

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



GLOBAL BOARD DIVERSITY TRACKER
DEVELOPING A GLOBAL APPROACH
OCTOBER 2022

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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 the European Women on Boards Directive. 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.

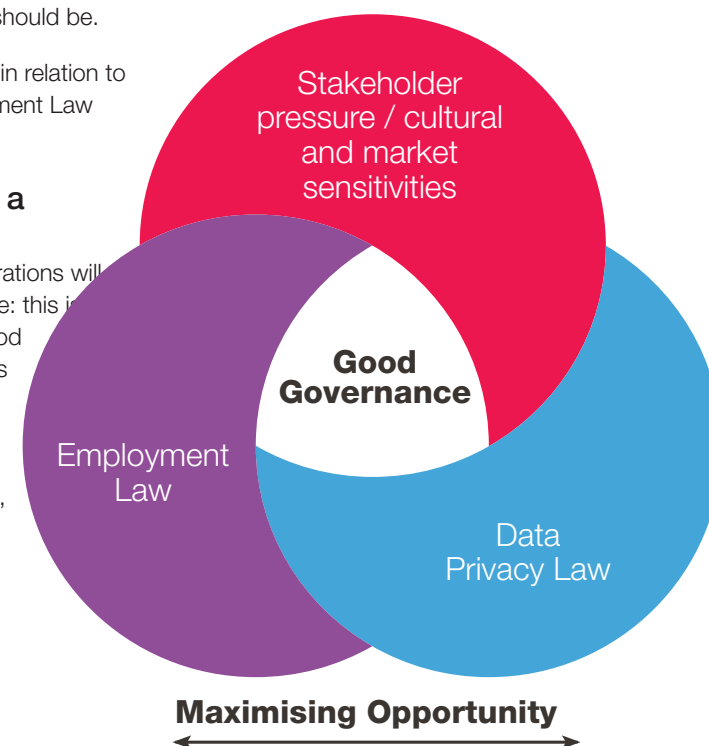
There is also additional detail in relation to gender in our Global Employment Law Guide App.

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. Local legal requirements enabling lawful positive action (as opposed to unlawful positive discrimination) to allow key talent to come forward have historically been underused and so some companies are only now navigating the legal complexities. Supporting the cultural and policy framework in which diversity thrives can require thorough diligence and investigation. In many respects, this is 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 it. Moreover, clear governance around diversity approaches can ensure that organisation 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).

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 on this (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




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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)	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗
 Australia	✗ (but guidelines of 30% for listed entities)	✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗	Gender: ✗ Race: ✗	✓ (in relation to guidelines, depending on number of employees and listed status)	✗	Gender: ✓ (only with respect to guidance) Race: ✗	Gender: ✓ Race: ✗	Gender: ✗ Race: ✗
 Belgium	✓ (for listed entities) (one-third to be of different genders from the majority)	✗	Gender: ✗	Gender: ✗	Gender: ✓ (for listed entities)	✓ (for listed entities)	✗	Gender: ✗	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: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	✓	✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: Risk of administrative or criminal offences
 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.

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)
 Italy	✓ 40% listed 33% non-listed	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓	✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: unremedied breaches lead to dissolution of the board.
 Ireland (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: ✗
 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)

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	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)	✗	✓ (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 listed companies)	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	✓	✗	Gender: ✗ Race: ✗	Gender: ✓ Race: ✗	Gender: ✓ Race: ✗ Gender: New appointments that do not contribute to a more gender-balanced supervisory or non-executive board will – with limited exceptions – be void.
 UAE (Input provided by Al Tamimi & Company)	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	✗	✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗

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)
 United Kingdom	✓ 40% (listed companies) (and one senior board position to be held by a woman)	✓ (listed companies)	Gender: ✓ Race: ✓	Gender: ✗ Race: ✗	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	✗ (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)	Gender: ✗ Race: ✗	Gender: ✗ Race: ✗	✓ (depending on the state)	✓ (depending on the state)	Gender: ✗ Race: ✗	Gender: ✓ Race: ✓ (depending on the state)	✗

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