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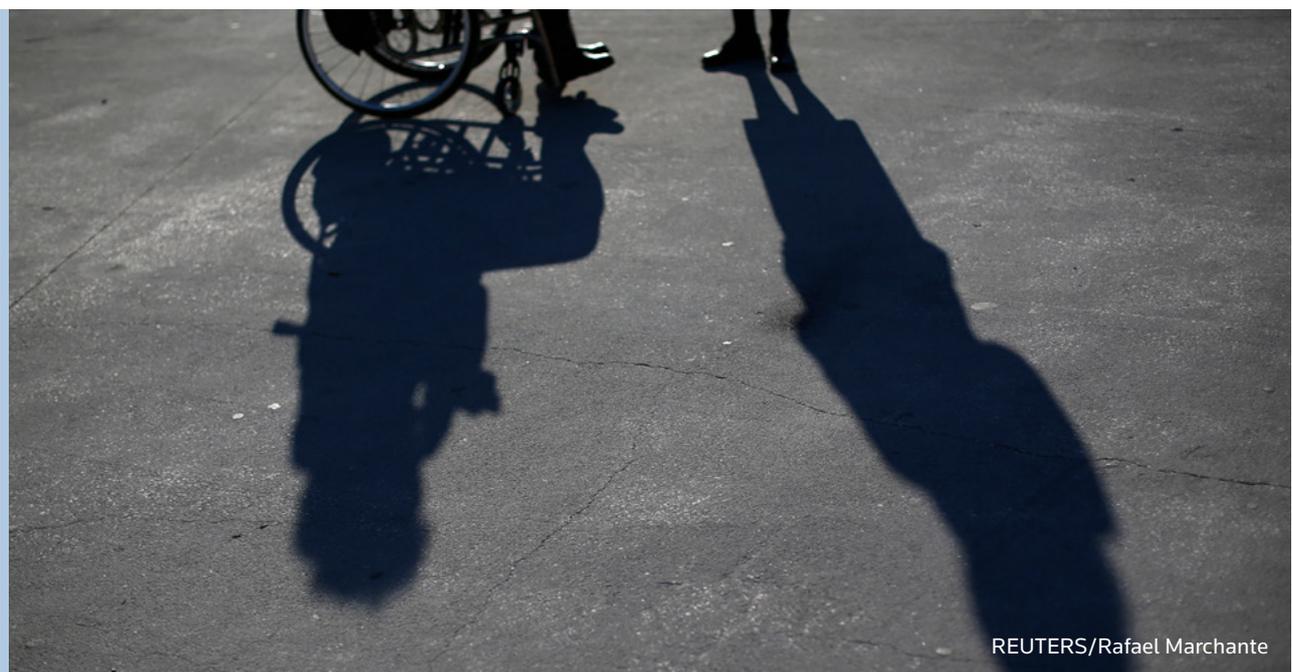
GLOBAL BOARDROOM DIVERSITY: LEGAL FINDINGS ON DISABILITY & DIVERSITY

EXECUTIVE SUMMARY

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This briefing analyzes the presence of corporate disclosure requirements concerning disability in Australia, Brazil, Canada, China, the European Union, France, Germany, India, Japan and the United Kingdom. The briefing finds that most of the examined jurisdictions do not have binding corporate disclosure requirements that mandate companies to reveal whether their boards include individuals with disabilities. While several jurisdictions exhibit guidelines that encourage, and in some cases, require companies to disclose the overall diversity of their board members, companies are seldom obligated to make disclosures specific to disability. Many jurisdictions similarly lack oversight mechanisms that ensure consistent reporting on disability. Frequently companies are compelled by market forces rather than by regulatory action to self-report on diversity, and are left to decide whether to include disability in their quest for broader diversity.

The jurisdictions analyzed in this briefing represent the full spectrum of workplace disability inclusion. Some have yet to secure the rights of individuals with disabilities beyond basic civil and educational rights; others have been spurred into action by sizable populations of people with disabilities. They have mature oversight mechanisms that compel companies to disclose the presence of people with disabilities on their corporate boards. However, looking across countries, it is clear that disability inclusion lags behind other indicators of corporate boardroom diversity, namely gender. For disability inclusion to gather momentum worldwide, individual policies must adopt legal frameworks that protect individuals with disabilities' rights to equal employment and require government suppliers to employ people with disabilities in conjunction with private sector accountability mechanisms. For now, companies are compelled by market forces rather than by regulatory action to self-report on diversity. As a result, disability is often overlooked in the quest for broader diversity.



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INTRODUCTION & RESEARCH CONTEXT

Board room diversity has emerged as an important metric of corporate inclusion and workforce diversity. However, as this briefing reveals, disability is often overlooked as a measurable dimension of diversity in boardrooms around the world.

People with disabilities make up 15% of the world's population (World Bank, 2021). Of the nearly 8 billion people on earth, over 1 billion live with some kind of a disability (World Bank, 2021). In the working aged population (16 – 64), this figure amounts to 386 million people. However, these 386 million working aged people with disabilities are subject to widespread discrimination and workforce exclusion (United Nations, 2022), since only 18% of countries constitutionally protect people with disabilities' right to work (Disabled World, 2022). In parts of the developing world, the unemployment rate for people with disabilities soars to 90% (United Nations, 2022). These discriminatory practices are reflected in the lack of disability representation on corporate boards worldwide. As noted above, few jurisdictions have corporate disclosure requirements that pertain to people with disabilities.

That said, it is difficult to generalize the nature of disability inclusion worldwide. As this briefing shows, the status of disability representation is uneven and does not correlate with geographical region, level of economic development, the presence of social welfare programs, internal ethnic or linguistic diversity, or other socio-cultural factors. Lacking supranational organization, disability policies, laws, and attitudes are set at the country level. Yet recent upheaval in global labor markets and subsequent supply chain issues have made it essential to understand and consider all facets of the global workforce, including disability.



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To complicate matters, there is a lack of systematic research about corporate boardroom disclosure in the global context. Business leaders, policymakers, and global investors need to understand how various jurisdictions have (or, in most cases, have not) adopted disclosure requirements, as well as what oversight mechanisms have been put in place to enforce them. Furthermore, there is a lack of clarity about whether diversity disclosure requirements specifically include disability. Definitions of diversity vary across socio-cultural contexts, but disability is a universal category that often gets overlooked in conversations about boardroom diversity. Given this uncertainty, this briefing examines diversity disclosure requirements around the world through a legal lens by asking (1) What corporate boardroom disability disclosure requirements exist around the world? (2) How do they differ from diversity disclosure requirements? (3) How do various jurisdictions define disability? (4) Do oversight mechanisms exist to enforce boardroom disclosure?

To answer these questions, this systematic legal analysis identifies legislative frameworks, local definitions of disability, and private sector accountability mechanisms in ten far-reaching jurisdictions. The table below summarizes reporting requirements and guidelines applicable to companies operating in the examined jurisdictions.

Figure 1.

GUIDANCE AND LAWS GOVERNING CORPORATE BOARD DIVERSITY & DISABILITY WORLDWIDE

	GUIDANCE ON DIVERSITY DISCLOSURE?	GUIDANCE ON DISABILITY DISCLOSURE?	LAWS REQUIRING DIVERSITY DISCLOSURE?	LAWS REQUIRING DISABILITY DISCLOSURE?	ARE THESE LAWS ENFORCED?	ANY OVERSIGHT MECHANISMS?
Australia	✓	✓				✓
Brazil	✓		✓		✓	✓
Canada	✓	✓	✓	✓*	✓	✓
China	✓		✓			
European Union	✓		✓		✓	✓
France	✓	✓				✓
Germany	✓		✓		✓	✓
India	✓		✓		✓	✓
Japan			✓		✓	✓
United Kingdom	✓	✓	✓	✓	✓	✓

*Laws requiring disability disclosure apply to federal public issuers only

CORPORATE DISCLOSURE REQUIREMENTS FOR DISABILITY: SUMMARY OF FINDINGS

In **Australia**, there are currently no legislative instruments or frameworks that require an Australian corporation to make disclosures as to the diversity of its board of directors. However, practice in both the private and public sectors suggests that corporations in Australia are beginning to take steps to increase the representation of persons with disabilities in their workplaces, including in leadership roles. Meanwhile, the regulatory and policy landscape in Australia is seeing movements toward increased diversity and inclusion on corporate boards and in corporate governance. Still, there is no indication that Australia plans to adopt more direct disclosure requirements pertaining to disability or, more broadly, diversity on corporate boards of public issuers in the near future.

In general, **Brazil** has a well-developed body of law governing disabilities, in part because Brazil has more than 17 million people with some type of disability. Beginning January 2, 2023, publicly-listed companies in Brazil are subject to diversity disclosure requirements; however, the law does not have specific requirements for private companies to include people with disabilities in their board diversity reporting. Nevertheless, there is strong evidence that companies are increasingly demonstrating an interest in including persons with disabilities in their workforce. For now, the percentage of Brazilian companies that have individuals with disabilities on their boards is low, especially taking into account the size of the population with disabilities in Brazil.

In **Canada**, federally incorporated companies that are public issuers are compelled to disclose board diversity to include the representations of various “designated groups” on the board of directors and among senior management. Designated groups include women, indigenous peoples, persons with disabilities, and members of visible minorities. However, corporations incorporated at the provincial or territorial levels are governed by the unique laws of their jurisdiction of incorporation, which limit disclosure to gender diversity. Provincial and territorial corporations may soon be subject to similar, broader disclosure requirements which would include persons with disabilities.

While encouraging diversity, regulations and guidelines on board diversity for listed companies or companies in the **People’s Republic of China** are limited. There are limited regulations or guidelines on board diversity requirements applicable to public issuers, and none that specifically define diversity, let alone disability.

The **European Union** has a robust legal framework for preventing and dealing with matters related to discrimination on the basis of disability. EU law aims to provide a uniform set of rules across all EU Member States, which can take the shape of either EU Regulations or EU Directives. EU Member States, however, retain considerable flexibility in the implementation and enforcement of diversity obligations. For example, under French law, there are no legislative instruments or frameworks that require a French corporation to make disclosures as to the diversity of its board of directors. However, both “hard law” and “soft law” now require companies to provide non-financial information about the corporations, including the companies’ diversity and disability employment policies. These robust laws are aimed at the legal protection of persons with disabilities in the workforce. Meanwhile, under German law, there are no disability disclosure obligations on public issuers. However, there is substantial legislation in Germany

addressing employees with disabilities, but such legislation generally does not apply to management or supervisory board members.

In **India**, there is no specific legislation for rules that affect or encourage the representation of persons with disabilities on company boards. There is, however, specific legislation dealing expressly with the rights of persons with disabilities to public education and employment in the public sector. The SEBI Framework, the compliance with which is mandatory for Indian public issuers, (i) requires data on differently-abled employees and (ii) requires the issuer to disclose whether it has an equal opportunity policy under the Rights of Persons with Disabilities Act. India has over 26.8 million people with a disability. In recent years, progress has been made in India regarding diversity representation on company boards, but there is currently no specific legal framework for reporting of representation of persons with disabilities on such boards.

Japan has no particular disclosure requirements relating to disability in the context of company boards, nor has the topic garnered much attention. The Corporate Governance Code sets out disclosure rules for companies listed on the Tokyo Stock Exchange relating to diversity among board members and core personnel. “Disability” is not expressly mentioned, and the criteria that constitute this diversity are left to the discretion of the issuer. Discrimination against persons with disabilities is prohibited under Japanese law, but disability inclusion has yet to be identified as a measure of corporate strategy.

In the **UK**, legislative instruments and government policy papers indicate that disability is factored into diversity disclosure requirements for corporate boards of public companies. Recently, this corporate governance statement was extended to apply to persons with disabilities.

Key Takeaways

- Many global jurisdictions now have laws in place requiring corporate board diversity disclosure, but few have laws requiring corporate board disability disclosure.
- Rather than legislation, it is the market driving board-level disability disclosure.
- Even so, disability inclusion lags behind other indicators of workplace diversity.
- Well-resourced jurisdictions and companies with a multinational business footprint, like those represented in this briefing, have an opportunity and obligation to demonstrate how public-private partnerships between legal frameworks and accountability mechanisms can drive disability inclusion.
- More is more – to increase workplace disability inclusion, board diversity, and disability disclosure, the world needs more consistent legal protections for people with disabilities, more widespread national commitments to inclusive procurement, and more private sector accountability that promotes disability transparency.



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ABOUT DISABILITY:IN

Disability:IN is a global organization driving disability inclusion and equality in business. More than 400 corporations trust Disability:IN to activate and achieve disability inclusion across their enterprise and in the broader corporate mainstream. Through the world's most comprehensive disability inclusion benchmarking; best-in-class conferences and programs; and expert counsel and engagement, Disability:IN works with leading businesses to create long-term business and societal impact.

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