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**Board Diversity |  
A Corporate Imperative**





## Content

Board Diversity   A Corporate Imperative .....	2
A Mandatory Approach to Gender Diversity .....	3
Calls for Transparency and Disclosure .....	4
Government and Institutional Pressure for Diversity .....	5
Managing Diversity Data .....	6



# Board Diversity | A Corporate Imperative

A convergence of forces is changing the public face of the boardroom: [the increasing amount of data showing how inclusion and diversity improves performance](#); impassioned protests for gender equality; the impact of the Black Lives Matter movement sparking a global awakening regarding racial equality and social justice; pressure from investors and shareholders; and legislation. While gender diversity on boards has been a focus for some time now, the importance of racial and ethnic diversity in the boardroom has started to dominate the conversation.

In the US, institutional investors are at the forefront of the demand for more diversity disclosures. Large investors like Blackrock, State Street, and Vanguard have publically expressed strong desires to see corporate boards diversify their ranks. As investor pressure on diversity escalates, it is likely more investors and stakeholders will take litigious steps to demand action. In the past several years, an increasing number of shareholder derivative lawsuits were filed against the boards of companies for failing to deliver on diversity in their boards and executive ranks. Complaints have also been filed alleging boards have breached their fiduciary duty by making false assertions about their diversity commitments.

Due to this increasing pressure, new laws around the world are experimenting with quotas to enforce diversity. California is the first state to impose minimum board diversity requirements for underrepresented groups. Outside the US, while some jurisdictions mandate strict quotas in particular for publicly listed companies, others are taking a softer approach by urging diversity efforts through disclosure requirements.

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"Governance-related demands by activist investors around the world rose from just 27 in 2009 to around 1,400 in 2019."

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Source: [McKinsey & Company](#)



# A Mandatory Approach to Gender Diversity

A proactive approach is recommended and necessary to understand the legal landscape.

A number of countries around the world, particularly in Europe, have introduced mandatory gender quotas. Since 2015, **Italy** has had a binding quota of 33% for listed companies and state-owned companies and in Germany; the government imposed a binding quota of 30% for supervisory boards of listed companies submitted to parity co-determination (roughly 110 of the biggest listed companies). In 2017, **France** instituted a binding quota of 40% and in 2018, **Austria** and **Belgium** introduced binding quotas of 30% and 33%, respectively.

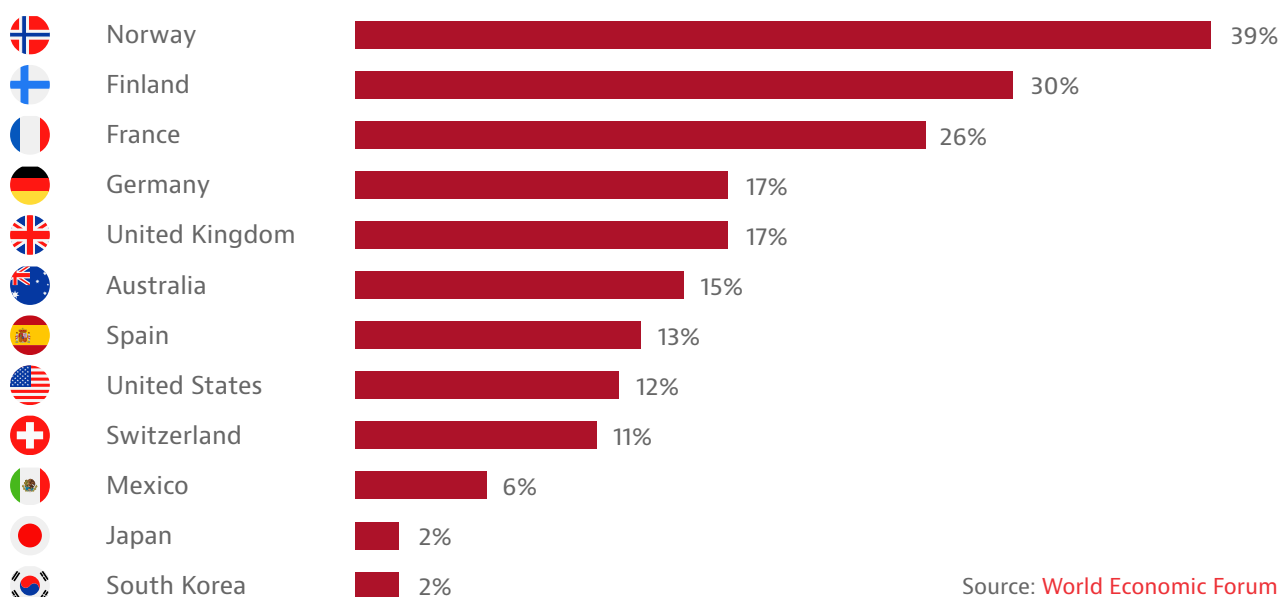
Legislation is on the horizon in the **Netherlands**, with the potential to be the most far-reaching measure on gender equality in the region to date. In December 2019, the Dutch parliament voted in favor

of a mandatory quota for women on the supervisory board of listed companies and other large corporations. The legislative proposal is currently in the preparation phase. The quota will entail that a target of 30% women on the supervisory board must be met. If the quota has not been met, the appointment of a male member to the supervisory board will be null and void.

While some European countries are mandating gender diversity, few Latin American countries have introduced binding quotas. Exceptions include **Colombia**, where in the public sector, Law 581, 2000 requires that women hold 30% of public-nature positions (including decision-making positions, such as boards) and **Argentina**, where associations and companies registered in the Inspección General de Justicia must have a gender diverse board of directors composed of the same number of men and women.

## The Countries with the most women in the boardroom

Female boardroom representation in selected countries



Source: [World Economic Forum](#)

# Calls for Transparency and Disclosure

Mandatory board quotas are not common in Asia Pacific.

Some jurisdictions are encouraging board diversity by pressing for disclosure of certain information. For example, in **Canada**, where there is no federal requirement for corporate board diversity, effective January 1, 2020, publicly-traded corporations incorporated under the Canada Business Corporations Act must provide shareholders with certain information, including:

- Whether the corporation has a written policy relating to the identification and nomination of members of designated groups for the board of directors;
- Whether the board or its nominating committee considers the level of representation of designated groups on the board when identifying and nominating candidates for election or re-election and, as the case may be, how that level is considered or the reasons why it is not considered;
- Whether the corporation considers the level of representation of designated groups when appointing members of senior management and, as the case may be, how that level is considered or the reasons why it is not considered;
- Whether the corporation has, for each designated group, adopted a target number or percentage, or a range of targets, for members of the group to hold positions on the board by a specific date;
- Whether the corporation has, for each designated group, adopted a target number or percentage, or a range of targets, for members of the group to be members of senior management, and;
- For each designated group, the number and proportion (as a percentage) of members of the group who hold positions on the board; and
- For each designated group, the number and proportion (as a percentage) of members of the group who are members of senior management, including all of the corporation's major subsidiaries.

The "designated groups" for this reporting are women, Aboriginal peoples, persons with disabilities, and members of visible minorities. "Members of senior management" include the chair and vice-chair of the board of directors, the president, the CEO and CFO, the vice-president of principal business units or divisions, and individuals performing a policy-making function.

In **Denmark**, as of 2013, due to an adopted amendment of the Danish Companies Act, the Danish Financial Statements Act and the Danish Act on Gender Equality, the approximately 1,100 largest Danish companies are obligated to set up targets for the quota of the underrepresented gender in the supreme governing body. Boards in state-owned companies should "as far as possible" have an equal gender balance; a man and a woman nominated for every vacancy (executives and non-executives). Despite no mandatory gender quota, from 2013 there was an obligation to all companies (listed and non-listed) to self-regulate and set their own targets. Companies affected are ordered to report on both targets and policies annually and may be fined if they fail to act or report in accordance with the rules.

In **Japan**, under the Financial Instruments and Exchange Act and its Cabinet Office Order, companies (mainly listed companies and companies making a public offering or with a certain number of shareholders) must disclose the number and the ratio of male/female officers (director, statutory auditors, etc.) in certain documents e.g. securities registration statement and annual securities report, etc.

For listed companies in **Singapore**, the Code of Corporate Governance requires that the board comprises directors who as a group provide the appropriate balance and mix of skills, knowledge, experience, and other aspects of diversity such as gender and age, so as to avoid groupthink and foster constructive debate. The board diversity policy and progress made, including objectives, are disclosed in the company's annual report. The Code of Corporate Governance applies to listed companies on a comply-or-explain basis, i.e. if the company does not comply with requirements, the company has to provide an explanation (e.g. in their annual report or in responses to questions by the Singapore Exchange Securities Trading Limited).

# Government and Institutional Pressure for Diversity

Even in jurisdictions where there are not mandates or reporting obligations, governments, particularly in Asia, are making it clear that a diverse board is important. For example, for listed companies in **Thailand**, there is a guideline issued by the Securities and Exchange Commission: Corporate Governance Code for listed companies 2017, suggesting the board of directors' composition should consider diversity in expertise, experiences, specialty, gender and age. Likewise, in **Taiwan**, according to the Corporate Governance Best Practice Principles for Listed Companies issued by the Taiwan Stock Exchange and the Taipei Exchange, the company should consider diversity (including gender and ethnicity) when forming its board of directors. In the **Philippines**, in the Code of Corporate Governance for Publicly-Listed Companies (Code), there is a recommendation for covered firms to establish a policy on board diversity, including (but not limited to) gender diversity. The Code provides the example of increasing the number of female directors, including female independent directors.

In **Australia**, the Australian Institute of Company Directors (AICD) formed in 2015 a "30% Club" where individual chairs of ASX 200 Boards committed to achieving at least 30% female representation on boards

as soon as they could. This objective was achieved 2019 and was a voluntary commitment with the results recorded by AICD and published in their quarterly reports. The initiative has now expanded to include ASX 300 Boards, with the objective being to achieve 30% female representation on boards by the end of 2021.

In the **United Kingdom**, the Hampton-Alexander Review - an independent, government backed initiative to increase the representation of women in senior leadership positions and on boards of FTSE 350 companies - published its fifth report in February 2021. The report found that there was notable progress made by companies towards meeting the Review's 33% targets for women in senior leadership positions in the FTSE350 by the end of 2020. However, the report also notes that **while women make up around 40% of the non-executive directors on FTSE 350 boards, women only represent about 14% of executive directors in the FTSE 100**. As executive positions attract a higher pay package than non-executive directors, there will continue to be a substantial gender pay gap in most boards and leadership teams. Promoting and recruiting women to executive positions will likely be the next area of focus for UK corporate boards.

## Why Diversity and Inclusion Matter?

**+53%**

ROE in Fortune 500 companies with at least three female directors

**+6%**

Net profit margin at companies in which 30% of leadership roles are filled by women

**+9pp.**

EVIT at companies with above-average diversity in their leadership teams

**+19pp.**

Innovation at companies with above-average diversity in their leadership teams

**+14%**

Increase in stocks of inclusive companies during the financial crisis of 2007-2009 during the same period, S&P index was -35%





# Managing Diversity Data

As many countries take steps to increase diversity at senior levels, attention is now turning towards growing a diverse pipeline. Companies need to think about their diversity data, and how to attract and retain diverse talent, including women and minorities.

A key element of any diversity strategy is to understand the workforce demographics, to measure changes and the impact of D&I programs over time, and to monitor pay equity. In some jurisdictions, organizations are legally obliged to collect diversity data, while in others the collection of diversity data is restricted. With a plethora of different legal requirements globally, sometimes there is a disconnect between what employers are legally permitted to collect, and what they are expected to collect. Common pitfalls include blanket collection across jurisdictions, failure to act on data when it is available, or implementing D&I initiatives without thinking about local discrimination laws. There are different legal frameworks for collecting and processing special category data and a risk of significant financial and sometimes criminal penalties if implemented incorrectly.

The approach to consent varies, but risk of not running a D&I program may also outweigh the data protection risks. Transparency is key – be clear with employees what data the company is collecting, why it is necessary, and the purposes for which it will be used. Put in place measures to ensure data is managed securely, anonymized and access is managed appropriately. Crucially, don't collect data for the sake of it – have a plan to understand what the data tells you and address it within the guardrails mentioned here.

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## For More Information

For more information on how to manage your company's inclusion and diversity policies and practices, visit Baker McKenzie's [Inclusion, Diversity & Equity in the Workplace hub](#).

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## Authors



**Susan Eandi**  
Partner  
Susan.Eandi@  
bakermckenzie.com



**Monica Kurnatowska**  
Partner  
Monica.Kurnatowska@  
bakermckenzie.com



**Caroline Burnett**  
Knowledge Lawyer  
Caroline.Burnett@  
bakermckenzie.com

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