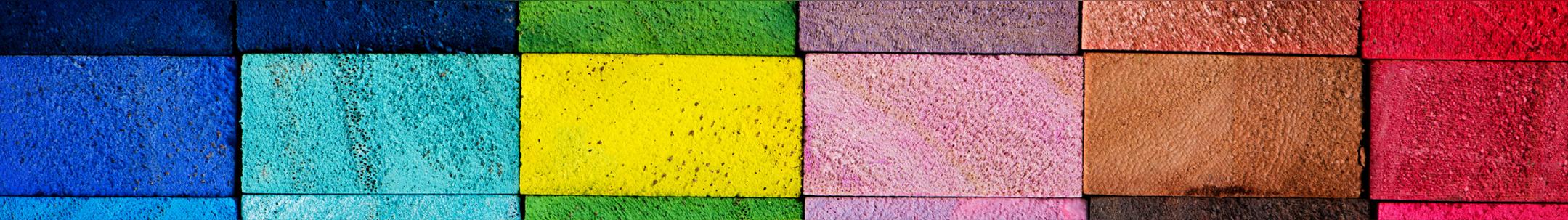


C L I F F O R D
C H A N C E



GLOBAL BOARD DIVERSITY TRACKER
DEVELOPING A GLOBAL APPROACH
MARCH 2023

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Introduction: specific board ratio requirements across the globe

Global context

Global stakeholder and societal pressure for boardroom diversity reform has been backed by legislative and regulatory developments. In many jurisdictions there are now specific target ratios for gender and race on corporate boards (particularly for listed entities). These developments have in turn led to increased stakeholder pressure. From stock exchange sanctions for non-compliance, to investors threatening to ‘red-top’ companies with non-compliant boards, plus the inclusion of board diversity metrics as a key indicator in ESG assessments, the rationale for compliance is clear.

Conversely, some stakeholders have expressed concern about what they see as a focus on metrics vs. merit. This environment means that clarity on what is a legal requirement, what is guidance, and what is best practice, can be an important part in weighing board composition and succession considerations, and the reporting of those. Companies with board (or below board) targets may need to benchmark the basis on which targets are being used.

However, the provisions are still patchwork: some jurisdictions (like the UK and the Netherlands) have specific number-based targets in place for listed entities; other jurisdictions (like Hong Kong) have stock exchange requirements but not a specific target requirement. Other jurisdictions (like China), do not have national

provisions. Some have guidance that is widely followed, but is not binding. Further provisions are expected – and across Europe, for example, impacted companies will be looking to track the progress of local implementation of the European Women on Boards Directive (as a result of which EU member states must require that at least 40% of non-executive director positions, or at least 33% of all director positions, in listed companies are held by members of the under-represented sex by 30 June 2026; member states must adopt the required national measures by 28 December 2024).

In the financial services sector, specific provisions apply (for example, joint ESMA and EBA guidelines), and more will likely follow at national levels given the calls for increased diversity in the sector.

About this guide

We know that for those charged with trying to manage succession pipelines, or appease stakeholders, or ensure their investee companies are compliant with best practice (whether that is being assessed by boards and their committees, general counsel, cosec, or stewardship and investment strategy teams, or diversity & inclusion leads), the goalposts are not always clear.

This summary guide is intended to give a snapshot on a by jurisdiction basis in key financial markets (primarily for listed entities)

of (i) where there are requirements for specific board diversity targets for the jurisdiction in which the entity is established; (ii) where there are guidelines for these; (iii) what reporting is required; and (iv) the sanctions (if any) for non-compliance. The guide does not include details of thresholds for requirements (where, for example, these depend on specific listing types or revenue), or sector-specific provisions. However, it can then be a ‘starter for 10’ (or indeed for 40 [%], which is becoming the new normal for target gender representation on boards) to help to establish what the minimum end goal should be.

There is also additional detail in relation to gender in our **Global Employment Law Guide App**.

Beyond establishing a board target

Legal and regulatory considerations will only be one factor at play here: this is, of course, part of broader good governance. Board diversity is often seen as a key way of avoiding group think, being representative of a positive ‘whole self/ speak up’ culture, setting role models and adopting positive approaches to succession planning. Stakeholder governance will also continue to play a part, and we will increasingly see



failure to focus on the appropriate targets (whether diversity or otherwise) being called out by shareholders, employees and customers.

Further, establishing the end-point of the journey that is right for a given organisation is one thing – working out if you are getting there, and how you should get there, is another. The laws and market practice around the collection and global sharing of the data required to monitor board diversity – and, critically, the levels beneath the board from which talent will be grown – continue to evolve.

For example, driving the mandate for data, in France the *Loi Rixain* requires companies with at least 1,000 employees to publish on their website the gender representation for management positions and governing bodies (not including the board) and will impose quotas of at least 30% of members of management positions and governing bodies to be from the underrepresented gender by 2027 and eventually reach 40% by 2030.

Moreover, disclosure on board diversity is required by some entities under EU-driven ESG regulation (including currently the Sustainable Finance Disclosure Regulation, and from 1 January 2024 under the Corporate Sustainability Reporting Directive).

Positive action vs. positive discrimination

For organisations looking to take positive action to improve representation at and below board level: local legal requirements enabling lawful positive action (as opposed to unlawful positive discrimination) to allow key talent to come forward had historically been underused. We see our clients increasingly using these but companies need to navigate the legal complexities to avoid the financial and reputational fall-out of equality legislation breach. Supporting the cultural and policy framework in which diversity thrives in any given organisation can require thorough diligence and investigation. In many respects, data, targets, and diversity operate in a virtuous circle: the more there is legislation or industry guidance requiring specific targets, the more there is a mandate for the gathering of data (within an appropriate framework) and taking of positive action to achieve those targets. Moreover, clear governance around diversity approaches can ensure that organisations are taking appropriate strategies, and that a diversity target is not seen as being at the expense of excellence.

One thing is certain: there will be more legislation and scrutiny of board diversity – and of compliance with legal and cultural norms. So far, most change has been in relation to gender. This summary also tracks race – but we expect there to be further change to come there, and potentially in

respect of other protected groups and/ or other demographic characteristics (as well as on specific experience and expertise, for example digitalisation and sustainability).

There is evidence that progress is being made, at least in some jurisdictions. For example, in the UK, in Q1 2023 it was reported that 96 FTSE 100 companies met the Parker Review target of having at least one minority ethnic director on their boards, and that the 40% target set by the FTSE Women Leaders Review for women on boards has been met in the FTSE 350. As the Co-Chairs of the FTSE Women Leaders Review state, they “*now need to deliver on a key Recommendation of the Review which is our focus on women appointments in the ‘big four’ roles of Chair, Senior Independent Director, Chief Executive and Chief Financial Officer.*”

Next steps

Organisations taking a global investment approach, or assessing the position for their board, would be well-advised to ensure that

(as a minimum) they are:

- assessing any applicable targets and compliance against them;
- ensuring they have the data gathering framework to monitor ongoing compliance (and talent pipeline);
- putting in place or assessing succession planning and board diversity policies;
- if not on track for meeting ratios, establishing what steps can be taken to change this (from assessing what positive action may be lawful, to wider D&I and cultural investigations and frameworks to support progress), or how reporting to explain non-compliance (where required) can be addressed.

We would be happy to work with you on your approach, including co-ordinating advice in relation to any of the jurisdictions covered in this guide (or beyond) to help achieve your goals. Our contact details are included at the end of this guide.

“ Clarity on what is a legal requirement, what is guidance, and what is best practice, can be important in weighing board composition and succession considerations, and the reporting of those. ”

Jurisdiction Snapshot

Jurisdiction	Legal requirements on protective characteristics ratios		Compliance requirements			Reporting required?		Consequences of non-compliance		
	Gender (female %)	Race	Comply or Explain	Voluntary Compliance	Mandatory Compliance	Gender	Race	Financial	Reputational	Other (if Y, please state)
 Abu Dhabi (Input provided by Al Tamimi & Company)	x	x	Gender: x Race: x	Gender: x Race: x	Gender: x Race: x	x	x	Gender: x Race: x	Gender: x Race: x	Gender: x Race: x
 Australia	x (but guidelines of 30% for listed entities)	x	Gender: ✓ Race: x	Gender: ✓ Race: x	Gender: x Race: x	✓ (in relation to guidelines, depending on number of employees and listed status)	x	Gender: ✓ (only with respect to guidance) Race: x	Gender: ✓ Race: x	Gender: x Race: x
 Belgium	✓ (for listed entities) (one-third to be of different genders from the majority)	x	Gender: x	Gender: x	Gender: ✓ (for listed entities)	✓ (for listed entities)	x	Gender: x	Gender: ✓ (for listed entities)	Gender: ✓ (for listed entities) If the composition of the board of directors does not comply with diversity requirements, the first subsequent general meeting must see the appointment of a board that meets these requirements. Any other appointment shall be null and void. If after this subsequent general meeting the composition of the board of directors does not comply with the diversity requirements, any (financial) benefit accruing to the directors based on their appointment will be suspended until the board meets the diversity requirements.

Jurisdiction	Legal requirements on protective characteristics ratios		Compliance requirements			Reporting required?		Consequences of non-compliance		
	Gender (female %)	Race	Comply or Explain	Voluntary Compliance	Mandatory Compliance	Gender	Race	Financial	Reputational	Other (if Y, please state)
 China	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗
 France	✓ 40% (for listed and significant unlisted companies)	✗	Gender: ✗ (but companies should explain when they do not comply with the board diversity policy set out in their corporate governance report) Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ (listed and significant unlisted companies) Race: ✗	✓ (listed companies only)	✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: For companies subject to legal requirements on ratios, new appointments made in violation of such ratios are void. The remuneration of board members is suspended until the composition of the board is compliant.
 Germany	✓ 30% (for listed and co-determined companies)	✗	Gender: ✓ (certain corporate entities (<i>Kapitalgesellschaften</i>) such as, amongst others, listed and unlisted stock corporations (<i>Aktiengesellschaften</i>), <i>Societas Europaea</i> (SE), etc.) Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	✓	✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: Risk of administrative or criminal offences; for certain listed companies, an election of members of the supervisory board by the shareholders' meeting (<i>Hauptversammlung</i>) and a delegation to the supervisory board without meeting the minimum quota requirement is void.

Jurisdiction	Legal requirements on protective characteristics ratios		Compliance requirements			Reporting required?		Consequences of non-compliance		
	Gender (female %)	Race	Comply or Explain	Voluntary Compliance	Mandatory Compliance	Gender	Race	Financial	Reputational	Other (if Y, please state)
 Hong Kong	✗ (but requirements, without specific target ratios, for example regarding diversity policies, are set out in the Listing Rules)	✗	Gender: ✓ Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ (listed companies and some elements only) Race: ✗	✓ (listed companies only)	✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ May result in disciplinary action or enforcement sanctions by the Hong Kong Stock Exchange.
 Italy	✓ 40% listed 33% non-listed controlled by public administration	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓	✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: unremedied breaches lead to dissolution of the board.
 Ireland <input type="checkbox"/> (input provided by McCann FitzGerald LLP)	✗ (but proposals for ratio for all companies in train)	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗
 Japan	✗ (but widely followed guidance for listed companies)	✗ (but widely followed guidance for listed companies)	Gender: ✓ (but no specific ratio) Race: ✗	Gender: ✓ (but no specific ratio) Race: ✗	Gender: ✗ Race: ✗	✓ (depending on company threshold)	✓ (depending on company threshold)	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: Non-compliance with reporting requirement could result in delisting from the Tokyo Stock Exchange

Jurisdiction	Legal requirements on protective characteristics ratios		Compliance requirements			Reporting required?		Consequences of non-compliance		
	Gender (female %)	Race	Comply or Explain	Voluntary Compliance	Mandatory Compliance	Gender	Race	Financial	Reputational	Other (if Y, please state)
 Luxembourg	✗ (but, for companies listed on the Luxembourg Stock Exchange, guidelines referring to “the appropriate representation of both genders” without specific target ratios)	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	✓ (for companies listed on the Luxembourg Stock Exchange and certain listed and non-listed Luxembourg companies which meet certain criteria must disclose a statement concerning their diversity policy; the law does not fix the scope of “diversity”, but gender is referenced as an example)	✓ (the reporting requirements for companies listed on the Luxembourg Stock Exchange and certain listed and non-listed Luxembourg companies which meet certain criteria do not set the scope of “diversity” and thus potentially race could be included)	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✓ Non-compliance with the diversity statement requirement, as applicable, would be considered as a faute de régularité and the board of the relevant entity could be held jointly and severally liable towards the company and any third parties for any damage resulting from such a violation.
 Singapore	✗	✗	✗	✗	✗	✓ (but no mandated target)	✓ (the reporting requirements do not specifically address race; however, the language is broad enough to cover this)	✗	✗	✗ Listed companies are now required to report on their diversity policy and progress in their annual reports under listing rules (including progress against a target set by the company)

Jurisdiction	Legal requirements on protective characteristics ratios		Compliance requirements			Reporting required?		Consequences of non-compliance		
	Gender (female %)	Race	Comply or Explain	Voluntary Compliance	Mandatory Compliance	Gender	Race	Financial	Reputational	Other (if Y, please state)
 Spain	Gender: ✗ (but guidelines for balanced composition and 40% female directors for listed companies) (The Spanish Government has announced measures including to mandate at least 40% women on boards and so further developments are expected.)	✗	✓ (regarding guidelines)	✗	✗	Gender: ✓ (listed companies must report corporate governance matters, which include principles and recommendations regarding gender ratios)	✗	Gender: ✓ (financial consequences for listed companies if they fail to report corporate governance matters, which include principles and recommendations regarding gender ratios)	✗	✗
 The Netherlands	✓ (One-third for supervisory boards of listed companies) (for other large companies, an appropriate and ambitious target should be set).	✗	Gender: ✓ Race: ✗ (only in relation to the self-set targets for non-listed companies)	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	✓	✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: New appointments for listed companies that do not contribute to a more gender-balanced supervisory or non-executive board will – with limited exceptions – be void.

Jurisdiction	Legal requirements on protective characteristics ratios		Compliance requirements			Reporting required?		Consequences of non-compliance		
	Gender (female %)	Race	Comply or Explain	Voluntary Compliance	Mandatory Compliance	Gender	Race	Financial	Reputational	Other (if Y, please state)
 UAE (Input provided by Al Tamimi & Company)	x	x	Gender: x Race: x	Gender: x Race: x	Gender: x Race: x	x	x	Gender: x Race: x	Gender: x Race: x	Gender: x Race: x
 United Kingdom	✓ 40% (listed companies) (and one senior board position to be held by a woman)	✓ (listed companies) (at least one member of the board to be from a minority ethnic background)	Gender: ✓ Race: ✓	Gender: x Race: x	Gender: ✓ Race: ✓	✓ (depending on company threshold)	✓ (depending on company threshold)	Gender: ✓ Race: ✓ (listed companies)	Gender: ✓ Race: ✓	Gender: ✓ Race: ✓ May result in 'red top' or 'amber top' investment warnings
 United States	x (but Nasdaq diversity guidelines for two diverse board members, depending on listed status; some states also have reporting requirements)	x (but Nasdaq diversity guidelines for two diverse board members, depending on listed status; some states also have reporting requirements)	Gender: ✓ Race: ✓ (Nasdaq guidelines – requirement depends on listed status: state law should be checked)	Gender: x Race: x	Gender: x Race: x	✓ (depending on the state)	✓ (depending on the state)	Gender: x Race: x	Gender: ✓ Race: ✓ (depending on the state)	x

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