

The Legal Implications of Gender Quota for Public Companies

Authors : Murat Can Pehlivanoglu

Abstract : Historically, gender equality has been mainly defended in the legal arenas of constitutional law and employment law. However, social and economic progress has required corporate law to provide gender equality on corporate boards. Recently, following the trend in Europe, the State of California (United States) enacted a law requiring that every publicly traded corporation based in California should have women on its board of directors. Still, the legal, social and economic implications of this law are yet to be discovered. The contractarian view of corporate law is predominant in the U.S. jurisprudence. However, gender quota law may not be justified through contractarian theory grounds. Therefore, the conformity of gender quota law with the general principles of U.S. corporate law remains questionable, and the immunity of close corporations from the scope of gender quota legislation provides support for the discrepancy. The methodology employed in this paper in the discussion of the rule's conformity with corporate law is doctrinal, and American case law and legal scholarship are the basis for this discussion. This paper uses the aforementioned California law as sample legislation to evaluate the gender quota laws' conformity with the contractarian theory of corporate law. It chooses California law as the sample due to its newness and the presence of pending shareholder lawsuits against it. Also, since California is home to global companies, the effect of such law is expected to be wider. As alternative theories laid down by corporate law may already be activated to provide gender equality on boards of publicly traded corporations, enacting a specific gender quota law would not be justified by an allegedly present statutory deficiency based on contractarian theory. However, this theoretical reality would not enable shareholders to succeed in their lawsuits against such law on corporate law grounds, and investors will have limited options against its results. This will eventually harm the integrity of the marketplace. Through the analysis of the contractarian theory of corporate law and California gender quota law, the major finding of this paper is that the contractarian theory of corporate law does not permit mandating board room equality through corporate law. In conclusion, it expresses that the issue should be dealt with through separate legislation with a different remedial structure, to preserve the traditional rationale of corporate law in U.S. law.

Keywords : board of directors, gender equality, gender quota, publicly traded corporations

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