



New requirements for gender representation in Norwegian board of directors



Siren Skalstad Ellensen
Partner



Malin Renate Ranheim
Partner



Albert Albertsen
Associate

On 22 December 2023, the Norwegian Parliament adopted new rules mandating gender balance in the boards of Norwegian companies meeting certain criteria in terms of size (operating and financial revenues) or number of employees.

Requirements for gender representation on board of directors already exist for public limited liability companies and state-owned limited liability companies, but from 1 January 2024, new requirements will also apply to private limited liability companies in general, general partnerships, foundations, co-operatives, and housing associations. Thousands of companies are affected by these changes and must now ensure compliance with the new rules during a transition period, including identifying and implementing necessary practical measures as soon as possible. The government estimates that the rule changes will apply to approximately 8,000 companies this year, and to about 20,000 companies by 2028. This newsletter provides a brief overview and introduction to the new rules, focusing on the rules for private limited liability companies.

The purpose of introducing the gender representation requirement Over decades it has been a political goal that both women and men shall be represented in the power structures of Norwegian society, including in companies' board of directors, and to achieve equality for both genders on the same terms. The new rules are

an important step in this direction. Requirements for gender representation help ensure equality and diversity, and ultimately, create gender balance in the management of Norwegian companies. The Norwegian business sector will need to adapt more than before to the rules of utilizing the collective competence in society.

Who is comprised by the gender representation requirement?

For private limited liability companies, the requirements for gender composition are included in section 6-11 a, first paragraph, of the Norwegian Private Limited Liability Companies Act (**Companies Act, Nw.: Aksjeloven**), setting out the following criteria for a private limited liability company to be comprised by the provision:

1. private limited liability companies that, on the balance sheet date for the annual accounts (normally 31 December), either have operating and financial revenues that cumulatively exceed NOK 50 million, **or**
2. which have more than 30 employees.

"Operating revenues" refer to income from the company's *normal operations*, such as sales of goods, services, and rental income.

"Financial revenues" refer to income *beyond ordinary operations*, such as interest income, dividends and currency gains.

For private limited liability companies following the layout plan in sections 6-1 and 6-1 a of the Norwegian Accounting Act, operating and financial revenues will appear in the accounting entries.

In calculating the number of employees, employees in a 50% position are counted as one employee, while employees with a lower position percentage are counted as a half employee, cf. the employee representation regulation.

Further, the above requirements also apply to co-operatives or housing associations (more than 500 members/shareholders), general partnerships (legal persons as participants), and commercial foundations.

The significance of a private limited liability company being subject to the gender representation requirement

For a private limited liability company being subject to the obligation of gender representation, the gender composition of the board of directors must meet the requirements below (for shareholder-elected board members). Note that the requirements do not apply to companies with 1 or 2 board members:

- If the board has 3 or 4 members, a maximum of 2 board members can be of the same gender.
- If the board has 5 or 6 members, a maximum of 3 board members can be of the same gender.
- If the board has 7 members, a maximum of 4 board members can be of the same gender.
- If the board has 8 members, a maximum of 5 board members can be of the same gender.
- If the board has 9 or more members, a maximum of 60% of the board members can be of the same gender.

The above requirements also apply to deputy board members, but there are no requirements for the gender composition of observers.

Gender composition for employee representation

In addition, new requirements for the gender composition of board members elected by and among the employees (employee representatives) also came into force the same date, cf. section 6-11 b of the Companies Act.

- In private limited liability companies where 3 or more board members are elected by and among the employees, the board members cannot all be of the same gender.
 - Exception: This does not apply if more than 80% of the total number of employees in the company at the time of the election are of the same gender.
- In private limited liability companies with more than 200 employees, the gender composition among the board members elected by and among the employees must meet the requirements in section 6-1 a, second and third paragraph, of the Companies Act.

For private limited liability companies where board members are elected by and among the employees, the requirements mentioned above apply from the first regular election after the dates in steps 1 to 4 (see below).

Gradual implementation of the new rules (transition period)

Due to the transition period and specific rules, not all private limited liability companies, covered by the gender representation requirement in section 6-11 a, first paragraph, of the Companies Act, need to change the board's composition during 2024.

The government estimates that by 2024, there will be a need for approximately 6,600 new board members, most of whom are women. Towards 2028, Norwegian companies will need to recruit about 13,000 new board members, and the rules will then apply to about 20,000 Norwegian companies.

Depending on the size of the company and its current board composition, the requirement for gender representation must be met at different times based on various thresholds divided into the following 5 steps:

Step 1

- Private limited liability companies/corporations with more than NOK 100 million in total operating and financial revenues must meet the gender representation requirement *by 31 December 2024*.

Step 2

- Private limited liability companies/corporations not covered by Step 1, and which have more than 50 employees, must meet the gender representation requirement *by 30 June 2025*.

Step 3

- Private limited liability companies/corporations not covered by Step 1 or 2, and which have more than 30 employees, must meet the gender representation requirement *by 30 June 2026*.

Step 4

- Private limited liability companies/corporations not covered by Steps 1 to 3, and which have total operating and financial revenues exceeding NOK 70 million, must meet the gender representation requirement *by 30 June 2027*.

Step 5

- Private limited liability companies/corporations not covered by Steps 1 to 4, and which have total operating and financial revenues exceeding NOK 50 million, must meet the gender representation requirement *by 30 June 2028*.

After the transition period (Steps 1-5 above), and when a company incurs an obligation to meet the gender composition requirements, these requirements must be met *no later than one month after the first subsequent ordinary general meeting (which approves the annual accounts)*. The ordinary general meeting is normally held within 30 June each year.

What happens if the gender representation requirements are not met?

It is important that private limited liability companies/corporations being comprised by the new rules, consider which measures to implement within said deadlines to be in compliance with the legal requirements for gender representation. The consequence of not meeting the requirements are as follows:

- the board of directors of the company cannot validly exercise its functions and authority under the Companies Act; and
- the company may be compulsorily dissolved if a board of directors that meets the new requirements of the Companies Act has not been filed to the Norwegian Register of Business Enterprises (*Nw.: Foretaksregisteret*) within said deadlines.

It should also be considered whether other (organizational) company documents, such as articles of association, shareholder agreements or other agreements/documents regulating the requirements on board composition in a private limited liability company/corporation, should be amended to comply with the new rules.

Please reach out if you have any questions to the new rules and implementation of these in a legal and practical manner.