MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

9 December 2024

Gender Balance Among Directors of Large Equity Listed Issuers

1. Introduction

In November 2022 the EU adopted a Directive (EU) 2022/2381 ('the Directive') on improving the gender balance among directors of large equity listed issuers, better referred to as the Women on Boards Directive.

The Directive does not apply to micro, small and medium sized[1] equity issuers.

The EU recognises increasing women's labour market participation is essential to a) boost economic growth in Europe b) improve the competitiveness of European companies and c) tackle demographic challenges in Europe.

The Directive aims for gender balance among directors of large equity listed companies. By mid-2026 every equity issuer within the European Union needs to have at least 40% female non-executive directors or have a female representation of executive and non-executive of at least 33%.

2. Background

The Women on Boards Directive is a crucial part of the 2020-2025 EU Gender Equality Strategy. Achieving gender balance in the workplace requires a comprehensive approach, which also includes fostering gender balanced decision-making within companies at all levels, as well as closing the gender pay gap. Some countries opposed regulation, preferring voluntary measures. Other countries thought that if actions had to be taken, it should be at national level.

Evidence shows that in the European Union, voluntary measures have not brought change fast enough, that is why the Directive matters, as it will ensure progress amongst all countries, and all companies.

[1] 'Micro, small and medium-sized enterprise' or 'SME' means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME having its registered office in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State.

Furthermore, a measure at EU level can ensure a competitive level playing field throughout the EU and avoid practical complications in business life. The EU is seeking to achieve more balanced representation of men and women on the boards of listed companies.

Enhancing women's presence on company boards, and thus their participation in economic decision-making, is expected to have a positive spill-over effect on women's employment in the companies concerned and throughout the whole economy.

Improving corporate governance through gender diversity has been shown to enhance decision-making, promote innovation, and lead to better overall performance. Studies suggest that boards with diverse gender representation are more likely to consider a wider range of perspectives, leading to more robust risk management and strategic decisions.

The requirements introduced by the Women on Boards Directive will complement The Code of Principles of Good Corporate Governance included in the Capital Markets Rules, which require the board of listed companies to have a diversity of knowledge, judgment and experience to properly direct the business.

3. Implementation

The Directive sets out key requirements for issuers in terms of gender balance in their boardrooms. The main requirements are as follows:

1. Gender Balance Targets

- Large equity listed companies are required to ensure that at least 40% of non-executive director positions or 33% of all director positions (both executive and non-executive) are held by the underrepresented gender. This target is to be achieved by 30 June 2026;

- Large equity listed companies which do not reach the said objectives are to set individual quantitative objectives with a view to improving the gender balance among executive directors. Such companies are to achieve such individual quantitative objectives by 30 June 2026;

- Large equity listed companies which do not achieve the said objectives are expected to adjust the process for selecting candidates for appointment or election to director positions. Such candidates will be selected on the basis of a comparative assessment of the qualifications of each candidate. Clear, neutrally formulated and unambiguous criteria are expected to be applied in a non-discriminatory manner throughout the entire selection process, including during the preparation of vacancy notices;

2. **Recruitment and Selection process**

- Large equity listed companies must ensure that their recruitment and selection procedures are designed to allow for a balanced representation of both genders;

- Large equity listed companies must take specific steps to ensure that there is no discrimination in the recruitment and selection process and that equally qualified candidates from the underrepresented gender are given priority for board positions.

3. **Disclosure requirements**

- Large equity listed companies must disclose their progress towards meeting these gender balance targets. These reports should include:

   i. Information on the current composition of the board;
   ii. Large equity listed companies which do not achieve either of the required objectives, shall include the reasons for not achieving the objectives and a comprehensive description of the measures taken to improve gender balance, such as recruitment policies or diversity initiatives;

- The report should be publicly accessible and integrated into the company's corporate governance statement as well as on the large equity listed company's website. This information needs to be easily accessible;

- Large equity listed companies which do not manage to achieve either of the set objectives, are required to disclose the reasons for not achieving the objectives in addition to a comprehensive description of the measures which the company has already taken or intends to take.

The Authority will publish a list of the companies that have achieved the directive's objectives, also on an annual basis.

To ensure effective implementation of the Directive, penalties that are effective, proportionate, and dissuasive, such as fines may be imposed through the Financial Markets Act.

The requirements of the Directive have not been transposed in totality in the Capital Markets Rules since in their respective nature, they fall outside the remit of the Authority. Specifically these articles are Article 6(4), Article 8(3) and Article 10. The scope behind the respective articles, amongst others, is to protect the rights of candidates, of the underrepresented sex, applying for a director position.

4. Amended Listing Rules

To transpose the new requirements of the Directive, a new chapter to the Capital Markets Rules has been introduced as Chapter 13. A copy of the chapter is annexed to this Circular.

5. Effective Date

Chapter 13 of the Capital Market Rules shall become effective from **28 December 2024,** being the transposition deadline of the Directive. Impacted issuers are required to reach one of the set objectives by 30 June 2026.

Contacts

Any queries or request for clarifications in respect of the above should be submitted on email address **transparency@mfsa.mt.**

Annex I

CHAPTER 13
GENDER BALANCE AMONG DIRECTORS OF LISTED COMPANIES

This Chapter applies to companies which have their registered office in Malta and whose shares are admitted to trading on a regulated market within the meaning of Article 2(1) of the Financial Markets Act, in one or more Member States. The aim of the following requirements is to achieve a more balanced representation of women and men among the directors of listed companies by establishing effective measures that aim to accelerate progress towards gender balance.

General

13.1 The provisions of this chapter shall not apply to debt issuers as well as micro, small and medium sized issuers.

13.2 In this Chapter, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them:

‘listed company’ means a company which has its registered office in Malta and whose shares are admitted to trading on a regulated market within the meaning of Article 2(1) of the Financial Markets Act.

‘board’ means an administrative, management or supervisory body of a listed company;

‘director’ means a member of a board, including a member who is an employees’ representative;

‘executive director’ means a member of a board who is engaged in the daily management of a listed company;;

‘non-executive director’ means a member of a board other than an executive director;

‘micro, small and medium-sized enterprise’ or ‘SME’ means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME having its registered office in Malta whose currency is not the euro, the equivalent amounts in euro.

13.3 Listed companies, shall reach either of the following objectives by 30 June 2026:

13.3.1 members of the underrepresented sex hold at least 40 % of non-executive director positions;

13.3.2 members of the underrepresented sex hold at least 33 % of all director positions, including both executive and non- executive directors.

Provided that the number of non-executive director positions deemed necessary to achieve the objective laid down in Capital Markets Rule 13.3.1 shall be the number closest to the proportion of 40 %, but not exceeding 49 %.

Provided further that the number of all director positions deemed necessary to achieve the objective laid down in Capital Markets Rule 13.3.2, shall be the number closest to the proportion of 33%, but not exceeding 49 %. (Refer to Appendix 13.1)

13.4 Listed companies which do not reach the objectives contained in Capital Markets Rule 13.3.2 are to set individual quantitative objectives with a view to improving the gender balance among executive directors. Such listed companies shall aim to achieve such individual quantitative objectives by 30 June 2026.

13.5 Listed companies which do not achieve the objectives referred to in Capital Markets Rule 13.3.1 or Capital Markets Rule 13.3.2, as applicable shall adjust the process for selecting candidates for appointment or election to director positions. Those candidates shall be selected on the basis of a comparative assessment of the qualifications of each candidate.

Provided that clear, neutrally formulated and unambiguous criteria shall be applied in a non-discriminatory manner throughout the entire selection process, including during the preparation of vacancy notices, the pre-selection phase, the shortlisting phase and the establishment of selection pools of candidates. Such criteria shall be established in advance of the selection process.

13.6 Listed companies which fall within the scope of the requirements of Capital Markets Rule 13.3 shall ensure that, when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority is given to the candidate of the underrepresented sex unless, in exceptional cases, reasons of greater legal weight, such as the pursuit of other diversity policies, invoked within the context of an objective assessment which takes into account the specific situation of a candidate of the other sex and which is based on non-discriminatory criteria, tilt the balance in favour of the candidate of the other sex.

13.7 Listed companies in receipt of a request from a candidate who was considered during the selection of candidates for appointment or election to a director position are obliged to inform that candidate of the following:

13.7.1 the qualification criteria upon which the selection was based;
13.7.2 the objective comparative assessment of the candidates under those criteria; and
13.7.3 where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the underrepresented sex.

13.8 Listed companies shall ensure that shareholders or employees, having the right to vote, are properly informed regarding the measures provided in ensuring gender balance at board level, including penalties for non-compliance by the listed company, as provided in Article 39A of the Financial Markets Act, where the process for selecting candidates for appointment or election to director position is made through a vote of shareholders or employees.

Reporting

13.9 Listed companies shall provide information to the MFSA, once a year, about the gender representation on their boards, distinguishing between the executive and non-executive directors and regarding the measures taken with a view to achieving the applicable the applicable objectives laid down in Capital Markets Rule 13.4.

13.10 Listed companies shall publish the information referred to in Capital Market Rule 13.9, in an appropriate and easily accessible manner on their websites. Additionally, where applicable, this information shall also be included in the Corporate Governance Statement.

Provided that the MFSA shall publish and regularly update, in an easily accessible and centralised manner, a list of the listed companies that have achieved either of the objectives laid down in Capital Markets Rule 13.3.

13.11 Listed companies which have not achieved one of the objectives laid down in Capital Markets Rule 13.3.1 or Capital Markets Rule 13.3.2, shall include the reasons for not achieving the objectives and a comprehensive description of the measures which the listed company has already taken or intends to take in order to achieve them, with the information detailed in Capital Markets Rule 13.9.

Appendix 13.1

Number of positions on the board	Minimum number of non-executive directors of the underrepresented sex necessary to meet the objective of 40 % (Article 5(1), point (a))	Minimum number of directors of the underrepresented sex necessary to meet the objective of 33 % (Article 5(1), point (b))
1	-	-
2	-	-
3	1 (33,3 %)	1 (33,3 %)
4	1 (25 %)	1 (25 %)
5	2 (40 %)	2 (40 %)
6	2 (33,3 %)	2 (33,3 %)
7	3 (42,9 %)	2 (28,6 %)
8	3 (37,5 %)	3 (37,5 %)
9	4 (44,4 %)	3 (33,3 %)
10	4 (40 %)	3 (30 %)
11	4 (36,4 %)	4 (36,4 %)
12	5 (41,7 %)	4 (33,3 %)
13	5 (38,4 %)	4 (30,8 %)
14	6 (42,9 %)	5 (35,7 %)
15	6 (40 %)	5 (33,3 %)
16	6 (37,5 %)	5 (31,3 %)
17	7 (41,2 %)	6 (35,3 %)
18	7 (38,9 %)	6 (33,3 %)
19	8 (42,1 %)	6 (31,6 %)
20	8 (40 %)	7 (35 %)
21	8 (38,1 %)	7 (33,3 %)

22	9 (40,1 %)	7 (31,8 %)
23	9 (39,1 %)	8 (34,8 %)
24	10 (41,7 %)	8 (33,3 %)
25	10 (40 %)	8 (32 %)
26	10 (38,5 %)	9 (34,6 %)
27	11 (40,7 %)	9 (33,3 %)
28	11 (39,3 %)	9 (32,1 %)
29	12 (41,4 %)	10 (34,5 %)
30	12 (40 %)	10 (33,3 %)