12] Change has been sluggish, if not outright stagnant.

Proposed Quota Legislation

For the past eight years, a bill has been lingering in the Brazilian legislature that has the potential to vastly and rapidly change the landscape of the boardroom. In 2010, Senator Maria do Carmo Alves introduced a bill which would require a minimum of 40% women on the boards of companies in which the Brazilian state directly or indirectly holds the majority of the shares (i.e., state-owned enterprises (SOEs).[13] The bill provided a gradual implementation of the quota system over a period of nine years, with SOEs required to achieve at least 10% improvement every two years until attaining the 40% quota by the end of the transition period. Since its origination in 2010, the bill has been amended; it now defines a minimum percentage of women's participation, beginning with 10% in 2018, then 20% in 2020, and finally reaching 30% in 2022—reducing the ultimate 2022 goal by 10%.[14]

On March 8, 2017, a year after President Temer's derogatory comments about women, and eight years after the bill was first introduced, the Senate Constitution, Justice and Citizenship Committee at last approved the bill. The Commission for the Defense of Women's Rights approved the proposal on August 8, 2017, and the Rapporteur added to the original bill the requirement for boards to have at least one female member if the percentage does not guarantee the minimum participation of women.[15] The proposal must now be analyzed conclusively by the Work, Administration and Public Service Committees.[16]

The bill has ignited widespread debate in Brazil. Meritocratic opponents—many of whom are women—believe that board positions should be solely based on merit, and fear that the implementation quotas will cast doubt on women's competencies. Proponents note the stagnancy of women's participation absent government intervention. Heloisa Bedicks of the IBGC has stated, "The quota gives us the necessary sense of urgency in this matter." Likewise, Luiza

8 *Id.*

9 *Women on Boards 2011*, Catalyst (Sept. 2011).

10 *Mulheres no Conselho de Administração*, Instituto Brasileiro de Governança Corporativa (Nov. 2011), http://www.ibgc.org.br/biblioteca/download/IBGC_2009_Pesquisa%20Mulheres...pesq.pdf.

11 *Brazil Board Index*, SpencerStuart 5 (2016), https://www.spencerstuart.com/-/media/pdf%20files/research%20and%20insight%20pdfs/brazil-board-index-2016_031617.pdf.

12 *Mulheres avançam em ritmo lento ao topo do mundo corporativo ("Women move slowly to the top of the corporate world")*, Gênero e numero (May 25, 2017), http://www.generonumero.media/mulheres-avancam-comando-mundo-corporativo/.

13 Bill No. 112 (2010).

14 Gênero e numero, *supra* note 12.

15 *Comissão fixa cota de 30% de mulheres em conselhos de administração de empresas públicas ("Commission sets quota of 30% of women on boards of directors of public companies")*, Câmara dos Deputados (Aug. 18, 2017), http://www2.camara.leg.br/camaranoticias/noticias/ADMINISTRACAO-PUBLICA/539334-COMISSAO-FIXA-COTA-DE-30-DE-MULHERES-EM-CONSELHOS-DE-ADMINISTRACAO-DE-EMPRESAS-PUBLICAS.html.

16 PL 7179/2017, Câmara dos Deputados, http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=2126313.

Trajano, owner and board member of Magazine Luiza, recently commented:

> We have 7% women on boards of companies with stock market shares. If I and the daughters of business owners are not counted, the index drops to 2%. It will take 110 years to match the male presence. The (executive) women themselves told me that the criteria for ascension should be meritocracy. And I said, "Then wait 110 years."[17]

The momentum surrounding the bill is a promising development for gender parity in Brazil's corporate world, at least within SOEs. The world eagerly waits to see whether the bill will finally pass, and is optimistic that Brazilian companies will adopt the IBGC's Code of Best Practices and also recognize the intersection of race in the ethnically diverse nation as well.

17 *'Quase apanhei até das mulheres ao defender cotas em empresas', diz dona do Magazine Luiza ("'I almost caught up with women when defending quotas in companies,' says owner of Luiza Magazine,")*, BBC Brazil (Mar. 2018), http://www.bbc.com/portuguese/brasil-43466259.

The Republic of Colombia

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According to a recent report by Deloitte, at 13% the Republic of Colombia has the highest percentage of women on boards of directors in Latin America.[2] This is noteworthy in light of the regional average of 7.2%.[3] It also reflects a significant increase in the number of women serving on public-sector boards, which has increased 15% since 2014.[4] While Colombia may lead Latin America with regard to women directors, there remains significant opportunity for improvement in access to professional opportunities for women in Colombia, including on corporate boards and in senior executive positions.

Legislative Framework

According to UN Women, the United Nations organization dedicated to gender equality and the empowerment of women, Colombia is well on its way to achieving "a system of laws and public policies aimed at ensuring women's rights and opportunities."[5] In 2011, for example, Colombia enacted its first national anti-discrimination law, which prohibits and indeed criminalizes any discrimination on the basis of race, nationality, sex, sexual orientation, religion, political ideology, or ethnic and cultural origin.[6] Although Colombia's judicial branch upheld the law as constitutional in 2013, there has yet to be any serious prosecution, or advancement of further workplace-specific rights, under the stewardship of that law.[7]

The Colombian government has also promulgated several laws geared toward increasing female participation in the public sphere, including a policy focusing on improving life and equal opportunities for women in rural communities,[8] providing equal opportunities for women,[9] and addressing violence and discrimination against women (the definition of violence includes the concept of economic violence due to female status).[10]

Colombia also maintains an overarching national policy that supports gender equality. In 2002, President Álvaro Uribe Vélez introduced a National Development Plan that authorized the Presidential Council on Equality for Women (CPEM) to build and enforce national policy aimed at promoting the social equity of women.[11] Both then and now, two of the Council's main goals are to promote the presence of women in the labor market and to increase political participation by women.[12] In 2010, Colombia re-affirmed its national policy toward gender equity in the National Policy

1 With thanks to the previous author, Candice Castaneda.

2 *Women in the boardroom: A global perspective*, Deloitte 17 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf.

3 *Id.* at 13.

4 *Id.* at 17.

5 *Columbia commits to strengthen gender equality policies, eliminate gender disparities in education, reduce female unemployment, implement a plan on ending gender-based violence (updated)*, UN Women, http://www.unwomen.org/en/get-involved/step-it-up/commitments/colombia (last visited Aug. 30, 2018). *See also Status of Women's Rights in Columbia*, UN Women, http://lac.unwomen.org/en/donde-estamos/colombia (last visited Aug. 30, 2018).

6 Wilda Escarfuller & Adam Frankel, *Racial Apartheid Persists in Latin America*, America's Quarterly (Oct. 11, 2013), https://www.americasquarterly.org/content/racial-apartheid-persists-latin-america.

7 Benjy Hansen-Bundy, *Constitutional Court Defends Anti-discrimination Law*, Columbia Reports (April 11, 2013), https://colombiareports.com/constitutional-court-defends-anti-discrimination-law/.

8 Ley N. 731 (2002) (Colom.).

9 Ley N. 823 (2003) (Colom.).

10 Ley N. 1257 (2008) (Colom.).

11 *Implementation of the International Covenant on Economic, Social and Cultural Rights: Colombia Addendum*, United Nations, Economic & Social Council, E/C. 12/COL/5 (Jan. 9, 2009), pp. 53-56, https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.COL.5-ENG.doc.

12 *Id. See also* Consejería Presidencial para la Equidad de la Mujer, http://historico.equidadmujer.gov.co/En/Paginas/Main-objective.aspx (last visited Sept. 2, 2018).

on Gender Equity for Women created as part of President Juan Manuel Santos's National Development Plan.[13] This program is geared toward furthering opportunities for equal participation of women in society, and includes a forum for discussing women's issues such as reconciling work and family life, reducing the unemployment rate, affirmative action, entrepreneurship, access to resources, and job training.[14]

While there is no quota system for corporate board participation by women in Colombia, there is a 30% quota for female participation in public political institutions.[15] In fact, in 2018 Colombia exceeded that target when it announced that, for the first time in the Republic's history, half of the country's cabinet members would be women.[16] Although the use of quotas to augment female participation in the political arena is a relatively basic concept, it does suggest an increasing awareness in Colombia as to the importance of participation by women in leadership positions.[17]

Non-Governmental Organizations

Non-governmental organizations (NGOs) committed to increasing professional opportunities and corporate leadership opportunities for women are also very active in Colombia. For example, the Women's Network was founded in 1995 by Isabel Londono as an association for professional women working in Bogota; it has over 6,500 members. In 1999, the Women's Network merged into the Foundation of Women for Colombia. The Foundation works to develop professional opportunities for women. In March 2011, for example, it held a conference for female CEOs in Colombia. It noted that 4% of CEOs in Colombia were women, compared with only 3% of CEOs in the United States. The Foundation also promotes women's participation in U.S. MBA programs and has participated in Harvard's Dynamic Women in Business program.[18]

In addition to the Foundation, the World Corporation for Colombian Women (CMM), which was originally formed in 1989 to promote micro-credit, is now dedicated to female economic and social advancement.[19] CMM is another example of a Colombian organization working to increase participation by women in the workforce and in the nation's economy.

Other Social and Academic Initiatives

In addition to NGOs, local students and academics are contributing to the debate on gender equality in Colombia. In 2017, for example, CESA, a leading business school in Colombia, compiled and released the country's first gender equality ranking.[20] According to this study, companies that employ women are 26% more profitable.[21] The study also revealed that women occupy only 34% of senior level management positions in the country.[22]

Professor Sandra Idrovo Carlier from the INALDE Business School of Colombia is an outspoken advocate for women's rights in Colombia. She has often spoken on the issue of corporate governance and the need for greater gender diversity in high positions at private (i.e., non-governmental) companies. Indeed, in a 2009 interview, Professor Carlier explained that companies are losing the benefits and opportunities provided by inclusion of women on boards or in other senior positions because of misconceptions that women are not as committed or prepared as men and are

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13 *See Política Pública Nacional de Equidad de género para las Mujeres y el Plan Integral para garantizar a las mujeres una vida libre de violencias*, Equidad de la Mujer, Gobierno de Colombia, http://www.equidadmujer.gov.co/ejes/Paginas/politica-publica-de-equidad-de-genero.aspx (last visited Sept. 4, 2018).

14 *Id.*

15 Deloitte, *supra* note 2.

16 Anastasia Moloney, *Colombia Shatters Glass Ceiling with Gender-Equal Cabinet*, Reuters (July 26, 2018), https://www.reuters.com/article/us-colombia-women-politics/colombia-shatters-glass-ceiling-with-gender-equal-cabinet-idUSKBN1KG2HM.

17 Ley N. 581 (2000) (Colom.).

18 *Mujeres Colombianas Presidentas*, Fundacion Mujeres Por Colombia (March 8, 2011), http://www.fundacionmujeresporcolombia.org/2011/03/08/mujeres-presidentas/.

19 *Corporación Mundial de la Mujer Colombia*, http://www.cmmcolombia.org/ (last visited Sept. 4, 2018).

20 *Gender Equality: Women Working for Less*, Bogota Post (Oct. 17, 2016), https://thebogotapost.com/2016/10/17/gender-equality-women-working-for-less/.

21 *Id.*

22 *Id.*

not as good at negotiations or networking.[23] She stated that, to truly effectuate a change in female participation and equality in Colombian corporations, there must be a change in culture.[24] Professor Carlier has been internationally recognized and was a featured speaker at the March 2012 International Seminar on Women and Leadership, Higher Level Female Talent, held in Miami by El Instituto Panamericano de Alta Dirección de Empresa (IPADE Business School).[25]

Similarly, Colombian businesswoman Yolanda Auza Gomez, President of Unisys de Colombia and General Manager of Unisys LACSA, also promotes female participation in business, and has been recognized as one of Latin America's top 25 businesswomen. Ms. Gomez launched a mentoring program for young businesswomen through the Colombian Chapter of Women Corporate Directors International.[26]

Lastly, the Externado de Colombia University, through the Business Administration Faculty, has introduced a "Women Breaking Barriers" program, which seeks to maximize the professional development of Colombian women in administrative positions.[27] To that end, the program arranges for 25 high-level women executives to mentor an equal number of students. The program also offers conferences on management skills and assistance with business management, team management, and organization.

Conclusion

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

23 *See e.g.*, Sandra Idrovo, Conclusiones Medellin Ciudad Cluster Camara (2009) http://www.youtube.com/watch?v=yqp8fGapq2g. *See also* Sandra Idrovo Carlier, Consuelo Leon Llorente, Marc Grau Grau, *Comparing Work-life Balance in Spanish and Latin-American Countries*, Eur. J. of Training & Dev. (2012), Vol. 36 Iss: 2/3, pp.286-307 (illustrating the type of research completed by Professor Carlier regarding issues relevant to women in the workplace). Professor Carlier's collaborators for this article were professors from Spanish universities.

24 *Id.*

25 Seminario Internacional Mujer y Liderazgo, Talento femenino más Alta Dirección, El Instituto Panamericano de Alta Dirección de Empresa (IPADE Business School (March 2012)). *See also* Sandra Monserrat Idrovo Carlier, INALDE, Claustro, https://www.inalde.edu.co/claustro/sandra-monserrat-idrovo-carlier/ (last visited Sept. 4, 2018).

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

27 *Women Breaking Barriers, a Commitment to Gender Equality*, Universidad Externado de Colombia, Sch. of Mgmt., https://www.uexternado.edu.co/en/school-of-management/mujeres-rompiendo-barreras-una-apuesta-por-la-equidad-de-genero/ (last visited Aug. 31, 2018).

Mexico

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Despite being one of the largest economies in Latin America[1] and home to many of the region's businesses,[2] in Mexico women only occupy approximately 6% of board positions.[3] However, the percentage of women in senior leadership positions in Mexico is growing: a 2017 report shows that the number of businesses in Mexico with no women in senior leadership has fallen from 52% to 38% since the beginning of 2016.[4] In addition, approximately 25% of Mexican firms have ownership that includes women.[5]

Cultural Backdrop

Gender roles, a culture of "machismo," and discrimination in Mexican society may explain the lack of women in corporate leadership positions.[6] Mexican women are expected to assume primary responsibility for household management and the rearing of children.[7] In addition, studies suggest that the level of early childhood education and care publicly available in Mexico is not yet of sufficient quantity or quality to serve the needs of Mexican women wishing to return to work.[8] Therefore, many Mexican women executives find it difficult to reconcile their professional lives with their family lives and often feel that they must choose between having a career and having a family.[9]

The culture of "machismo" in the workplace is also a significant barrier to women's professional advancement.[10] In the 1980s, for example, it was common practice for employers to require women employees to sign a resignation letter when hired, so that the employers could fire them quickly if they became pregnant.[11] Although resignation letters are no longer legal, women continue to face "subtle discrimination all the way to sexual harassment" in small domestic

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1 *Where Will Latin America's Growth Come From?*, McKinsey Global Inst. 4 (Apr. 2017); *Mexico Overview*, World Bank, http://www.worldbank.org/en/country/mexico/overview (last updated Apr. 16, 2018).

2 *The Latin 500 Ranking 2015*, Latin Trade (July 7, 2015), http://latintrade.com/the-latin-500/.

3 *Women in the boardroom: A global perspective*, Deloitte 18 (2017), https://www2.deloitte.com/content/dam/Deloitte/za/Documents/technology-media-telecommunications/za_Wome_in_the_boardroom_a_global_perspective_fifth_edition.pdf; *Latin America: Female Boardroom Blues*, Knowledge@Wharton (Oct. 19, 2011) *reprinted* in Latin Bus. Chron. (Nov. 7, 2011), http://www.latinbusinesschronicle.com/app/article.aspx?id=5218. *See also* Irene Natividad, *'There is no denying the effectiveness of quotas': why Europe will surpass the U.S. in changing the face of the corporate board,* Bus. Library (Fall 2010), http://findarticles.com/p/articles/mi_go2446/is_5_34/ai_n56248109/ (stating that of twenty-three Mexican companies surveyed by Corporate Women Directors International, 52% had female directors and 5.8% of all directors were women).

4 *Women in business: New perspectives on risk and reward*, Grant Thornton 11 (Mar. 2017), https://www.grantthornton.global/globalassets/1.-member-firms/global/insights/article-pdfs/2017/grant-thornton_women-in-business_2017-report.pdf; *Women in the Workforce: Mexico*, Catalyst (Oct. 27, 2017), https://www.catalyst.org/knowledge/women-workforce-mexico#footnote30_jbkm4mc.

5 *The Global Gender Gap Report 2016*, World Econ. Forum (2016), http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=MEX.

6 *See* Amy Stillman, *Machismo persists in Latin America despite rise of female presidents,* Fin. Times (Mar. 5, 2014), https://www.ft.com/content/6519773e-8d90-11e3-9dbb-00144feab7de; Interview with Ivonne Monteagudo, *Women, Machismo and Opportunity: Women and Business Leadership in Mexico*, in Focusing on Latin Am., Int'l Museum of Women, http://exhibitions.globalfundforwomen.org/economica/projects/latinamerica/mexico/women-machismo-opportunity (last visited Aug. 27, 2018).

7 *Tierra de Hombres in Las CEOs más Poderosas de América Latina*, América Economía, http://rankings.americaeconomia.com/2010/top_ceo/tierra_hombres.php (last visited Sept. 4, 2018) (discussing the view of Carlos Alcérreca, Dean of Administration and Accounting at ITAM of Mexico, on the changing roles of women in companies).

8 *See* Silke Staab & Roberto Gerhard, *Childcare Service Expansion in Chile and Mexico: For Women or Children or Both?*, U.N. Res. Inst. for Soc. Dev. (May 2010), http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/5F0320F46ECBA3BFC1257744004BB4E8/$file/StaabGerhard.pdf; *The Pursuit of Gender Equality: An Uphill Battle*, OECD (2017), https://www.oecd.org/mexico/Gender2017-MEX-en.pdf.

9 *Latin America: Female Boardroom Blues, supra* note 3. See also Nathanial Parish Flannery, *In Mexico and Around the Globe Women are Moving into Senior Leadership Positions*, Forbes (Mar. 26, 2012), https://www.forbes.com/sites/nathanielparishflannery/2012/03/26/in-mexico-and-around-the-globe-women-are-moving-into-senior-leadership-positions/#6e0e99475236; *Why top management eludes women in Latin America: McKinsey Global Survey results*, McKinsey (Aug. 2013), https://www.mckinsey.com/business-functions/organization/our-insights/why-top-management-eludes-women-in-latin-america-mckinsey-global-survey-results.

10 *See, e.g.*, Interview with Ivonne Monteagudo, *supra* note 6.

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

companies, as well as in large multinational corporations, in Mexico.[12] Gender discrimination is so prevalent in Latin America that 61% of female executives reported that they have experienced discrimination.[13] For example, Ivonne Monteagudo, a former Senior Vice President of Sam's Club Mexico, recalls overhearing a male manager decide to fire a female employee rather than a male employee, because the former did not have to support a family.[14]

In addition to the machismo culture, cronyism in Mexican society has historically hindered progress towards gender equality in the workplace. The Inter-American Development Bank reports that "cronyism and connections are a more accepted mode of doing business in Latin American than in the rest of the world."[15] In fact, as recently as 2016, Mexico ranked as one of the top 10 economies for crony capitalism in the world.[16] Male directors and CEOs tend to hire friends and professional contacts when vacancies arise and, as such, it is difficult for women to break into the business world unless they are politically connected or part of a family-run business. Indeed, many of the women directors of Mexican companies serve on the boards of their family businesses.[17] Despite these historic tendencies, the call for reform may be strengthening in Mexico: not only has popular opinion surged against cronyism[18] but President Andrés Manuel López Obrador recently ran on a platform that pledged, among other things, to curb the country's corruption.[19] Although it is still too soon to assess the impact of these trends on women in the workplace, they at least represent a potential positive force for change.

Legislative Framework

As of 2016, women held only 5.7% of corporate board seats in Mexico as compared to the regional (Latin American) average of 7.2%.[20] Yet despite this comparably low percentage, Mexico does not currently have any laws or regulations establishing gender quotas for boards of directors.[21] However, the Mexican Government recently announced its intention to amend its regulations to require publicly traded companies to disclose the number of women on their boards and whether they have implemented gender equality policies.[22]

Moreover, Mexico has several laws that promote gender equality, including equal pay for equal work laws, maternity laws, and equal opportunity laws. Under the Mexican Constitution, men and women are equal before the law[23] and all citizens have the freedom to work in a lawful profession of their choice.[24] The Constitution also enumerates a number of equal rights, regardless of gender, including the prevention of discrimination against working mothers.[25]

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12 Interview with Ivonne Monteagudo, *supra* note 6.

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

14 Interview with Ivonne Monteagudo, *supra* note 6.

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

16 *Our Crony Capitalism Index: The Party Winds Down*, Economist (May 7, 2016), https://www.economist.com/graphic-detail/2016/05/05/comparing-crony-capitalism-around-the-world.

17 *Tierra de Hombres, supra* note 7. *See also Flannery, supra* note 9 (describing how Maria Asuncion Aramburuzabala was thrust into a board position at Grupo Modelo only after her father, the former controlling shareholder, died without a male heir).

18 Economist, *supra* note 16.

19 *A Left Turn in Mexico*, Wall Street J. (July 1, 2018), https://www.wsj.com/articles/a-left-turn-in-mexico-1530496717?mod=searchresults&page=1&pos=1.

20 Deloitte, *supra* note 3 (citing *The CS Gender 3000: The Reward for Change*, Credit Suisse (Sept. 2016)).

21 *Id.* However, Mexico has had a gender quota in place for governmental positions since 2002.

22 Francisco Garcia-Naranjo G, *Corporate governance and directors' duties in Mexico: overview* (last updated Dec. 1, 2017), https://content.next.westlaw.com/Document/I2ef12afa1ed511e38578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1.

23 CONSTITUTION OF MEXICO 2018, art. 4, *http://www.diputados.gob.mx/LeyesBiblio/pdf/1_270818.pdf.*

24 *Id.* at art. 5.

25 *Id.* at art. 123 (providing equality for workers regardless of gender, including no strenuous work for pregnant employees, paid maternity leave six weeks prior to and after birth, job retention during maternity leave, two extra rest periods of 30 minutes to breastfeed, and women's entitlement to nursing aid and infant care services).

Mexican federal labor law and its laws prohibiting discrimination and harassment also align with international standards. More specifically, discrimination on the basis of ethnic origin, nationality, sex, age, disability, health conditions, religion, immigration conditions, opinions, sexual preference or civil status is expressly prohibited under Mexican law.[26] The law also clarifies that workplace or sexual harassment is grounds for a just cause termination.[27] Lastly, employers are now expressly prohibited from requesting pregnancy tests as a hiring condition, and they cannot require a woman to resign, supposedly voluntarily, due to pregnancy.[28]

In addition, other public sector trends have kept women's representation at the forefront of Mexico's political discourse in recent years. In Mexico's 2012 presidential election, for example, Vazquez Mota, the first female presidential candidate in Mexico's history, often spoke about the need to increase women's participation in politics and business alike.[29] And in Mexico's July 2018 elections, the country achieved its highest-ever levels of female representation in both houses of Congress.[30] With women holding 49.2% of seats in Mexico's Senate, it is now the upper legislative chamber with the second-largest female representation in the world.[31]

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

Corporate Governance Code

The Mexican Corporate Governance Code offers voluntary recommendations on corporate governance for private and public companies. It was drafted largely by the Committee on Corporate Governance and, at the time of its 1999 inception, was "the first of its kind in Latin America."[32] The Committee on Corporate Governance was composed of members of the Mexican Stock Exchange, the Mexican Bankers' Association, the Mexican Institute of Finance Executives, and the Mexican Institute of Public Accountants, as well as the industrial, retail, and service sectors.[33] Notably, none of the drafters were women.[34]

The purpose of the Code is to increase transparency consistent with international standards and to increase competitiveness and investment.[35] The Code has five sections: (1) Board of Directors, (2) Evaluating and Compensating Directors, (3) Auditing, (4) Finances and Planning, and (5) Stockholder Information. Regarding board composition, the Code recommends that boards have 3-15 board members, of which 25% should be independent directors.[36] Although the Code is voluntary, the Mexican Securities Law requires that 25% of public company board members be independent directors.[37] The Code does not include a recommendation for gender diversity with regard to board composition, nor does the Code discuss term limits or other restrictions limiting a director's independence after a certain number of years served.

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26 Diana J. Nehro, *Mexico Labor Reforms Increase Protection for Employees and Clarity for Employers*, SHRM (Feb. 12, 2013), https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/mexico-labor-reforms.aspx.

27 *Id.*

28 *Id.*

29 Flannery, *supra* note 9.

30 Robbie Whelan, *Women Test Mexico's 'Macho' Political Culture With Big Electoral Gains*, Wall Street J. (July 12, 2018), https://www.wsj.com/articles/women-test-mexicos-macho-political-culture-with-big-electoral-gains-1531387800.

31 *Id.*

32 *Corporate Governance Code for Mexico*, Eur. Corp. Governance Inst. (ECGI) 1 (Sept. 26, 2002), http://www.ecgi.org/codes/documents/mexico_code_en.pdf.

33 *Id.* at 1, 2.

34 *Id.* at 13-14.

35 *Id.* at 1. *See also Country Report: Voluntary Corporate Governance Code in Mexico*, OECD 2, 4 (Oct. 2007), http://www.oecd.org/corporate/ca/corporategovernanceprinciples/39741190.pdf.

36 *Código de Mejores Prácticas Corporativas*, Consejo Coordinador Empresarial 14 (2006) http://www.ri.pemex.com/files/content/Codigo_de_Mejores_Practicas_Corporativas_CCE.pdf. This is the revised, and most current version of, the voluntary Corporate Governance Code for Mexico.

37 Luis Lavalle Moreno, *Comments to the New Securities Law*, Martinez, Algaba, Estrella, de Haro y Galvan-Duque, S.C. 8 (Feb. 2006), http://www.iln.com/articles/pub_302.pdf.

Private Sector Initiatives

There is also potential for private sector reform in Mexico. For example, Corporate Social Responsibility (CSR) is now considered an imperative for many Mexican companies.[38] Although CSR is not a legal requirement, its growing recognition has led to greater transparency from Mexican companies on social, environmental, and ethical issues – including diversity of representation. In fact, the Mexican Stock Exchange (BMV) created a new sustainability index in 2015 to help measure and encourage the growth of Mexican companies that are prepared for future social, environmental, and economic challenges.[39] One factor, among many, that results in a favorable sustainability index score is the number of women on a company's board of directors.[40]

Individual organizations are also recognizing the economic impact of gender diversity. In 2016, the U.S. Chamber of Commerce Foundation along with the American Chamber of Commerce of Mexico hosted an event in Mexico City that focused on the promotion of women in business as a means of achieving a more prosperous Mexican economy.[41] Research presented at this event showed the many benefits of investing in women in business, including the "multiplier effect – when women reinvest a large portion of their income in their families and communities."[42] These findings build on prior reports from the American Chamber of Commerce of Mexico, which found after surveying 24 transnational companies that 75% of such companies reported "better results by having women who serve on their executive committee."[43]

The American Chamber of Commerce of Mexico also discovered that many transnational companies have adopted various programs to help retain women employees in Mexico, including flexible hours, maternity and paternity support, mentoring programs, women's networks, and programs promoting respect and diversity inclusion.[44] The majority of the programs are available to all employees regardless of gender, even though they may be specifically intended to increase the participation of women in the workplace, to help reconcile work with family life, and to promote leadership and diversity.[45] Perhaps because of these programs, working women in Mexico are more likely to work for a global firm as opposed to a non-global, domestic firm.[46]

Several local and international women's organizations have also developed initiatives to increase the presence of women in boardrooms. The Mexican Association of Executive Women is a network of business women from small, medium, and large businesses.[47] Its mission is "the search for unity of executive women and the support of their participation in better opportunities of employment and wealth, while achieving equity and justice in a democracy."[48] Women Corporate Directors, which has a chapter in Mexico City, advises boards on the participation of women in the workforce, trains women for board service, and claims to have helped facilitate the placement of more than 500 women on corporate boards, private boards, and advisory boards around the world.[49]

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38 Garcia-Naranjo G, *supra* note 22.

39 *Social Responsibility*, Grupo BMV, https://www.bmv.com.mx/en/Grupo_BMV/Mercado_responsabilidad_social#.VbjCo_mqpBc (last visited Mar. 23, 2018).

40 *Sustainability Guide: Toward Sustainable Development of Companies in Mexico*, Grupo BMV 32, https://www.bmv.com.mx/docs-pub/SERVICIOS_EMISORAS/3q2wk7r8jj6746k46q1n.pdf.

41 *Exploring Opportunities for Private Sector Engagement and Impact: Promoting Women's Economic Empowerment and Workforce Development in Mexico*, U.S. Chamber of Com. Found. (Feb. 2016), https://www.uschamberfoundation.org/event/exploring-opportunities-private-sector-engagement-and-impact-promoting-womens-economic.

42 *Id.*

43 American Chamber Mexico, Best Practices in Diversity and Labor Inclusion, slide 2 (2011), http://www.amcham.com.mx/member-services/best_practices_in_diversity_and_labor_inclusion.aspx.

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

45 *Id.* at slide 3.

46 *Today's Mexican High Potentials at Work Report*, Catalyst (July 2014), https://www.catalyst.org/system/files/todays_mexican_high_potentials_at_work_0.pdf.

47 *Asociación Mexicana de Mujeres Empresarias A.C.*, http://www.ammjenacional.org/ (last visited Aug. 28, 2018).

48 *Id.*

49 *Women Corporate Directors*, http://www.womencorporatedirectors.org/ (last visited Aug. 24, 2018).

Lastly, civil society in Latin America, and in Mexico specifically, is helping to promote and support women in corporate management positions. For example, the PanAmerican Institute for High Business Direction (IPADE), a private university in Mexico and one of the leading business schools in Latin America, has a Research Center for Women in Senior Management. The Center focuses on three primary areas: (1) analyzing and promoting the stories of women who have successfully achieved balance between their personal, family, and professional lives; (2) identifying and promoting businesses that promote a commitment to developing female leadership and managers; and (3) making an impact on education, public policy, and culture on these topics.[50] The Center frequently releases research and publications and in 2017, in honor of IPADE's 50th Anniversary, it released a book on the evolution of "the business woman" in Mexico, as well as the challenges of promoting female talent in management.[51]

Conclusion

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

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

50 *IPADE Business School, Research Centers, Research Center for Women in Senior Management*, https://www.ipadebusinessschool.com/research-centers/#CIMAD (last visited Aug. 28, 2018).

51 *IPADE Business School, Research Centers Commemorative Collection*, http://50aniversario.ipade.mx/2017/11/12/research-centers-commemorative-collection/?lang=en (last visited Aug. 28, 2018).

The Republic of Panama

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The New Law and New Initiatives

In July of 2017, Panama established a minimum quota for women on the boards of directors (or similar bodies) of the Panamanian government, public companies, financial intermediaries, and other entities regulated by the foregoing.[1] The law took effect July 12, 2017 with the ultimate requirement that 30% of women must be appointed to available board positions. The law is implemented in three graduated phases: Women shall comprise 10% of people appointed to boards in the first year of the law's enactment, 20% in the second year, and 30% in the third year. There is currently no penalty for non-compliance with this law.

In addition to this new law, in January 2018, the Government of Panama hosted the launch of, and was the first country in Latin America and the Caribbean to join, the Equal Pay International Coalition (EPIC), a global initiative to reduce the wage gap between women and men, which is about 15% in the region.[2] EPIC is promoted by the International Labor Organization, UN Women, and the Organization for Economic Cooperation and Development, and was launched globally in September 2017 within the framework of the UN General Assembly.[3]

The Legal and Governmental Framework

In addition to the new law requiring the appointment of a minimum percentage of women to boards, Panama has passed several laws specifically related to women.

Fundamentally, the Panamanian Constitution expressly prohibits discrimination based on race, birth, social class, handicap, sex, religion, and political ideology.[4] The Constitution further provides that a similar wage or salary be paid for similar work under identical conditions, regardless of sex, nationality, age, race, social standing, or political or religious ideologies,[5] and establishes that men and women are equal in marriage.[6]

Panama also has established minimum quotas for women on primary or party ballots in its national elections. Panama's electoral law requires that 50% of a party's candidate nomination list for national office be women, and requires that at least 10% of public funds dedicated to civic and political education be exclusively for training women.[7] However, only about 18% of Panama's Parliament is composed of women.[8]

With regard to Panama's executive branch, Mireya Moscoso was Panama's first—and to date only—female president, serving from 1999 to 2004. Overall, women hold about 28% of positions in Panama's executive branch of government.[9]

In the judicial branch, one woman serves on the highest court (out of nine members).[10] A 2014 report indicates that

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1 Law 56 of July 11, 2017 (Pan.).

2 *EPIC coalition is launched in Panama to close pay gap between women and men in Latin America and the Caribbean*, UN Women (Jan. 30, 2018), http://lac.unwomen.org/en/noticias-y-eventos/articulos/2018/1/lanzamiento-coalicion-epic.

3 *Id.*

4 CONSTITUTION OF PANAMA, art.19.

5 *Id.* at art. 67.

6 *Id.* at art. 57.

7 Electoral Code of Panama art. 182(B)(2.4)(d) 239.

8 *The Global Gender Gap Report 2016*, World Econ. Forum (2016), http://reports.weforum.org/global-gender-gap-report-2016/economies/#economy=PAN.

9 *Id.*

10 *Corte Suprema de Justicia*, Organa Judicial de Panama (June 24, 2010), http://www.organojudicial.gob.pa/tribunales/corte-suprema-de-justicia; Información Local, WCD Panamá, http://www.wcdpanama.org/article.html?aid=116 (last visited Sept. 14, 2018).

women held 11% of seats in the judicial branch.[11] The Association of Women Corporate Directors of Panama ("WCD Panama") shares this same statistic on their website, along with the fact that Colombia and Panama, with 11% of women on their judicial bodies, are the Latin American countries with the lowest female representation in the judicial branch.[12]

Women in the Workforce

Approximately 58% of Panama's female population between the ages of 15 and 64 participate in the labor force (compared with approximately 86% of Panama's male population of the same age).[13] By contrast, approximately 71% of women and 75% of men with advanced degrees participate in Panama's labor force.[14]

In 2016, the World Economic Forum ranked Panama 47th out of 144 countries in a study that analyzed the gender gap.[15] The World Economic Forum study also revealed a substantial wage gap between men and women in Panama: Women are estimated to make about 62% of men's pay.[16]

Panama has legislation regarding sexual harassment in employment, with criminal penalties.[17] While it is permissible for prospective employers to ask about family status,[18] dismissal of pregnant workers is prohibited, mothers are guaranteed an equivalent position after maternity leave, and nursing mothers are entitled to nursing breaks at work.[19] Panama provides that there shall be 98 days of fully paid maternity leave, which the government helps to sponsor.[20] There is no mandated paternity leave.[21]

Under Panamanian law, women are permitted to retire and get full benefits at 57. Men are permitted to retire and get full benefits at 62.[22]

Women are not permitted to work in certain jobs deemed "hazardous" in the same way as men.[23]

Women in Positions of Leadership

Precise information on the percent of women in management and leadership of companies in Panama is difficult to discern. The World Economic Forum estimates that about 25% of firms have women in ownership and approximately 24% have women in top management positions.[24] WCD Panama recently conducted a study analyzing companies that are subject to the law requiring a minimum quota of women on boards of directors. According to the study, as of early 2018 the boards of directors of the 495 companies subject to the law are composed of 14% women and the boards of

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11 *Competitiveness: Catching the next wave – Panama*, Deloitte 17 (Apr. 2014), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-panama-competitiveness-report-08042014.pdf.

12 WCD Panamá, *supra* note 10.

13 *Labor force participation rate, female (% of female population ages 15-64) (modeled ILO estimate)*, World Bank, https://data.worldbank.org/indicator/SL.TLF.ACTI.FE.ZS?locations=PA (last updated March 2017); *Labor force participation rate, male (% of male population ages 15-64) (modeled ILO estimate)*, World Bank, https://data.worldbank.org/indicator/SL.TLF.ACTI.MA.ZS?locations=PA (last updated March 2017).

14 World Econ. Forum, *supra* note 8.

15 *Id.*

16 *Id.*

17 *Women, Business and the Law 2016*, World Bank 191 (2016), http://pubdocs.worldbank.org/en/810421519921949813/Women-Business-and-the-Law-2016.pdf. There is no legislation regarding sexual harassment in education or in public places. *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 World Econ. Forum, *supra* note 8.

directors of the 86 companies subject to the law are comprised of 18% women.[25]

In a study about five years ago of 24 corporations that had common shares registered with Panama's securities regulator, the World Bank found that only 9% of directors were women.[26] A 2015 study of nine listed companies in Panama found no women CEOs, only 12% of senior managers at those companies were women, and just 5% of those companies had women on their boards of directors.[27]

Broader Women's Rights

Women have many of the same core civil rights as men in Panama, including access to identification, travel, and employment; the ability to sign contracts, register businesses, and access bank accounts; ownership rights to property; and the weight their testimony is given in court.[28]

Women also have similar—or better—educational attainment than men. About the same percent of girls and boys enroll in primary education (95% and 96% respectively).[29] At the secondary and tertiary education level, however, female enrollment outstrips male enrollment, with 81% female and 75% male enrollment in secondary education and 47% female and 31% male enrollment in tertiary education.[30] Due to this, the World Economic Forum ranks Panama first out of 144 countries in gender gap analyses of female enrollment in secondary and tertiary education.[31] *La Prensa, a major Panamanian newspaper, recently estimated that two out of three university students were women.*[32]

A 2014 Gallup poll found that 51% of adults in Panama said women were treated with respect and dignity in Panama, while 45% of adults said women were not.[33] However, earlier this year, Gallup data showed that the number of women who believed women were treated with dignity and respect in Panama had declined in the past five years.[34]

Conclusion

While Panama still has a long way to go to achieve gender equality in the workforce and on boards and in management positions, within the past year, the government of Panama has taken key, public steps in recognition of and to address the gender gap between women and men on boards of directors and the gender wage gap between women and men. It remains to be seen how effective these steps will be.

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25 WCD Panamá, *supra* note 10; *Piden equidad de género en cargos directivos*, La Prensa (Feb. 24, 2018), https://impresa.prensa.com/economia/Piden-equidad-genero-cargos-directivos_0_4970502964.html.

26 Deloitte, *supra* note 11.

27 *2015 Global Women Entrepreneur Leaders Scorecard Executive Summary*, ACG Inc. 24 (2015), http://i.dell.com/sites/doccontent/corporate/secure/en/Documents/2015-GWEL-Scorecard-Executive-Summary.pdf.

28 Word Bank, *supra* note 17, at 190.

29 World Econ. Forum, *supra* note 8.

30 *Id.*

31 *Id.*

32 *Empieza a regir ley que establece la participación de mujeres en juntas directivas estatales*, La Prensa (July 13, 2017), https://www.prensa.com/politica/Empieza-establecela-participacion-directivas-estatales_0_4801769779.html.

33 Cynthia English & Johanna Godoy, *Respect and Dignity for Women Lacking in Latin America*, Gallup (Oct. 14, 2014), http://news.gallup.com/poll/178427/respect-dignity-women-lacking-latin-america.aspx.

34 Johanna Godoy, *Latin America: Fighting Machismo and Murder*, Gallup (Mar. 8, 2018), http://news.gallup.com/international-womens-day/228875/latin-america-fighting-machismo-murder.aspx.

Middle East

Cooperation Council for the Arab States of the Gulf

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While the numbers are still low, the issue of diversity on corporate boards has received increasing attention in the Cooperation Council for the Arab States of the Gulf ("Gulf Cooperation Council" or "GCC").[1] However, according to a 2017 study conducted by the GCC Board Directors Institute (GCC BDI), like many other countries in the Middle East, the GCC countries view diversity through the lens of experience and independence.[2] Some corporate governance codes in the GCC even attempt to address diversity in terms of "independent directors."[3] The GCC BDI report also found that only 10% of respondents stated that they would look to improve diversity through attracting female candidates. However, as discussed below, there is a slow but growing focus on the inclusion of women in the boardroom and the workforce in the region.

Corporate Board Diversity Remains Low

Female representation on corporate boards is still low. Across the region, women only make up 2% of board representation.[4] Additionally, Saudi Arabia and the UAE are among the eleven countries where at least half of the corporate boards of listed companies do not have a woman board member or CEO.[5] A look at board representation across several stock exchanges in the GCC further shows the lack of female representation. For example, the Dubai Financial Markets have five women out of 383 total board seats, the Bahrain Bourse has six women board members out of 353 total seats, and the Tadawul exchange has one female board member out of 1,298 total seats.[6]

According to a 2015 McKinsey report, there were at the time a number of barriers to women's participation on corporate boards, many of which still exist.[7] Specifically, within the region, intangible traditions and biases operate as "powerful constraints."[8] The GCC BDI study found that 48.1% of respondents identified culture and 44.2% of respondents listed a lack of qualified candidates as barriers to appointing women to boards.[9] The struggle to find qualified female candidates is further exacerbated by the fact that traditionally women in the GCC did not work outside the home, and still today women tend to sacrifice their careers in order to raise a family.[10] Finally, a Deloitte study, completed in conjunction with the 30% Club of the GCC, found that while many respondents felt that having women in the C-suite would be beneficial, most respondents did not think that increasing the number of women on boards was a priority.[11]

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1 The GCC 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").

2 *Board effectiveness review: A decade of change in GCC boardrooms*, GCC Bd. Dir. Inst. 28 (2017), http://gccbdi.org/Media/Survey%20Publications/GCC%2028077%20Survey%20Summary%202017%20English%20AW3.pdf.

3 Saeed Bin Shabib, *White Paper: Diversity & The Boardroom The Case for Women in Regional (UAE) Boards*, LinkedIn (Jan. 24, 2016), https://www.linkedin.com/pulse/white-paper-diversity-boardroom-case-women-regional-uae-bin-shabib.

4 *Women in Finance: Beyond the Numbers, Middle East*, ACCA (2017), http://www.accaglobal.com/content/dam/ACCA_National/me/News/wif-report-jan-2017.pdf.

5 GCC Bd. Dir. Inst., *supra* note 2, at 29.

6 Bin Shabib, *supra* note 3.

7 Tari Ellis, Chiara Marcati & Julia M. Sperling, *Promoting gender diversity in the Gulf*, McKinsey & Co. (Feb. 2015), http://www.mckinsey.com/insights/organization/promoting_gender_diversity_in_the_gulf.

8 *Id.*

9 GCC Bd. Dir. Inst., *supra* note 2, at 29.

10 *Culture, Organizational Policies, Self-Imposed Barriers, and Gender Diversity in the UAE*, Hawkamah, Inst. for Corporate Governance (2017), https://www.hawkamah.org/uploads/reports/Hawkamah%20-%20Gender%20Report.pdf.

11 *View from the top: What business executives really think about women leaders in the GCC*, Deloitte & 30% Club (2017), https://30percentclub.org/assets/uploads/Deloitte_and_30__Club_Study_-_View_from_the_top_(2).pdf.

Reason for Optimism

Efforts by some GCC member governments have led to positive changes. The UAE has made the greatest progress toward gender diversity in the corporate sphere by imposing a quota in 2012. The quota requires every state-owned company to have least one female board member. This is an especially noteworthy move because gender quotas generally are not popular in the Middle East.[12] While the quota has been in place for a few years, it has not had a major impact on increasing female representation on corporate boards. According to a 2017 Deloitte study, only 2.1% of board seats were occupied by women.[13] The lack of impact may be partly a result of the fact that the 2012 quota did not include a target date or sanctions for non-compliance.[14] The UAE has also enacted laws in order to regulate the pay gap in the workforce.[15]

The government of Saudi Arabia has also committed to improving female participation in the workforce. Saudi law forbids gaps in pay between men and women.[16] Additionally, the government is working toward increasing the percentage of women in the workforce from 22% to 30% by 2030. Finally, in 2012 Saudi Arabia passed a law requiring 30 women to be present on the Shura council (the formal advisory body of Saudi Arabia), out of a total of 150 seats.[17] Shortly after passing this law, the Saudi King appointed 30 women to the council for the first time in history.[18] Female presence on the council has remained consistent since then, with women holding about 20% of the seats.[19]

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.[20] 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.[21] 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.[22]

Associations that promote training, networking, and mentoring opportunities among businesswomen continue to gain momentum and effect change. The major NGOs and civil organizations in the Gulf region include the GCC Chapter of the 30% Club, The Hawkamah, the Institute for Corporate Governance in the UAE, the Dubai Business Council, and the Reach Mentoring organization.

Conclusion

The move toward greater female representation in the boardroom has been slow in the GCC. Cultural traditions and biases continue to create barriers to women entering and progressing in the workforce. However, studies show that more businesses in the GCC are starting to acknowledge the benefits of having women on corporate boards. Furthermore, the governments in Saudi Arabia and the UAE have implemented changes that will provide greater opportunities and equality to women in the workforce and political sphere. Greater shifts in laws and cultural perceptions are essential to increasing the number of women in senior leadership positions in the GCC.

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12 *Id.*

13 *Women in the boardroom: A global perspective*, Deloitte (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf.

14 Siri Terjesen & Ruth Sealy, *Board Gender Quotas: Exploring Ethical Tensions From A Multi-Theoretical Perspective*, Bus. Ethics Quarterly, 26(1), 23-65 (2016).

15 ACCA, *supra* note 4.

16 *Id.*

17 Deloitte, *supra* note 13.

18 Sara Hamdan, *Women Appointed to Saudi Council for First Time*, NY Times (Jan. 16, 2013), https://www.nytimes.com/2013/01/17/world/middleeast/women-appointed-to-saudi-council-for-first-time.html.

19 Fatmah Alotaibi, Roger Cutting & Julia Morgan, *A Critical Analysis of the Literature in Women's Leadership in Saudi Arabia*, 3 INT'L J. OF BUS. ADMIN. AND MGMT RES. 29, 35 (2017).

20 *Leveraging an untapped talent pool: How to advance women's role in GCC family businesses*, strategy& 4 (2014), http://www.strategyand.pwc.com/global/home/what-we-think/reports-white-papers/article-display/leveraging-untapped-talent-pool.

21 *Id.* at 11.

22 *Id.*

Egypt

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Egypt is the most populous country in the Middle East-North Africa region, with a population of approximately 95.6 million[1] (of which approximately 47.3 million[2] are women). Egypt has historically played an important political role within the Arab world, and Cairo, its capital, has been the home of the headquarters of the League of Arab States since its creation in 1945. Furthermore, the post of the Secretary-General of the Arab League has traditionally been held by an Egyptian national. Unlike many oil-rich Arab countries, however, Egypt is considered a lower-middle income country.

The Egyptian corporate legal framework has its origins in French civil law. The Capital Market Law 95 of 1992 regulates the capital market and provides the legal framework and supervision of the Egyptian Stock Exchange (EGX) and financial institutions, including brokerage firms. In 2005, the Egyptian Institute of Directors of the Ministry of Investment adopted a Code of Corporate Governance ("the Code"), which was most recently modified in 2011.[3] The Code applies to all EGX-listed companies and all non-listed financial institutions. The Code sets forth governing principles to create more transparent and disclosure-oriented corporate boards, emphasizing the importance of establishing risk management committees and adopting rules on avoiding conflicts of interest.

The 2011 revolution in Egypt eventually led to notable cultural changes, especially as they affect Egyptian women. Although women participated in the protests in 2011, the years immediately following the revolution saw a decrease in gender parity in the country. The Constitutional provision setting a quota for women in parliament was revoked and replaced with a requirement that each party nominate at least one woman. However, female candidates were not given top priority in the 2011 Parliamentarian elections and, as a consequence, women lost representation in government.[4] In the workforce, women continued to face discrimination as they attempted to apply for jobs.[5]

In recent years, conditions have slowly improved for women. The passage in 2015 of a new quota for women in government led to a big uptick in the number of women serving on local councils and in Parliament. The quota requires 25% female representation in local councils and 10% female representation in Parliament.[6] In 2016, female representation in Parliament spiked to 14.9%.[7] Attitudes are also shifting in the government and business worlds. For example, President Abdel Fattah El-Sisi has taken steps toward female empowerment in recent years, including publically condemning the increase in acts of sexual violence against women, renewing the National Council for women, and appointing an equal number of men and women to Parliamentarian seats as part of his presidential prerogative.[8]

On the business side, the EGX is looking to address gender diversity as part of its larger sustainability strategy.[9] The EGX recently announced a collaboration with the American University in Cairo to improve gender representation on corporate boards.[10] There is also growing recognition of the business case for including women on corporate boards.

1 *Women, Business and the Law 2018*, World Bank (2018), https://wbl.worldbank.org/en/reports.

2 *Id.*

3 *Egypt Code of Corporate Governance*, Ministry of Investment (Mar. 2011), http://www.ecgi.org/codes/documents/code_egypt_2011_englishtranslation2016.pdf.

4 Mustansir Barma, *Half the Country, but Still Unequal*, Carnegie Endowment for Int'l Peace (Mar. 14, 2013), http://carnegieendowment.org/sada/51211.

5 *Id.*

6 World Bank, *supra* note 1.

7 Melsa Ararat et al., *Board's Gender Diversity and Firm Performance Before and After the Egyptian Revolution* (July 1, 2017), https://ssrn.com/abstract=3063867.

8 Miwa Kato, *Women of Egypt*, The Cairo Review of Global Affairs (2017), https://www.thecairoreview.com/essays/women-of-egypt/.

9 Gian Piero Cigna, Pavle Djuric, & Alina Sigheartau, *Corporate Governance in Transiting Economies: Egypt Country Report*, European Bank for Reconstruction and Development (2017), https://www.ebrd.com/documents/ogc/eygpt.pdf.

10 *EGX and AUC's School of Business Collaborate to Improve the Representation of Women on Corporate Boards*, American Chamber of Commerce in Egypt (July 19, 2017), https://www.amcham.org.eg/membership/members-news/1480/the-american-university-in-cairo.

A 2017 study of the performance of companies following the revolution found that those with a woman on the board fared better than companies with all-male boards.[11]

In 2016, the Code of Corporate Governance was updated to include provisions covering diversity on corporate boards. Notably, Section 2.2.1 stated, “[g]uided by international best practices, the Board composition should ideally be made up of a diverse mix, unbiased to gender or faith.” The Code also included a provision regarding inclusion of an independent member with “technical and analytical skills for the benefit of the Board and the company.”[12] This second provision falls in line with much of the Middle East, where corporate diversity is focused more on the inclusion of independent executives and less on gender.[13] Despite recent changes, in practice the Code is toothless. There are no meaningful consequences for non-compliance other than requiring companies that fail to adhere to these principles to disclose the reasons for such failure in their annual reports.

Although the Code recommends both gender and religious diversity on boards, little work has been done to encourage greater religious diversity in the workplace. As for gender diversity, women still account for only 8% of board seats and 23% of the total workforce, down from 26% in 2016. Female participation in the economy is still limited by a number of barriers to entering and staying in the workforce. Laws still limit the ability of women to apply for a passport or national identity card, and to travel outside the home if they are married.[14] Further, changes in policy and laws will do little in Egypt without a broader shift in the cultural mindset.[15]

There are several prominent non-governmental organizations (NGOs) in Egypt focusing on advancing women’s rights, such as the Center for Egyptian Women’s Legal Assistance, Nazra, the Egyptian Center for Women’s Rights, the Arab Alliance for Women’s Rights, and the Association for Development and Enhancement of Women. By and large, these NGOs are united by common objectives: to seek legislative reforms in the area of family law, to advocate for broader female representation in government and judiciary systems, and to promote economic empowerment of women. Additionally, the American University in Cairo is home to the Women on Boards Observatory, which seeks to improve the gender balance of women on corporate boards in Egypt and the Middle East.

Conclusion

Egypt has seen increasing female participation in the workforce and in politics in recent years as the country has begun to appreciate the business case for including women on corporate boards. Changes in the law that require female participation on corporate boards and in politics likely have helped this increase. However, the number of women on corporate boards remains low. A larger cultural shift is needed in order to see a greater increase in the number of women in the workforce and on corporate boards.

11 Ararat et al., *supra* note 7.

12 Ministry of Investment, *supra* note 3.

13 *Board effectiveness review: A decade of change in GCC boardrooms*, GCC Board Directors Institute 28 (2017), http://gccbdi.org/Media/Survey%20Publications/GCC%2028077%20Survey%20Summary%202017%20English%20AW3.pdf.

14 World Bank, *supra* note 1.

15 Kato, *supra* note 8.

Israel

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Israel is one of a number of countries that has specific laws to address and combat discrimination against women, as well as representation of women on company boards of directors.

Equality for men and women has existed in the law since 1951, three years after the establishment of the State of Israel, with the passage by the Knesset (the Israeli Parliament) of the Woman's Equal Rights Law (the "Equal Rights Law"). The Equal Rights Law's intention was to ensure "women are to enjoy all rights enjoyed by men" and "special rights and privileges accorded women are to be preserved."[1] In 2011, a legislative amendment required "appropriate representation of women in inquiry commissions and national examination committees."[2] Another law, the Equal Employment Opportunities Law, was enacted in 1988. The Equal Employment Opportunities Law prohibits employers from discriminating between their employees or those seeking employment based on a number of characteristics, including gender and pregnancy.[3] With these guiding principles in mind, Israel went on to enact and implement laws and regulations that help achieve a more diverse representation on boards of public and government companies.

Public Companies

The Israel Companies Law (the "Companies Law"), enacted in 1999, is applicable to public companies in Israel and states that if a board is composed of only one gender, any new non-executive director appointments must be of the other gender, thus requiring that boards of public companies include at least one woman.[4] An amendment in 2011 established that the Israel Securities Authority has the authority to impose monetary sanctions on any company that violates such provision.[5]

Catalyst, an international nonprofit organization focused on expanding the representation of women in business and in executive positions, in conjunction with the Strauss Group and the Israel Women's Network, issued a series of published reports (the "Israeli Catalyst Reports") studying representation of women in public companies in Israel. The most recent Israeli Catalyst Report, from 2013, provides a comprehensive look at the percentage of women in senior executive positions and on the boards of directors of Israel's 100 most highly traded companies on the Tel Aviv Stock Exchange (the "TA100").

According to the 2013 report, the Israeli workforce was made up of 47% women and 31% of executive positions were held by women.[6] In comparison to 2012, the report points out that "[w]omen account for almost half of the workforce, but their status in the labor market is unstable and has even grown weaker."[7] In the TA100, 7.5% of CEOs were women (down from 7.9% in 2012) and 19% of the top executives were women (down from 20% in 2012).[8]

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1 Women's Equal Rights Law 5711-1951; Albeck, P., *The Status of Women in Israel*, 20 AM. J. COMP. L. (1972).

2 *Ensuring equal rights for women in Israel*, Israel Foreign Affairs (Oct. 25, 2015), https://israelforeignaffairs.com/2015/10/ensuring-equal-rights-for-women-in-israel/.

3 Equal Employment Opportunity Act 5748-1988.

4 Part VI, ch. 1, art. E(d), Companies Law 5759-1999.

5 *Annex No. II, Statistic Information, Attached to the 6th Periodic Report Concerning the Implementation of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, State of Israel, Ministry of Justice (2017), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/INT_CEDAW_ADR_ISR_27760_E.pdf.

6 *The Israeli Catalyst Report, Women Leading Business, The Fourth Israeli Census Report 2013 Women's Representation in the TA-100 Companies Index 5*, The Strauss Group & Israel Women's Network (Mar. 2014), https://www.strauss-group.com/wp-content/blogs.dir/3/files/sites/3/Israel-Catalyst-Census-TLV-100-2013_Final.pdf.

7 *Id.*

8 *Id.* at 6.

In terms of board membership, in 2013, 2% of TA100 board chairpersons were women (down from 5% in 2011 and 3% in 2012) and 17.2% of board members were women.[9] For board representation, Israel was ranked sixth in the world out of the 44 countries examined (down from fourth place in 2012).[10] In the TA100, 89% of the companies had at least one woman on the board (down from 91% in 2012).[11] For context, this statistic tied the TA100 with the USA Fortune 500 and UK FTSE 100.[12] The report notes, "[s]ince 2012, there has been a rising trend in the percentage of women board members in the banking industry (up from 19.4% to 22.4%), in the wood, paper and paper products industry (up from 12% to 22.2%), in the computer industry (up from 12.5% to 17.2%) and in the oil exploration industry (up from 12.2% to 15.4%)";[13] however, the percentage of women board members dropped between 2012 and 2013 in other industries (communications and media; electrical and electronics; and financial services).[14]

Although the Israeli Catalyst Reports are the most robust studies on women on boards pertaining to Israel, there have not been any new reports released with updated facts and figures since the 2013 report. Other more recent articles and reports have provided glimpses into the current landscape. As of 2016, Israel was one of 16 countries that had 100% of boards with at least one female board member, and the average was approximately two women per board.[15] Furthermore, 20% of CEOs were female and 20% of CFOs were female.[16] In the TA25 (Israel's 25 most highly traded companies) in 2016, 25% of board members were women and 12% of boards had women chairpersons.[17]

Government Companies

A government company, as defined in the Government Companies Law of 1975, is a company in which the State (or the State together with another government company) has "more than half of the voting power at general meetings or the right to appoint more than half the number of directors."[18] Government companies, or state-owned enterprises (SOEs), are subject to the Government Companies Law, and are under the authority of the Government Companies Authority. In 1993, an amendment to the Governmental Companies Law stated that all SOEs must have adequate representation of both genders on their boards.[19] Further to such amendment, in 2007, a government resolution stated that SOEs must have an equal representation of both genders on their board, thus requiring 50% of those boards to be made up of women.[20]

Since 2013, the Government Companies Authority has implemented a procedure entitled the "Team of Directors," which is a list of recommended candidates that government ministers, who are responsible for appointing directors to SOEs, rely upon for selecting and appointing directors.[21] This procedure includes set quotas for certain members of the population, including women.[22] Additionally, in 2013, the Israeli Authority for the Advancement of the Status of Women conducted a training program for supervisors on the status of women in government companies,[23] highlighting the Israeli government's focus on ensuring the issue of diversity on boards, especially for women, is in the forefront.

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9 *Id.*

10 *Id.* at 13.

11 *Id.* at 6.

12 *Id.* at 14.

13 *Id.* at 12.

14 *Id.*

15 *2016 Global Board Diversity Analysis*, Egon Zehnder (2017), https://www.gbda.online/assets/EZ_2016GBDA_DIGITAL.pdf.

16 *Id.*

17 *Women in the boardroom: A global perspective*, Deloitte (2017), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/Women%20in%20the%20boardroom%20a%20global%20perspective%20fifth%20edition.pdf, citing Israel Securities Authority.

18 Government Companies Law, 5735-1975, ch. One, 1(a).

19 Deloitte, supra note 17, citing Government Companies Law, Sec. 18A.

20 *Id., citing The State Comptroller of Israel Report on the Representation of Women at Senior Positions in Public Service* (Mar. 2014).

21 State of Israel, *supra* note 5, at 27.

22 *Id.*

23 *Id.* at 28.

Since 2007, there has been a 10% increase in the rate of women on the boards of SOEs, 33% in 2007, 40% in 2011 and 43% in 2017 (of the 437 total directors serving in 2017, 189 were women).[24] In addition, 67% of government companies had reached the equal representation standard set by the 1993 Governmental Companies Law Amendment.[25] Following implementation of the Team of Directors, there was a significant increase in the representation of women on boards of government companies: 44% of the directors appointed from the Team of Directors were women.[26]

Private Companies

There are no specific laws requiring gender representation on boards of private companies. There is also limited publicly available information that specifically relates to the composition of private boards.

Conclusion

While Israel is still striving toward the goal of gender equality among public, private, and government companies, there is reason for optimism given the relatively high percentage of women in executive positions and on boards compared to other countries. In the World Economic Forum rankings on the global gender gap index, Israel ranks number one (along with 26 other countries) in educational attainment,[27] potentially positioning women for higher representation in leadership roles in years to come.

24 *Id.* at 26.

25 *Id.* at 27.

26 *Id.*

27 *The Global Gender Gap Report 2017*, World Economic Forum (2017), http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

Jordan

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Jordan has a population of approximately 10 million,[1] of which approximately 4.7 million are women.[2] Women in Jordan face barriers in board and upper management positions, and in the workforce overall.[3] To address this problem, the Jordanian government has adopted several policy and legislative measures to improve the status of women in Jordan. In fact, the Jordanian government established a quota system reserving 15% of the seats in the lower house of Parliament for women.[4] Despite the government's efforts to increase women's participation in the political arena, efforts to increase women's participation in the corporate world have been negligible at best. The Jordan Strategy Forum recently reported in a study that Jordan has "one of the lowest female economic participation rates in the world."[5]

Corporate Governance Codes and Regulations

Jordan maintains several corporate governance codes, but the central sources of corporate governance legislation include the Companies Law, the Securities Law, the Banking Law, and a number of Instructions and Regulations issued by the Jordanian Securities Commission and the Central Bank of Jordan. In addition, there are two additional national corporate governance codes in Jordan. One is the Corporate Governance Code for Shareholding Companies Listed on the Amman Stock Exchange (Code for Listed Companies), which contains both mandatory provisions based on the compulsory requirements of laws, regulations and instructions, and voluntary provisions that companies can implement under a "comply or explain" basis. The other is the Jordanian Corporate Governance for Private, Limited Liability and Non-listed Public Shareholding Companies (Code for Unlisted Companies), which is purely voluntary.[6] Notably, none of the codes set any standards in explicitly promoting diversity through the participation of women. As such, female participation is markedly low. As one study notes, the governance system maintains impactful structural biases against the appointment of female directors, as the language of the governance reports only employ masculine pronouns.[7]

Severe Underrepresentation of Women in the Boardroom

A 2015 report noted that while women represent 15.60% of the labor force of the publicly listed companies where the average board size is eight members, only 3.54 % of board members are women, and women hold only 21% of senior decision-making positions.[8] Of the 237 publicly listed companies, 185 (78%) have no women on their boards, with only 52 companies (22%) having women directors. For the 10 largest listed companies, the female board representation averages 6.46%. Moreover, nine of those 10 companies disclose the composition of their board, with four including the number of women among their board members. Of those nine companies, in total, there are six women out of 112 board members.

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1 *World Factbook: Jordan*, Central Intelligence Agency, https://www.cia.gov/library/publications/the-world-factbook/geos/jo.html (last updated Sept. 5, 2018).

2 *Females constitute 47 per cent of population in 2017 – DoS*, Jordan Times (Mar. 8, 2018), http://www.jordantimes.com/news/local/females-constitute-47-cent-population-2017-%E2%80%94-dos.

3 *Jordan Diversity Report*, IFC 2015 (Nov. 2015), https://www.ifc.org/wps/wcm/connect/e93318004a0d7ff195cfb7e54d141794/IFC_Jordan_Gender_Report_Sep_2015.pdf?MOD=AJPERES.

4 *Gender Quotas Database: Jordan*, IDEA, https://www.idea.int/data-tools/data/gender-quotas/country-view/154/35 (last updated Apr. 18, 2018); *Getting to Equal – Key Findings*, World Bank, Women, Bus. & Law (2016), http://pubdocs.worldbank.org/en/555061519930693642/WBL2016-Key-Findings-EN.pdf.

5 *Participation of Women in the Boards of Banks in Jordan - Where Do We Stand? What Are the Implications*, Jordan Strategy Forum (2017), http://www.jsf.org/en/content/participation-women-boards-banks-jordan.

6 *Corporate Governance in Transition Economies – Jordan Country Report*, Eur. Bank for Reconstruction & Dev. (Dec. 2017), https://www.ebrd.com/documents/legal-reform/jordan.pdf.

7 Val Singh, *Contrasting positions of women directors in Jordan and Tunisia* (Jan. 2008), https://www.researchgate.net/publication/265291705_Contrasting_positions_of_women_directors_in_Jordan_and_Tunisia.

8 *Jordan Diversity Report*, IFC 2015 (2015), https://www.ifc.org/wps/wcm/connect/e93318004a0d7ff195cfb7e54d141794/IFC_Jordan_Gender_Report_Sep_2015.pdf?MOD=AJPERES.

There are currently 930 private shareholding companies in Jordan of which 717 (77%) have no women on their boards. And women represent only 9.10% of board members and chair 2.56% of company boards. These statistics are some of the lowest in the world, even compared to other Middle Eastern countries.

As is the case of some other Arab countries, strong connections to powerful families were found to be a key factor in the appointment of women to director positions.[9] Although the various Governance Codes are significant in enhancing awareness of the importance of corporate governance, they have not galvanized substantive change in transforming Jordan's corporate culture to meaningfully include women's voices.

Efforts to Increase Women's Participation in the National Economy

There have been some more recent attempts to increase female labor participation through various reforms and new legislation. According to an IFC study: the Social Security Fund created the Maternity Fund to encourage the employment of women; the Labor Law was amended to consider sexual harassment in the workplace; and there is now a requirement to have a nursery in the workplace under certain conditions, to enable women to return to work if they have children below the age of four. However, these laws, regulations, and national initiatives (with the exception of the Maternity Fund) are still not fully enforced or implemented.[10]

Non-governmental organizations (NGOs) also have made strides to increase women's participation in the boardroom. For example, the Jordan Forum for Business and Professional Women[11] (BPWA), an NGO dedicated to female business professionals, focuses on identifying and communicating the productive, independent role of women through training, legal guidance, and advocating for laws and regulations that empower Jordanian women in the corporate arena.

Conclusion

While there have been some progressive legislative measures and efforts within civil society to increase women's participation and visibility in the political domain and in the workforce generally, women remain severely underrepresented in Jordan's corporate world, particularly in the boardroom.

9 Singh, *supra* note 7.

10 IFC 2015, *supra* note 8.

11 *Jordan Forum for Business & Professional Women*, www.bpwa.org.jo (last visited Aug. 29, 2018).

Pakistan

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In Pakistan, women comprise just 22% of the workforce.[1] Recent changes in Pakistani law signify a shift toward granting women greater rights and freedoms and increasing gender parity.[2] The country now has an 18% quota for female representation in the national parliament[3] and a 22% quota for municipal councils.[4] Further, the legal age of marriage has been set at 18 for men and women.[5]

Despite these broader changes, as of 2017 only 6.4% of publically listed companies had a woman on their board and only 31 of the Karachi Stock Exchange (KSE) 100 index companies had a female director. Those numbers are in comparison to the fact that women make up 17.2% of parliament,[6] 22% of the workforce, and 49% of the total population.[7]

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."[8] In 2017, the Code of Corporate Governance was amended through the Act to Reform and Re-enact the Law Relating to Companies and for Matters Connected Therewith ("Companies Act"). Part of the Companies Act required every public interest company to have at least one female director within three years.[9] There is no formal quota for female representation on corporate boards.

The Securities and Exchange Commission of Pakistan (SECP) predicts that the new Companies Act will more than double the representation of female corporate directors, from 6.4% to at least 14.3% by 2020. SECP also acknowledged the studies conducted in other countries that discuss the benefits of female participation in corporate boards.[10] Although the law took effect in 2017, the lack of publicly available information regarding gender diversity on boards makes it hard to judge the effect the Companies Act has had to date in Pakistan.

Barriers Still Exist Despite Progress

Women in Pakistan still face barriers to entering the workforce and the C-suite, not to mention the legal restrictions on a woman's access to inheritance and credit and property rights. Additionally, women do not have the same type of access as men to apply for a passport, register a business, or obtain a national identity card.[11] Further, as noted in our last report, women on corporate boards in the country largely serve on the boards of companies owned by family members, suggesting that breaking the glass ceiling in Pakistan requires bypassing the traditional path in favor of a familial connection.[12]

1 *Women, Business and the Law 2018*, World Bank (2018), https://wbl.worldbank.org/en/reports.

2 *Id.*

3 CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, art. 51.

4 SINDH LOCAL GOVERNMENT ACT, art. 18.

5 World Bank, *supra* note 1.

6 *SECP regulation: Women directors to more than double in three years*, Sec. Exch. Comm'n Pak. (July 8, 2017), https://www.secp.gov.pk/wp-content/uploads/2017/07/Press-Release-July-8-Women-directors-in-Pakistan.pdf.

7 World Bank, *supra* note 1.

8 CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, art. 25(1)-(2).

9 COMPANIES ACT § 154. (2017).

10 Sec. Exch. Comm'n Pak., *supra* note 6.

11 World Bank, *supra* note 1.

12 *Gender Diversity on Pakistan's Corporate Boards*, Center for Int'l Private Enterprise (July 22, 2015), https://www.cipe.org/blog/2015/07/22/gender-diversity-on-pakistans-corporate-boards/.

Still, several organizations, both within the country and internationally, are working toward increasing female presence in the economic sphere in Pakistan. The Pakistan Institute of Corporate Governance (PICG), for instance, is a non-profit organization focused on promoting stronger corporate governance by providing training and other support to corporate directors. As part of its programming, PICG has a specific leadership training program focused on women directors. Additionally, chambers of commerce focused on female business interests have developed across the nation, including the Women Chamber of Commerce and Industry Peshawar Division. On the international front, the U.S. State Department and American University launched an initiative in 2012 in partnership with public and private stakeholders in the U.S. and Pakistan. That initiative, the U.S.-Pakistan Women's Council, seeks to increase participation by women in the Pakistani economy through employment and entrepreneurial and educational training and access.

Conclusion

The issue of diversity within corporate boards has gained some interest in Pakistan in recent years. Most notable is the new Companies Act, which now requires certain companies to have at least one woman on their boards. The business case for female inclusion within corporate boards has also become more mainstream. However, legal and cultural barriers remain for women joining the workforce in Pakistan.

Tunisia

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Tunisia has achieved an impressive position in the Middle East and North African region with its integration of women into educational, political, and economic realms of society.[1]

With respect to social codes, Tunisia has long had the most progressive personal status code in the Arab world, prohibiting polygamy and giving women equal rights in marriage and divorce. Moreover, Tunisia has shined in the international human rights domain by removing all key reservations to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[2]

Many gender positive legal reforms also have been introduced in recent years, including specifying a gender non-discrimination clause in Tunisia's new constitution[3] and a gender parity law, requiring each political party to run an equal number of male and female candidates in the Constituent Assembly elections.[4] In addition to these legal reforms, the Tunisian government has erected institutions to support women's economic empowerment with ministries focused on gender issues.[5] Despite these admirable strides toward equality, the issue of women's participation in Tunisia's business world has not been approached with the same rigor.

Corporate Governance Regulations and Tunisian Women in the Boardroom

The primary sources of corporate governance legislation in Tunisia are the Law No. 2000-93 enacting the Commercial Companies Code, the Law No. 2005-96 on the Strengthening of the Security of Financial Relations, the Law No. 2007-69 on the Stimulation of Economic Initiative, and Law No. 2001-65 on the Establishment of Lending Institutions. In addition, there are specific regulations applicable to banks and companies listed on the Tunisian Stock Exchange.[6] However, not one of these laws or regulations mandates measures to increase Tunisian women's participation in corporate governance.

In 2008, the Tunisian Centre of Corporate Governance issued the Tunisian Guide of Corporate Governance ("Guide") that was revised in 2012.[7] The Guide offers recommendations for corporate governance and aims to make the Tunisian system of corporate governments more transparent.[8] It is merely voluntary, and none of the ten largest listed companies in Tunisia provide a "comply or explain" statement with their annual reports, as is recommended. Notably, the Guide contains an affirmative provision that promotes the principle of diversity on corporate boards—Section 2.1.6 recommends that the composition of boards should be "balanced and diversified," and include "women and men of different backgrounds."[9] It recommends that boards be composed of at least 25% of women.

1 Val Singh, *Contrasting positions of women directors in Jordan and Tunisia* (Jan. 2008), https://www.researchgate.net/publication/265291705_Contrasting_positions_of_women_directors_in_Jordan_and_Tunisia.

2 The Tunisian Council of Ministers removed all reservations on Aug. 16, 2011. By accepting the Convention, Tunisia committed to undertake a series of measures to end discrimination against women in all forms. *See Convention on All Forms of Discrimination against Women*, UN Women, http://www.un.org/womenwatch/daw/cedaw/cedaw.htm.

3 The new constitution recognizes officially the equality between men and women in its Article 21, which reads "All male and female citizens have the same rights and duties. They are equal before the law without discrimination"; *Women in Business and Management – Gaining Momentum in the Middle East & North Africa*, ILO (Jan. 27, 2016), https://www.ilo.org/beirut/publications/WCMS_446101/lang--en/index.htm.

4 *Tunisia on Board with Women's Rights*, Human Rights Watch (Sept. 22, 2011), https://www.hrw.org/news/2011/09/22/tunisia-board-womens-rights.

5 Victoria Chambers with Clare Cummings, *Building Momentum – Women's empowerment in Tunisia* (Nov. 21, 2014), https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10319.pdf.

6 *Corporate Governance in Transition Economies – Tunisia Country Report*, Eur. Bank for Reconstruction & Dev. (Dec. 2017), https://www.ebrd.com/cs/Satellite?c=Content&cid=1395252135851&d.

7 *Guidelines of Corporate Governance Best Practices*, Centre of Corporate Governance (2012), https://www.ebrd.com/documents/ogc/tunisia.pdf.

8 *Id.*

9 *Id.*

Notwithstanding those recommendations for increased gender inclusion on Tunisian boards, the percentage of women on the boards of listed companies was only approximately 8% at the end of 2013.[10] All ten largest listed companies disclose their board compositions, as the Guide recommends.[11] There are women in six of the ten largest listed companies, with one woman on each of these six boards (making an average of 13.2%). However, when counting all ten companies, there are only *six women out of 84 board members or 7.61%.*

Although these figures are low, Tunisian NGOs and other institutions are pushing to integrate women in business despite the lack of mandatory legislative attention. For example, the Center for Arab Women for Training and Research,[12] a regional institution based in Tunis, promotes the role of Arab women in the economic and political sectors through advocacy-based research, training, networking, and publications.

Conclusion

While Tunisian companies have yet to realize the Guide's recommendation of at least 25% of women board members, the Guide's and Tunisian NGOs' attention to increased gender diversity gives room for optimism that further progress will be made to advance women in leadership positions in Tunisia in the future.

10 ILO, *supra* note 3.

11 Eur. Bank for Reconstruction & Dev., *supra* note 6.

12 *See generally Center of Arab Women for Training and Research*, www.cawtar.org (last visited Aug. 29, 2018).

North America

Canada

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In Canada, the issue of diversity on corporate boards has received increasing attention over the past decade from legislators, policy advocates, and members of the business community. Yet despite these efforts, the pace of change with respect to women and minorities in leadership roles in Canada has lagged behind other countries.

Provincial and Federal Initiatives See Progress

The Canadian government has taken an increasingly active role in initiatives to increase the proportion of women on corporate boards. In 2006, the Government of the Province of Quebec implemented a law that required Quebec Crown corporations—which are state-owned and controlled enterprises ("SOEs")—to have equal representation of men and women on their boards of directors by December 2011.[1] By November 2011, the Prime Mister of Quebec was able to report that the government had achieved its goal and that all 22 Crown corporations had achieved gender parity.[2] Moreover, he noted that the proportion of women in Quebec's government had increased more than 90% during the 2006 to 2011 period.[3] In 2016, the Ontario government announced that it had set a target of having women make up at least 40% of all appointments to every provincial board and agency by 2019.[4]

The Ontario Government was the first jurisdiction in 2014 to pass securities law rule amendments to National Instrument 58-101, Disclosure of Corporate Governance Practices, and Form 58-101F, Corporate Governance Disclosure, that encourage greater representation of women on boards and in executive officer positions in Toronto Stock Exchange (TSX)-listed companies.[5] This regulatory approach has now been adopted by 10 Canadian jurisdictions.[6] By requiring annual disclosures with respect to women on boards and in executive officer positions, this model aims to increase transparency and drive greater representation of women on boards in Canada.[7] Since its implementation, gains have been seen in the representation of women on boards. From 2015 to 2017, women's representation on boards has increased about 3%, with approximately 14% of board seats occupied by women.[8] Yet these gains have not translated to other minorities, as minority representation has remained flat for this period.[9] Maureen Jensen, the chair of the Ontario Securities Commission, recently suggested revising existing provisions and possibly taking other regulatory action such as disclosure enhancements.[10]

In 2017, the Canadian federal government passed Bill C-25, which included amendments to the federal corporations' statutes that would require certain corporations incorporated under the Canada Business Corporations Act to provide

1 Bill 53, An Act Respecting the Governance of State-Owned Enterprises and Amending Various Legislative Provisions, 2006 S.Q., ch. VIII, sect. 43.

2 *La parité entre les femmes et les hommes est atteinte*, Gouvernement du Québec (Nov 30, 2011), https://www.premier-ministre.gouv.qc.ca/actualites/communiques/details-en.asp?idCommunique=164.

3 *Id.*

4 *Get on Board: Ontario's implementation plan to promote women in corporate leadership*, Ontario.ca, https://www.ontario.ca/page/get-board-ontarios-implementation-plan-promote-women-corporate-leadership (last updated August 2, 2018).

5 *Increasing Gender Diversity in Corporate Leadership* (Dec. 2, 2014), https://news.ontario.ca/mof/en/2014/12/increasing-gender-diversity-in-corporate-leadership.html.

6 CSA Multilateral Staff Notice 58-309, Staff Review of women on boards and In Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices (Oct. 5, 2017), https://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20171005_58-309_staff-review-women-on-boards.pdf.

7 *Id.*

8 CSA Multilateral Staff Notice 58-309, *Staff Review of Women on boards and in Executive Officer Positions – Compliance with N1 58-101 Disclosure of Corporate Governance Practices* (Oct. 5, 2017), http://www.osc.gov.on.ca/documents/en/Securities-Category5/sn_20171005_58-309_staff-review-women-on-boards.pdf

9 *See 2016 Annual Report Card*, Canadian Board Diversity Counsel (2016), https://boarddiversity.ca/wp-content/uploads/2018/04/CBDC-Annual-Report-Card-2016.pdf.

10 OSC urged to push companies to set targets for women on boards (Oct. 24, 2017), https://www.cbc.ca/news/business/women-boards-osc-1.4369447

their shareholders annually with certain disclosures regarding diversity among the directors and members of senior management. The regulations, when implemented, will require disclosure regarding diversity in addition to gender.[11] This bill, which was enacted into law in May 2018, follows the National Instrument 58-101 "comply and explain" model, but further requires that disclosure apply not to just women, but also designated groups, including "indigenous Canadians, persons with disabilities, and members of visible minorities."[12] Similar changes were proposed to the Business Corporations Act (Ontario) (OBCA) in a private members' bill. Although the bill has passed a second reading in the Ontario Legislative Assembly, it remains unclear whether the bill will be passed into law.[13]

In May 2018, Bill C-25 was enacted into law, requiring certain disclosures regarding the diversity of boards and senior management in public companies.[14] It follows the National Instrument 58-101 "comply and explain" model, but further requires that disclosure apply not to just women, but also designated groups, including "indigenous Canadians, persons with disabilities, and members of visible minorities."[15]

Stock Exchange Listing Requirements

None of Canada's stock exchanges include gender-related provisions in their respective listing requirements.[16] While, as noted above, the disclosure requirements include disclosures related to gender diversity, the Toronto Stock Exchange (TSX) has no specific listing requirements related to diversity, gender, or otherwise.

Public Advocacy Efforts

Non-governmental policy groups also have taken up the cause of increasing diversity on Canada's corporate boards. The Canadian Board Diversity Council (the "CBDC") was created in 2009 to promote board diversity in Canada by increasing Financial Post 500 (FP500) and public sector board representation of women, visible minorities, Aboriginal peoples, persons with disabilities, and lesbian, gay, bisexual and transgender (LGBT) persons. As part of its mission, the CBDC aims to increase the percentage of women on the boards of Canada's largest organizations. The CBDC issues an annual report tracking data regarding representation among directors and executives of FP500 companies.

In 2011, the CBDC also launched the Diversity 50 campaign, which is a sponsor-driven approach to improving board diversity in Canada. Every year, the CBDC releases a list of 50 diverse individuals as qualified by criteria reviewed by a group of Canada's leading CEOs, which include individuals from HSBC Canada, Deloitte, and Norton Rose. The Diversity 50 list represents a database of diverse candidates for board of director positions in Canada's largest 500 organizations.

Additionally, in 2006, DiverseCity on Board, launched in Toronto, with the mission to ensure that governance boards of non-profit and public bodies reflect the diversity of the populations they serve. In less than a decade, the program has expanded from Toronto, to other major cities in Canada, and has become the "go to" program that connects qualified, pre-screened candidates from visible minority and under-represented communities to volunteer board positions. The program also provides online governance training to organizations and individuals regardless of their background.

Conclusion

While government initiatives to increase the representation of women and minorities on Canadian corporate boards are currently being implemented, both industry groups and provincial governments have continued their efforts to address the issue. Organizations such as CBDC and DiverseCity on Boards have launched grassroots corporate initiatives, continue to raise awareness, track data regarding representation among boards of directors, and train candidates. The results of these efforts will be closely monitored, as the issue of women's representation on corporate boards remains significant in Canada's national debate.

11 Kellan E. McKeen, *Bill C-25 - A Catalyst for Corporate Diversity in Canada?,* Lawson Lundell LLP (May 14, 2018), https://www.lawsonlundell.com/the-business-law-blog/bill-c-25-a-catalyst-for-corporate-diversity-in-canada

12 *Id.*

13 J. Tuzyk and V. Locke, *Bill 101 Aims to Bring Mandatory Compensation Voting, Majority Voting and Diversity Disclosure to Ontario Companies* (Jan. 2018), https://www.lexology.com/library/detail.aspx?g=a85d275d-9e8d-4f77-8e1f-061dcda5320a.

14 Kellan E. McKeen, *Bill C-25 - A Catalyst for Corporate Diversity in Canada?,* Lawson Lundell LLP (May 14, 2018), https://www.lawsonlundell.com/the-business-law-blog/bill-c-25-a-catalyst-for-corporate-diversity-in-canada

15 *Id.*

16 *Breaking the Glass Ceiling: Women in the Boardroom, A Study of Major Global Exchanges,* Paul Hastings 15 (Fall 2014).

United States

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Introduction

Although there has been recent progress, women still remain underrepresented on corporate boards in the United States. As of 2017, women held 19.8% of board seats at companies in the Fortune 1000, a list of the largest U.S. companies ranked by total revenue.[2] However, encouragingly, in the first five months of 2018 women accounted for 248, or 31%, of newly appointed board directors at the 3,000 largest publicly traded companies, according to an analysis of corporate filings by ISS Analytics.[3] According to board recruiters, shareholder pressure, along with the #MeToo movement, has fueled some of this momentum.[4] However, less attention has been given to the attainment of racial or ethnic diversity in the board room. Black Americans comprise 10% of U.S. graduates but hold only 4% of senior-executive positions; Hispanics and Latinos comprise 8% of graduates versus 4% of executives; and Asian Americans represent 7% of graduates versus 5% of executives.[5]

Empirical Studies on Board Diversity

Empirical studies have provided a number of business reasons for diversity on corporate boards, with some showing that boards whose members have a variety of gender, racial, and sexual orientation backgrounds ultimately outperform homogenous boards. For instance, a 2018 report by McKinsey & Company (building on its 2015 report) "reaffirms the global relevance of the link between diversity—defined as a greater proportion of women and a more mixed ethnic and cultural composition in the leadership of large companies—and company financial outperformance."[6] The analysis draws on a dataset of more than 1,000 companies covering 12 countries, and found that companies in the top quartile for gender diversity on their executive teams were 21% more likely to experience above-average profitability than companies in the fourth quartile.[7]

Morgan Stanley had similar findings in its 2016 report, concluding that companies with more diverse gender populations (both inside and outside of the boardroom) tend to perform better. The report was based on a proprietary gender-diversity framework that ranked more than 1,000 stocks globally. According to the report, "[h]igh gender diversity companies have delivered slightly better returns, with lower volatility, compared with their low diversity or sector peers, and they have moderately outperformed on average in the past five years."[8] Further, "[t]he top fifth of selected companies that consistently rank gender diversity among their priorities, with data to back it up, outperformed their peers based on volatility and risk factors."[9] It should be noted that, while some research has found that diverse boards have a positive impact on a company's financial performance, others have not; the differing

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1 With special thanks to Stefanee Handon, Kristin Starr, Casey Miller, Kirstin Teager for their work on the *Report Card on the United States* (Fall 2016).

2 2020 Women on Boards Gender Diversity Index, Women on Boards 3 (2017), https://www.2020wob.com/sites/default/files/2020WOB_GDI_Report_2017_FINAL.pdf.

3 Vanessa Fuhrmans, *Women on Track to Gain Record Number of Board Seats*, Wall St. J. (June 21, 2018), https://www.wsj.com/articles/women-on-track-to-gain-record-number-of-board-seats-1529573401.

4 *Id.*

5 *See Delivering through Diversity*, McKinsey & Co. (Jan. 2018), https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Organization/Our%20Insights/Delivering%20through%20diversity/Delivering-through-diversity_full-report.ashx.

6 *Id.*

7 *Id.*

8 *Why It Pays to Invest in Gender Diversity*, Morgan Stanley (May 11, 2016), http://www.morganstanley.com/ideas/gender-diversity-investment-framework; *see also An Investor's Guide to Gender Diversity*, Morgan Stanley (Jan. 17, 2017), https://www.morganstanley.com/ideas/gender-diversity-investor-guide.

9 *Why It Pays to Invest in Gender Diversity*, *supra* note 8.

results depend in part on how financial performance was defined and what methodologies were used.[10] Aside from financial performance, however, research identifies a number of other business benefits to board diversity, including better understanding of consumer preferences, a stronger mix of leadership skills, and improved risk management.[11] According to recent reporting, some firms are demanding greater representation in the boardroom in the wake of sexual harassment scandals.[12]

Studies have also looked at the root causes of underrepresentation of women in the boardroom. The United States Government Accountability Office ("GAO") – the nonpartisan U.S. agency often called the "congressional watchdog" – found that there were several factors that hinder increases in women's representation in the board room, including "boards not prioritizing diversity in recruitment efforts; lower representation of women in the traditional pipeline for board positions; and low turnover of board seats."[13]

The corporate pipeline problem was also identified in a 2017 study entitled "Women in the Workplace" (the "WiW Study"), a comprehensive study of the state of women in corporate America conducted by a partnership of McKinsey & Company and LeanIn.Org.[14] The objective of the WiW Study was to "give organizations the information they need to promote women's leadership and foster gender equality."[15] The WiW Study surveyed 222 companies in the United States that employ over 12 million people; more than 70,000 employees completed the survey which focused on their experiences regarding gender, opportunity, career and work-life issues.[16] According to the WiW Study, "Women remain significantly underrepresented in the corporate pipeline. From the outset, fewer women than men are hired at the entry level, despite women being 57 percent of recent college graduates. At every subsequent step, the representation of women further declines, and women of color face an even more dramatic drop-off at senior levels. As a result, one in five C-suite leaders is a woman, and fewer than one in thirty is a woman of color."[17] The WiW Study concludes that, "Until we treat gender diversity, and diversity more broadly, like the business imperative it is, true progress will be hard to achieve."[18]

Federal Efforts Stall, But States and Cities See Progress

U.S. Congress

Two initiatives supporting gender parity on corporate boards have been introduced in the U.S. House of Representatives. The Gender Diversity in Corporate Leadership Act—which was re-introduced in this Congress—aims to strengthen diversity disclosure requirements and bolster the Securities and Exchange Commission's ("SEC" or "Commission") role in encouraging gender diversity.[19] The bill also establishes an advisory group to study strategies to increase diversity among boards of directors and to release a report summarizing its findings and determinations.[20] A resolution introduced last session expressed that "corporations should commit to utilizing the benefits of gender diversity in boards of directors and other senior management positions."[21] Although both initiatives have had sponsors from both sides of the aisle, they remain in committee, with no hearings or further action scheduled.

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10 U.S. Gov't Accountability Office, GAO-16-30, *Corporate Boards: Strategies to Address Representation of Women Include Federal Disclosure Requirements* 5 (Dec. 2015), https://www.gao.gov/assets/680/674008.pdf (hereinafter "GAO Report").

11 *Investors letter to companies–2017*, Thirty Percent Coalition (Oct. 4, 2017), https://www.30percentcoalition.org/simplepagemenu/thirty-percent-coalition-investors-letter-to-companies-2017.

12 Fuhrmans, *supra* note 3.

13 GAO Report, *supra* note 10, at 13.

14 *Women in the Workplace*, McKinsey & Co. & Lean In (2017), https://womenintheworkplace.com/Women_in_the_Workplace_2017.pdf.

15 *Id.* at 1.

16 *Id.*

17 *Id. at* 4.

18 *Id.* at 31.

19 *See* H.R. 1611, 115th Cong. (2017-2018).

20 *Id.*

21 *See* H.R. 445, 114th Cong. (2015-2016).

SEC

Although Congress has been slow to enact legislation to address this issue, agencies within the federal government have started to take a closer look at the problem of board diversity. In December 2015, the U.S. Government Accountability Office (GAO) released a report describing the lack of gender diversity within corporate boards. The report outlines the problem in very stark terms: "Even if every future board vacancy were filled by a woman, we estimated that it would take until 2024 for women to approach parity with men in the boardroom."[22]

The SEC has made efforts to improve the diversity of corporate boards—most notably in 2009, when the Commission amended its regulations to require disclosure of a company's consideration of diversity when identifying nominees for board member positions.[23] 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.[24] While the former SEC Chair Mary Jo White announced that her staff was preparing recommendations for proposing the relevant rule to require more robust board diversity disclosures, [25] current SEC Chairman Jay Clayton pledged only to "monitor" the issue.[26]

Despite this, the SEC's Advisory Committee on Small and Emerging Companies recently recommended that the SEC require companies to describe in their proxy statements the extent to which their boards are diverse, and to disclose the race, gender and ethnicity of each board member/nominee as self-identified by the individual.[27] These recommendations may help to spur further progress.

State and Local Government

In August 2018, California's legislature was the first in the country to pass legislation to institute gender quotas for boards of directors of public companies headquartered in the state. Under the legislation (S.B. 826), by the end of 2019 every public company headquartered in California that does not currently have a woman director on its board must add one, and if there is not a natural opening, then the board must legally add a board seat specifically for a woman director.[28] By the end of 2021, corporations with more than five directors will be required to have at least two female directors, or three female directors if the corporation has six or more directors. The bill is on the Governor's desk to sign, as of the date of publication of our report.

Several other states around the country have focused their legislative efforts on voluntary guidelines to improve gender diversity on the boards of companies based in their states. For example, in Illinois and Pennsylvania, resolutions were adopted encouraging publicly traded corporations in the state to reach certain percentages of women on their boards.[29] In Massachusetts, a resolution encouraging greater gender diversity in the leadership of companies and state government was passed unanimously by the state legislature.[30] In Colorado, the General Assembly passed a resolution urging, within the three year period from January 2018 through December 2020, companies with nine or more director seats to have a minimum of three women on their boards; companies with five to eight director seats to have two women on their boards; and companies with fewer than five director seats to have a minimum of one woman on their boards.[31] Similar to resolutions passed in other states, Ohio and Maryland recently introduced resolutions urging all

22 GAO Report, *supra* note 10, at 9.

23 17 C.F.R. § 229.407(c)(2)(vi) (2010).

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

25 Mary Jo White, 31st Chair of the SEC, Keynote Address at the International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability (June 27, 2016), https://www.sec.gov/news/speech/chair-white-icgn-speech.html ("The SEC can't mandate board diversity, but it can make Boards provide more meaningful disclosure on it.").

26 *See* Andrea Vittorio, *Democrats Demand Improved Diversity Disclosures From SEC*, Bloomberg News (May 26, 2017), https://www.bna.com/democrats-demand-improved-n73014451567/.

27 *See Recommendation Regarding Disclosure of Board Diversity,* SEC Advisory Comm. on Small & Emerging Cos. (Feb. 16, 2017).

28 S.B. 826, 2017-2018 Sess. (Cal. 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB826.

29 H.R. Res. 439, 99th Gen. Assemb., Reg. Sess. (Ill. 2015); H.R. Res. 273, Gen. Assemb., 2017 Sess. (Pa. 2017).

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

31 H.R. J. Res. 17-1017, 70th Gen. Assemb., Reg. Sess. (Colo. 2017).

private and public companies and institutions doing business in these states to commit to increase the gender diversity on their boards of directors and in senior management positions, and to set and publish goals by which to measure their progress.[32]

On the local government level, New York City and Philadelphia each have taken steps to increase diversity disclosures by city contractors.[33] The New York City Comptroller and New York City's pension funds launched a Boardroom Accountability Project designed to enhance public disclosure reporting. The initial phase, which began in 2014, included pressing companies to make "'proxy access' – the right of large, long-term shareholders to nominate corporate board candidates on a company's ballot – a market standard."[34] When the project began, just six U.S. companies allowed proxy access; today that number has increased to more than 524. Further, in 2017, the Board Accountability Project 2.0 launched, and included an initiative to ask 151 companies to disclose the race, gender, and skills of their board members, as well as their process for adding or replacing board members.[35] The results of the project were announced in June 2018: 35 of the targeted companies now disclose information on racial and gender diversity, and 49 of the companies have chosen 59 new directors who are women or minorities.[36] In launching the program, New York City Comptroller Scott M. Stringer said, "we're doubling down and demanding companies embrace accountability and transparency."[37]

Outside Pressure – Institutional Investors and Public Advocacy Efforts

Institutional investors and other advocacy groups have mounted pressure in recent years to accelerate the appointments of women to boards of directors.

Institutional Investors

Institutional investors have taken a more prominent role by using their financial influence to focus corporate efforts on increasing board diversity. Both public and private institutional actors have employed a number of tactics to urge publicly traded companies to take action. These include public statements of support for more diverse boards, support for shareholder resolutions encouraging companies to adopt formal diversity policies, threats to engage in or actual no-vote campaigns against directors on boards that have refused to respond to demands for increased diversity, and campaigns for proxy access to allow shareholders to directly nominate corporate directors.

In 2013, Eve Ellis of JP Morgan's Matterhorn Group, started the Parity Portfolio which factors gender-diversity criteria in the investment process, requiring that its portfolio companies have a minimum of three women on the board of directors.[38] State Street Global Advisors created the Gender Diversity Index ETF, which tracks the performance of companies that have the largest levels of gender diversity in their boards of directors and senior management teams.[39]

32 H.R. Con. Res. 23, 132nd Gen. Assemb., Reg. Sess. (Ohio 2018); H.R. J. Res. 2, Reg. Sess. (Md. 2018); S. J. Res. 4, Reg. Sess. (Md. 2018).

33 Philadelphia Mun. Code § 17-104, as amended by B. 130457 (2013), https://phila.legistar.com/LegislationDetail.aspx?ID=1432999&GUID=0DB3C132-E00B-46D1-B7D5-6C96FEE35D3F; New York City Local Law No. 44 (2016), http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2240496&GUID=43C2F69D-B671-4363-917F-3F8265961E93.

34 *Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign — Version 2.0*, City of New York Boardroom Accountability Project, https://comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/boardroom-accountability-project-2-0/ (last visited Sept. 13, 2018).

35 *Id.*

36 Press Release, Comptroller Stringer, NYC Funds: Unprecedented Disclosure of Corporate Boardroom Diversity Following Groundbreaking Campaign, (June 27, 2018), https://comptroller.nyc.gov/newsroom/comptroller-stringer-nyc-funds-unprecedented-disclosure-of-corporate-boardroom-diversity-following-groundbreaking-campaign/.

37 Press Release, New York City Comptroller Scott M. Stringer, Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign — Version 2.0 (Sept. 8, 2017), https://comptroller.nyc.gov/newsroom/press-releases/comptroller-stringer-nyc-pension-funds-launch-national-boardroom-accountability-project-campaign-version-2-0/.

38 *The Parity Portfolio Strategy,* Matterhorn Grp. at Morgan Stanley, *https://fa.morganstanley.com/matterhorn/mediahandler/media/147218/Parity%20Fact%20Sheet%20022015.pdf; see also Gender Lens Investing: Q&A with Eve Ellis, Financial Advisor and Portfolio Manager in The Matterhorn Group at Morgan Stanley,* US | SIF (Nov 3, 2016), https://www.ussif.org/article_content.asp?edition=1&section=5&article=7.

39 Press Release, State Street Corp., State Street Global Advisors Launches Gender Diversity ETF to Help Investors Seek a Return on Gender Diversity (Mar. 7, 2016), https://newsroom.statestreet.com/press-release/corporate/state-street-global-advisors-launches-gender-diversity-etf-help-investors-se.

Since its inception in 2016, the ETF (which is listed on the ticker symbol "SHE") has increased by 24%.[40] State pension funds, such as CalSTRS, are talking with their feet and using their positions to press this issue within the investor community and at the SEC. In March 2018, the New York State Common Retirement Fund, the third largest pension fund in United States,[41] announced that it would vote against all the directors standing for re-election at the more than 400 companies in which they invest that have no women on their boards.[42]

Advocacy Groups

A number of other organizations are also involved in driving efforts to increase board diversity. These initiatives range from conducting research, to creating voluntary codes of conduct and best practices, to taking action by partnering with those involved in identifying board candidates or mentoring senior women executives. Catalyst, a global nonprofit that works with CEOs and leading companies to build workplaces that work for women,[43] focuses on increasing boardroom diversity by producing research and conducting programs in which current CEOs and board chairs mentor and sponsor CEO-endorsed women board candidates. The 30% Club likewise has established a mentoring program, and works with executive search firms to encourage them to put forward diverse slates of candidates.

The Thirty Percent Coalition has been active in calling for change, including launching a campaign in 2012 to send letters to companies urging them to increase representation of women on their boards, engaging with more than 230 companies overall.[44] Since the campaign began, 189 companies have appointed a woman to their boards (as of July 2018).[45]

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 generally voluntary for U.S. corporations (with the exception of California). There has been increased support from public advocacy groups and state elected officials for enhanced obligations in stock exchange listing requirements and to require U.S. companies to take tangible steps to address the issue. There are indications that these efforts have had some positive effects, particularly with the recent uptick in board appointments for women in 2018 (women accounted for 31% of new board directors at 3,000 of the biggest publicly traded companies). Moreover, ISS Analytics – the data arm of Institutional Investor Services – has found that women in the boardrooms have a greater set of skills and qualifications on their resumes than their male counterparts.[46] These trends suggest that the modest growth in recent years may be accelerating.

40 *See* SHE:US, Bloomberg, https://www.bloomberg.com/quote/SHE:US (last visited Aug. 16, 2018).

41 *Corporate Board Diversity: Gaining Traction Through Investor Stewardship*, Bus. Law Today (Jul. 16, 2018), https://businesslawtoday.org/2018/07/corporate-board-diversity-gaining-traction-investor-stewardship/.

42 Press Release, Office of the N.Y. State Comptroller, DiNapoli: State Pension Fund Will Vote Against Board Members at Corporations with no Women Directors (Mar. 21, 2018), https://www.osc.state.ny.us/press/releases/mar18/032118.htm.

43 *Catalyst*, https://www.catalyst.org/mission (last visited Sept. 14, 2018).

44 Press Release, Thirty Percent Coalition, 189 Companies Appointed Woman to Boards since Campaign Launched in 2012 (Jul. 17, 2018), https://www.30percentcoalition.org/news/coalition-news/the-thirty-percent-coalition-commends-38-new-companies-adding-women-to-their-boards-of-directors-during-the-2018-adopt-a-company-campaign.

45 *Id.*

46 Fuhrmans, *supra* note 3.

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