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INSTITUTE FOR SUSTAINABILITY LEADERSHIP

Technical Report

TRANSFORMATIONAL LEADERSHIP



Future of Boards

Phase 1: Part 2

Legal and Regulatory Frameworks for Sustainability



DLA PIPER

The University of Cambridge Institute for Sustainability Leadership

The University of Cambridge Institute for Sustainability Leadership (CISL) is a globally influential Institute developing leadership and solutions for a sustainable economy. We believe the economy can be 'rewired', through focused collaboration between business, government and finance institutions, to deliver positive outcomes for people and environment. For over three decades we have built the leadership capacity and capabilities of individuals and organisations, and created industry-leading collaborations, to catalyse change and accelerate the path to a sustainable economy. Our interdisciplinary research engagement builds the evidence base for practical action.

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About the research

The Future of Boards Research Study by the University of Cambridge Institute for Sustainability Leadership (CISL), in partnership with the global law firm DLA Piper, explores key trends in how board practice and the wider legislative environment are changing around the world; how aligned with a sustainable future these trends in board practice, and their drivers, are likely to be; and the practical implications for boards. We draw from primary and secondary data to understand trends and their drivers, and use a bespoke sustainability framework to understand whether or not these trends are likely to support, or be obstacles to, the alignment of business success with the long-term wellbeing of all people and planet – in other words, a sustainable future is understood as one where everyone's wellbeing is optimised which requires healthy social and environmental systems.

We are carrying out the research in two phases. Phase 1 explores the evolving and emerging trends in board practices and capabilities, and the related legislative and regulatory context, using a range of primary and secondary data sources. It is divided into three parts.

Phase 1: Part 1 sets out the context, rationale and theoretical underpinning for this study, as well as the research design.

Phase 1: Part 2 is the focus of this report. It explores the first domain of interest – trends in both 'hard' law (legislation and case law) as well as 'soft' law (such as codes of conduct and guidelines), which relate to areas of broad sustainability concern. This structured comparison of existing law enables us to gain insights into the legal context within which boards are currently operating, and are likely to operate, in the future. It also enables us to evaluate which trends, that are aligned with a sustainable future, warrant board support and leadership.

Phase 1: Part 3 then looks at three further domains which relate specifically to trends in board practice, including in response to this evolving legislative context, and wider pressures to achieve sustainability outcomes. These three domains are:

1) materiality, purpose, strategy and disclosure
2) board membership, structure, individual capabilities and group dynamics, and
3) stakeholder engagement, including interfacing with investors.

Phase 1: Research Summary for Business provides a summary of Parts 1, 2 and 3.

Phase 2 of the research will explore and evaluate some of the findings from Phase 1 in greater detail. It will also arrive at a set of recommendations to enable boards to better align organisations with sustainability outcomes, and positively contribute to a thriving future for all.

The research is being carried out with funding from, and in conjunction with, the global law firm DLA Piper, which is assisting CISL in identifying sources of data and gathering insights from multiple locations around the world. It is also providing guidance and advice as the project progresses. It is important to note that while DLA Piper has funded this work, intellectual stewardship lies with CISL.

Background to the study and research framework

Rationale

Businesses, while providing one of the primary ways in which people's wants and needs are met, are also central to creating the grand challenges facing the world today, from climate change to biodiversity loss, excessive inequalities in wealth, income and opportunity or eroding trust in social institutions. These challenges also pose substantial risks for businesses.

Increasingly, boards are under pressure, not only to effectively respond to these external risks, but also to understand and respond to stakeholder expectations, while remaining commercially viable in the short and long term. In addition, they are faced with further challenges arising from increased legislation and reputational issues arising from various corporate scandals and malpractice, post-COVID restructuring, geopolitical upheavals, shifts in macroeconomic policy, and financial market pressures for consistently high returns.

Within this rapidly evolving situation, difficult questions arise about the appropriate role and effective functioning of the board – as the key body (or bodies) responsible for direction, oversight and accountability of an organisation.[1]

This research has been designed to practically support boards in understanding, navigating and responding to the different observable trends in legal frameworks, board practice, board structure and stakeholder engagement that are facing them, and to evaluate the extent to which these are likely to impact on the ability of a board to align business success with sustainability outcomes. The full background to the research, as well as details of the methodology, can be found in the Phase 1: Part 1 report.

The research

Trends in board practice occur across many levels. On the basis of existing literature and insights, we are focusing on four areas, or 'domains'.

For the purposes of this research, a **trend** is understood as the general direction in which something is developing or changing.

Domain 1 – Legal frameworks in a range of jurisdictions (both 'hard' law – legislation and case law, as well as 'soft' law – codes of conduct and guidelines) which shape and underpin board practice that directly relates to sustainability.

Domain 2 – Board practice, including materiality, purpose, strategy and reporting.

Domain 3 – Board membership, structure, individuals and dynamics.

Domain 4 – Stakeholder engagement (including investor interface).

We explore the trends in these domains through a combination of primary and secondary research, using multiple techniques – from questionnaires and interviews to literature reviews and analysis – to better

understand these trends, their drivers, trajectory and pace of change. Although this governance challenge affects all kinds of organisations, this research focuses primarily on large public or privately owned shareholder companies.

We also used a bespoke **sustainability framework** that enables us to explore the extent to which observed trends do or do not align with the long-term wellbeing of people and planet, by seeing how they map against three different business approaches to sustainability (for further details see Phase 1: Part 1).

Table 1: The sustainability framework

Approach to sustainability	Criteria
Corporate Social Responsibility (CSR)	• focus on short-term shareholder financial value maximisation • limited and unsystematic responses to societal and stakeholder pressure to limit negative environmental and social impacts. Action is based on relieving pressure from influential stakeholders and ultimately protecting short-term profit • strong rules-based and compliance mindset • primarily a self-interested motivation (short-term)
Enlightened Shareholder Value (ESV)	• aims to create long-term shareholder financial value • recognises the importance of operating within accepted environmental and social thresholds, and therefore natural, social and human capitals are stewarded, stock and flows of these capitals are accounted for and benefits are allocated to ensure healthy stakeholders, including the environment • concerned with double materiality – external influences on financial income, *and* the impact of the organisation on the environment and wider society because of its impact on long-term financial performance (impact materiality) • varying levels of systemic response, from limited and partial (for example, targets for

	CO_2 emissions only), to explicitly aiming to operate within all accepted environmental and social thresholds (eg all Sustainable Development Goals or all social and environmental elements outlined in *Doughnut Economics*)[2] • primarily a self-interested motivation (long-term)
Purpose driven	• has a clearly defined purpose which defines its reason to exist as an optimal strategic contribution to the equitable long-term wellbeing of people and planet • while all stakeholders are therefore the ultimate beneficiary, the organisational purpose acts as a strategic filter to direct all actions of the company towards an ambitious contributing aspect or sub-stakeholder group • the purpose informs all value-creation goals and parameters for operating. These parameters ensure action within social norms and scientific consensus, and in a way that ensures the health of stakeholders, wider society and the environment, which is necessary to achieve the purpose, and/or may be the object of the purpose (as opposed to the reason to exist being to maximise financial value for members/shareholders) • the purpose is achieved within accepted environmental and social thresholds, and therefore natural, social and human capitals are stewarded, stock and flows of these capitals are accounted for and benefits are allocated to ensure healthy stakeholders, including the environment • shareholders are seen as one of a number of core stakeholders, and profitability is seen as a vital means to achieve the purpose

	• primarily an externally directed 'other' orientation, with self-interest of the business as a means to that end

Domain 1: Sustainability in the legal framework of selected jurisdictions

1.1 Introduction

Evolving trends in both hard law (legislation and case law) and soft law (codes of conduct and guidelines) that directly relate to sustainability have some of the most significant effects on board structure, decision-making, processes and priorities. This is therefore a vital starting point for analysis as it provides the framework within which boards and companies operate.

In order to address this area, we therefore focused primarily on those cross-cutting areas of law that govern *all* dimensions of sustainability, not just particular issues that are inherently linked to sustainability, such as employment practices, or circular economy policies. This approach enables us to investigate the limitations – or indeed permissions – that corporate and financial law frameworks put on the formation, management and conduct of companies. This is a very different exercise from just mapping the external constraints that are imposed by the laws covering such legal areas as environmental law, labour law, or tax law. These legislations tend to be fragmented, siloed and traditionally focused on isolated issues, such as the abatement of pollution, rather than addressing social, climate and environmental thresholds at a systemic level. For example, it has been argued that specific target legislation has failed to deliver its intended impact in many areas, such as by failing to prevent the violation of different environmental planetary boundaries (such as through legislation focused on climate change, biodiversity preservation or ocean acidification).[3] While these different laws address various social and environmental aspects of sustainability, they generally do not consider the interconnections between them, or long-term impacts of business practices. Moreover, the loopholes and enforcement problems arising from these legislations also weaken corporate accountability frameworks.[4]

Our research was therefore premised on:

- the acknowledgement that sustainability is a cross-cutting theme that defies the conventional separation between different areas of law, and
- the belief that sustainability requires a holistic study of the extent to which sustainability principles can be embedded in legal and regulatory frameworks.

1.2 How we approached the research

Legal trends are both global and specific to particular jurisdictions and legal cultures. In order to achieve a sound proxy for making global conclusions, we researched 11 jurisdictions across six continents, in conjunction with DLA Piper. These were: Australia, China, Colombia, Hong Kong, Japan, the Netherlands, Singapore, South Africa, Sweden, the United Arab Emirates (UAE) and the United Kingdom (England and Wales).[5] Additionally, we examined legal developments in the United States (specifically the state of Delaware) and captured relevant legal changes in EU law, as an example of a supranational jurisdiction.

This choice of jurisdiction was made to reflect the diversity of legal frameworks around the world. It was also designed to incorporate a range of legal traditions, such as Anglo-Saxon, European, East Asian and others.[6] However, it is worth noting that some areas of the world are less represented than others (South America and Africa). Additionally, some relevant jurisdictions in terms of legal innovation or impact on nature and the environment (eg France, Germany, India, Brazil) are out of the scope of the research, albeit, where appropriate, relevant examples were also drawn from the legal developments in other countries beyond the 13 jurisdictions that are the focus of our report.

Why did we choose the state of Delaware?

The reason for choosing the law in the state of Delaware is because, in the US, corporate law is regulated at state level. Among US states, Delaware is widely considered to be the most important jurisdiction from a corporate law perspective.

For over three decades, Delaware has been the state where most businesses incorporate.[7] Our choice was therefore also motivated by the economic footprint of the companies registered in Delaware. As of 2021, 66.8 per cent of all Fortune 500 companies were incorporated in Delaware and over 90 per cent of all US initial public offerings in 2021 were registered there.[8] We looked predominantly at Delaware corporate law and federal financial markets law, but also drew contrasts from other US states where appropriate.

The relevant information, in particular from statutes, secondary regulations, case law, codes and guidelines, was collected through:

- legal research to identify existing hard and soft law – this work included drawing information from academic books, journal articles, reports, publications by national public authorities and international organisations, legal directories, communications from industry associations and news from professional media outlets
- a legal questionnaire (Appendix 1), which was distributed to DLA Piper legal offices across 11 selected jurisdictions: Australia, China, Colombia, Hong Kong, Japan, the Netherlands, Singapore, South Africa, Sweden, the UAE and the United Kingdom (England and Wales).

We investigated five areas of law:

- company law
- supply chain due diligence
- sustainability disclosure requirements
- securities law and listing rules
- corporate governance codes and stewardship codes.

These five were chosen because, given the vast number of regulations having sustainability implications, it was necessary to limit our areas of legal research. Our focus is on the internal rules of company and financial law, which affect the governance of companies from a general perspective and regulate their interaction with stakeholders (eg shareholders, directors, employees, community, the environment) and their financial market relationships and transactions. Company law and financial law create an internal legal framework for optimising the value generated by corporate activities under the constraints of other areas of law designed to discipline corporate behaviour and address market externalities.

Other legal areas addressing specific issues can be linked to sustainability outcomes such as environmental externalities (environmental law), relationship between employers and employees (labour law), redistribution (tax law), anticompetitive conduct (competition law), the waste and pollution arising from patterns of production, consumption and distribution (circular economy law), consumers' rights (consumer law), are outside the scope of our research. Although there are some promising emerging areas for further investigation, such as competition law and mergers and acquisitions (M&A) law, these fields are not yet relatively well developed in relation to sustainability.[9]

1.3 The type of businesses that come under the scope of this research

The legal forms we investigated are those that allow an organisation full discretion on how it distributes profits among its members. We therefore looked at both private companies and public companies, which make up the majority of business entities.

A **private company** is defined here as a legal entity with independent legal personality, limited liability, share capital, limited transferability of shares, delegated management, and investor ownership.

A **public company** is defined as a limited liability company that offers shares to the general public.

This focus means that we have not included the law relating to all the legal forms that business can use. Some of these alternative legal frameworks support businesses that may be premised on different logics from those identified in the research design and assumptions set out in Phase 1: Part 1 (and summarised earlier in the preamble to this report). Examples include co-operatives or mutuals, or specific legal entities that are already designed to prioritise public benefit over private, such as the Community Interest Company (CIC) in the UK, or to exclude private benefit completely, such as through not-for-profits.[10] Other businesses may use a non-member (or non-owned) legal form such as trust, one which is also not primarily focused on distributing residual profit to members or shareholders.

We have, however, considered what have become known as 'dual-purpose' companies.[11]

Dual-purpose companies are hybrid organisations,[12] also described as "profit-with-purpose" companies.[13] They can be defined as for-profit legal entities whose aim, in addition to generating profits, is to create public benefit (in other words, they aim to generate a positive impact on the environment, society, employees and the community).

2. Executive summary of the research findings

Seven overall trends emerged from our analysis.

Trend 1: Corporate governance codes and stewardship codes embrace sustainability principles.

These soft law instruments are signalling rising regulatory expectations for greater sustainability behaviour by businesses and can change faster than hard law in some jurisdictions.

Trend 2: Sustainability reporting and disclosure requirements move from corporate voluntary self-regulation to being increasingly enshrined in mandatory legal frameworks.

This shift towards a legislative approach aims to promote corporate transparency and improve comparability between companies. This is expected to enable boards to better benchmark their performance and empower stakeholders to use sustainability data to better gauge risks and hold companies accountable.

Trend 3: Sustainability risks have created new litigation and liability risks.

These risks of litigation can affect both individuals as well as boards as a whole. They can operate in opposing directions, both to increase adherence to sustainability claims and practices, or to deter such activities by boards.

Trend 4: There is mounting stakeholder pressure to clarify the fiduciary duties of boards and make them consistent with sustainability considerations.

This trend is becoming increasingly politicised as the implications of 'shareholder primacy' face heightened scrutiny, while the push to broaden fiduciary duties encounters resistance in certain jurisdictions.

Trend 5: Legislators and regulators are increasingly adopting board diversity requirements.

This change is driven by shifting cultural influences and the realisation that certain diversity criteria play a significant role in addressing today's complex challenges.

Trend 6: Supply chain due diligence requirements are gaining momentum.

By focusing more attention on supply chain practices, this extends the responsibility and hence ambit of a board's focus. These requirements, particularly the pending EU supply chain rules, generally have extra-territorial application and multi-jurisdictional implications.

Trend 7: States are enacting innovative corporate forms that bring private and public benefit together.

These dual-purpose companies, such as benefit corporations, enable the pursuit of both the public interest as well as shareholder and wider stakeholder interests.

We also identified the drivers of these trends, their pace of change and the resulting implications for boards.

Table 2: Key trends, drivers, pace of change and implications for boards

Key trend	Drivers	Pace of change	Implications for boards
Trend 1: Mainstreaming of sustainability in corporate governance and stewardship codes	– corporate scandals creating pressure to promote good corporate governance principles – institutional investors' focus on long-term investment and responsible ownership – pressure to strike a middle way between voluntary self-regulation and mandatory state regulation	**Fast** (eg increase in sustainability-related provisions in corporate governance codes and stewardship codes in the last five years)	– boards under further scrutiny with new benchmarks against which board behaviour is measured – although regulation does not change directors' duties as a matter of hard law, there is pressure to reframe board duties in terms of creating long-term sustainable value for all stakeholders – more board engagement with investors and investment managers on environmental, social and governance (ESG) themes – potential need for new capabilities, board structures and more representative and diverse membership to meet new governance standards – generally, board discretion over degree of compliance
Trend 2: More mandatory sustainability disclosure requirements	– stakeholder demand for comparable and consistent	**Fast** (eg) 300+ mandatory sustainability reporting	– more personal and collective liability risks arising

	sustainability information from investors and civil society actors – regulators' drive to combat greenwashing – increased multilateral co-operation to harmonise sustainability disclosure standards	provisions currently in place in more than 70 jurisdictions)[14]	– materiality assessments and sustainability disclosures expected to go beyond a tick-box approach towards becoming useful decision-making tools – sustainability disclosures might influence cost of capital, company valuation and M&A transactions – hard for boards, investors and other stakeholders to compare data across jurisdictions due to the lack of common frameworks – need for functional co-ordination and adequate resource allocation for these issues – implies further and deeper stakeholder engagement – potential upgrading of board structures and capability-building to respond effectively – board discretion preserved around deciding which risks are material to the business – elevated attention to due diligence, internal control systems and third-party assurance

Trend 3: New litigation and liability risks relating to sustainability	– increased board and even individual legal liability on sustainability performance as a result of increased legislation (and international guidelines) – increased public and non-governmental organisation (NGO) scrutiny and action to combat green and sustainability impact-washing through courts – anti-ESG backlash further multiplies and complexifies litigation risks, as some claimants seek to block or reverse ESG regulations and investment practices	**Moderate** (eg climate litigation cases have more than doubled since 2015; just over 800 cases filed between 1986 and 2014 compared to over 1,200 cases filed since 2015)[15]	– conflicting expectations on boards, from both shareholders and other stakeholders, multiply litigation risks – need to balance the further integration of sustainability concerns across the company with some shareholders who might oppose such practices – boards' non-financial risk oversight function becomes more salient – board members can become individual targets of litigation – liability risks might deter some professionals from seeking to sit on boards – need for internal systems to overcome fractured informational flows on sustainability risks
Trend 4: Aligning fiduciary duties with sustainability considerations	– pressure from legal and academic discourse as well as NGO activists – proliferation of sustainability-related risks impacting boards' long-term viability and reputation	**Slow** (some legal action on fiduciary breach grounds if other interests than shareholders pursued. There is, however, an	– ideological crossfire intensifies the politicisation of fiduciary duties, which might open up a fiduciary trap – complexity, gaps and ambivalences create more compliance and liability risks

	– stakeholder pressure to expand fiduciary understanding beyond driving short-term shareholder profit – ESG investors incentivising boards to adopt more holistic versions of fiduciary duty	increasing amount of discussion and number of proposals on this issue, potentially signalling a future uplift in speed of this trend)	– challenging to navigate the distinction between pecuniary vs. non-pecuniary interests and competing interpretations of 'materiality' – directors' reappointment partially contingent on shareholders' views on directors' sustainability stance – boards' fiduciary mandates increasingly challenged by shareholder activism
Trend 5: Increased mandatory board diversity requirements	– cultural push for gender equality in some jurisdictions – ESG pressure from investors, asset managers and activist investors to increase board diversity – corporate scandals creating pressure for changes in board representation	**Moderate** (eg board quota laws passed in 20+ jurisdictions, of which eight quota laws passed in the last five years)	– boards are being asked to evaluate their diversity ratios – pressure for more representative boards across key criteria (eg, skills, gender, experience, age) – more diversity criteria being required in board appointment procedures, succession planning and board/executive compensation schemes – need to consider diversity recruitment in the nomination/governance committees – boards are encouraged to develop talent pipelines to ensure more diverse succession planning

Trend 6: Mandatory supply chain due diligence requirements gaining momentum	– civil society actors have increased attention on some of the negative sustainability impacts of international supply chains – corporate scandals involving the protection of the environment and the respect for human rights and workers within the supply chain – pressure from the international community and international organisations (such as the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD)) to align supply chain practices area with human rights and environmental standards	**Slow** (restricted to a small number of states but likely to increase, and supply chain regulations will carry significant impact due to their extra-territorial application and multi-jurisdictional implications)	– boards' supervisory powers and the legal boundaries of companies become more fluid – enhanced supply chain oversight capabilities crucial for managing the legal risks arising from supply chain practices – more focus is needed on supply chain transparency and engagement with affected stakeholders across supply networks – challenge of ensuring the collection of reliable data on supplier practices – risks and costs arising from transactions or contracts suspended for failing due diligence – need for upgraded due diligence systems, contractor policies, codes of conduct, disclosure channels, accountability mechanisms and escalation processes to manage supply chain risks – a need to consider the diversification of the supplier base and the 'onshoring' of critical operations to bring supply chain activities under closer management control

Trend 7: New legal structures to bring private and public benefit together	– Certified B Corporations movement and other pressure on governments to legitimise the status of benefit corporations in company law – benefit corporations seen as a legal vehicle to support a cultural transition from shareholder capitalism to a new form of stakeholder/responsible capitalism – benefit corporations' ability to be a legal protective shield against shareholders demanding high short-term returns	**Slow** (first introduced in 2010 and still limited to a small number of countries)	– B Corp certification, and the use of contractual enhancements via directors' service agreements and articles of association ahead of changes in the primary legislation regarding the scope of fiduciary duties, challenges the traditional understanding of directors' duties – more board discretion given by the law to consider multi-stakeholder interests, and the wider public benefit – protection from liability for failing to maximise shareholder returns – challenges in arbitrating competing stakeholder interests and public benefit, within different contexts – requires new ways of measuring success, and new checks and balances on managerial power – risk of reinforcing the view that sustainable outcomes are the reserved domain of benefit corporations, thereby legitimising the dichotomy between benefit corporations and mainstream corporations

3. Summary details of the identified trends

3.1 Trend 1: Corporate governance codes and stewardship codes embrace sustainability principles

Introduction and geographical spread

In the last five years, more sustainability-aligned provisions have been incorporated into the corporate governance codes of countries that belong to the different legal traditions and cultures included in our sample. In particular, the codes of the UK, South Africa, the Netherlands, Singapore, Sweden, China, Hong Kong and Japan have increasingly shifted towards promoting stakeholder-inclusive and long-term sustainable value creation.

The revision of investment stewardship codes has also led to a more sustainability-focused turn in the investment stewardship codes of Japan, the Netherlands, Singapore, South Africa, Sweden and the UK.

Drivers

This trend is driven by a confluence of interrelated factors. Recent waves of corporate scandals have increased the salience of corporate governance on the public agenda, creating pressure to raise related standards. Industry associations and stock exchanges have also stepped up their efforts to promote better corporate governance practices, seeking to strike a middle way between self-regulation and state regulation. Moreover, institutional investors, as forward-looking custodians of large pools of assets, have become more vocal advocates of long-term corporate horizons, enhanced checks and balances for governing corporate conduct, and responsible ownership.

Alignment with business sustainability

These soft law instruments create normative incentives for boards to steer their organisations from CSR to ESV. Across our sample, this shift towards ESV is reflected in the redefinition of corporate success as an outcome that can be beneficial to shareholders in the long term, only if it also takes the interests of all material stakeholders into account in its decision-making. One of the tenets of these soft law frameworks (eg in South Africa, Singapore and the Netherlands) is ensuring that the long-term viability of companies is inseparable from addressing their adverse societal and environmental impacts. The codes also make clear that stakeholder engagement and the management of environmental and social risks are no longer matters of residual CSR. They are defined as important management issues material to long-term financial performance. Moreover, these principles and recommendations create a normative signal that also permits boards to pursue more sustainability pathways, legitimising the attempts of those who seek to go beyond the mandatory regulatory baseline and hence become aligned with the Purpose-driven approach. However, the transition to Purpose-driven corporate practices is to a large extent contingent upon the degree to which the risks taken by first movers will be rewarded by regulators and the costs of the status quo will increase.

Enablers, barriers, limitations

Some of the enabling factors behind this trend are the inherent flexibility in adhering to the provisions of these soft law instruments and the options available to signatories regarding the manner of compliance. The malleability of these codes makes negotiations over their revisions less contentious and onerous compared with parliamentary legislation. Furthermore, the support of institutional investors, industry associations and regulators in propelling the trend creates an enabling coalition in support of more sustainability-oriented corporate governance standards, informed by greater awareness of how sustainability risks can generate financial liabilities in the mid to long term.

However, the main limitation of this trend is that such codes only require voluntary compliance, though this does not imply that non-compliance is without consequences (eg, damaging public reprimands, rising cost of capital). Furthermore, most corporate governance codes across our sample only target listed companies. These also increase the regulatory burden for such companies at a time when the number of listed companies is already diminishing, particularly in Anglo-American markets.[16] Among institutional investors, stewardship practices are also not universally embraced, as they are resource-intensive, some institutional investors claim that shaping the corporate strategy of investee companies would overstep their fiduciary duties. Additionally, the business model of institutional investors who are managing widely diversified portfolios creates minimal incentives for company-specific stewardship because company-specific improvements are generally insignificant for the overall performance of the portfolio. However, this creates enabling conditions for sector-level or value chain stewardship in order to avoid inter-company risk shifting and ensure that systemic risks are contained. Furthermore, under an ownership structure premised on widely diversified shareholdings by large institutional investors, the threat of exit as a source of power in equity markets is a less a viable option. Hence, engagement could be a more effective strategy of portfolio management for some asset managers. Ultimately, however, the long-term effectiveness of stewardship strategies depends upon the congruence between company-level or portfolio-level sustainability action and the systemic economic incentives shaping corporate conduct.

Investment stewardship codes outline aspirational principles, but these have not necessarily translated into material changes in corporate governance practices. Furthermore, competitive pressures from different stock exchanges could instigate a race to the bottom, not the top, in the content of the listing standards. For instance, the divisive positions of stock exchanges on high-frequency trading practices and the proliferation of dual-class share structures have become salient topics in debates about the evolving standard-setting role of stock exchanges. Stock exchanges can therefore act as both enablers and barriers to these trends.

Likely trajectory

As more companies measure their corporate governance standards against the benchmarks of corporate governance codes, and investment stewardship is recognised as material to financial performance, this fast-paced trend will likely continue to gain traction. Furthermore, regulators might consider the introduction of more stringent regulatory requirements to promote responsible ownership and higher corporate governance standards if their voluntary nature is proving to be inadequate.

Implications for boards

- Boards are under intense regulatory scrutiny as corporate governance codes provide new benchmarks against which to measure board performance.

- Although regulation does not change directors' duties as a matter of hard law, corporate governance codes increasingly reframe board duties in terms of creating long-term sustainable value for all stakeholders rather than just for shareholders.
- Board members are under increased pressure to break the cycle of societal distrust by aligning corporate purpose, board duties and composition, remuneration schemes, stakeholder engagement and non-financial reporting with the sustainability-oriented expectations of some investors, consumers, stock exchanges and regulators.
- Boards might expect investment managers to engage more proactively with them on ESG themes as part of investor stewardship campaigns.
- Boards retain wide discretion in deciding whether to adhere to the proposed soft norms, as well as flexibility in terms of the manner of compliance.
- There is an implicit assumption that in order to meet the new standards of corporate governance, boards would benefit from developing new capabilities, creating new governance structures, and striving for broader representation in the boardroom (in terms of skills, experience, cognitive frames, sex, age, etc).

3.2 Trend 2: Sustainability reporting and disclosure requirements move from corporate voluntary self-regulation to being increasingly enshrined in mandatory legal frameworks

Introduction and geographical spread

The trend towards more mandatory sustainability reporting is increasingly fast paced across our sample of jurisdictions. The trend is most widespread in the EU and UK, where, in the last two years, reporting on non-financial matters has become more extensive and prescriptive. However, the trend is also gaining pace in other jurisdictions, such as China, Colombia, Hong Kong and Singapore, mostly via changes in financial regulations and listing rules. Although a similar trend can be identified in the US, proposed federal sustainability disclosure rules have triggered a corporate backlash.

Drivers

The trend is propelled by stakeholder demand for access to consistent and comparable sustainability information and a commitment by regulators to standardise disclosure requirements. Regulatory action is expected to combat greenwashing, enhance the comparability of disclosures, help market players estimate the costs and opportunities of sustainability-related risks, empower stakeholders to hold companies accountable for their sustainability performance, and facilitate the reallocation of capital towards sustainable activities. Furthermore, multilateral co-operation on sustainability disclosure has further accelerated the global harmonisation of sustainability disclosure standards, such as those currently developed by the International Sustainability Standards Board (ISSB).

Alignment with business sustainability

Mandatory sustainability reporting regulations create enabling conditions for stakeholders as well as companies themselves to encourage movement from CSR to ESV. Sustainability disclosures can contribute to the reframing of corporate performance to create long-term value within sustainable parameters. Mandatory disclosure requirements require boards to recognise sustainability as more than just compliance tick-boxing, specific to the CSR approach, and point instead to the mutually reinforcing interlinkages between financial and non-financial metrics in line with the ESV approach. They also address the problem of inconsistent and opaque voluntary disclosures, which helps ensure that incentives are appropriately aligned. As such, free-riders are punished and rewards can be fairly distributed to those with measurably better sustainability performance than others. Furthermore, in some jurisdictions, such as the EU, the concept of 'double materiality'[17] is gaining regulatory acceptance. Hence, mandatory disclosures, while focusing mainly on translating the impact on external systems back into impact on the financial bottom line, could perhaps prompt or enable companies to fundamentally reconsider their value drivers and seek to become more Purpose driven.

However, existing regulations ultimately only improve the business case for sustainability rather than legally requiring, or providing incentives for, boards to steward their capitals within social and environmental thresholds. Furthermore, disclosure requirements do not challenge misaligned corporate conduct, because they typically lack substantive obligations or strong enforcement mechanisms. Instead, they delegate the alignment of companies with sustainable outcomes to stakeholders, who are expected to use the disclosed information to inform their investment decisions and advocate more corporate sustainability practices.

Enablers, barriers, limitations

The trend is enabled by growing political support for regulators that are taking the driving seat after decades of industry-driven initiatives. More stakeholders are demanding sustainability data to inform decision-making and anchor their engagement with companies. The harmonisation of reporting standards reinforces these trends. Furthermore, the market for disaggregated sustainability data is growing as third-party providers and digital tools help investors to manage materially relevant data.

Product-level, service-level and portfolio-level disclosure requirements are also becoming more widespread (for example, in the EU, UK and US). Ongoing technical work on definitions, classifications and taxonomies of sustainable activities might counter 'sustainability-washing' and enhance the comparability of related disclosures, thus providing greater clarity for those boards seeking to tap into the business opportunities arising from sustainability and steer their companies towards sustainable outcomes.

However, sustainability disclosure requirements face technical and political challenges. They are increasingly complex, elevate regulatory costs, create scope for regulatory arbitrage and their effectiveness is yet to be proved. Furthermore, building trust around sustainability disclosures and making them useful in investment decision-making is hard due to the absence of regulatory action regarding sustainability-related index providers and rating agencies. Although some countries, such as the UK, have initiated discussions on the regulation of ESG rating providers, this remains a blind spot that challenges the effects of disclosure.[18]

Regulators opting for disclosure-based regulatory strategies expect the availability of sustainability data to allow market players to better gauge sustainability risks and empower stakeholders to make companies accountable for their adverse impacts. However, sustainability disclosure risks turning into an end in itself

rather than becoming a means to an end. Additionally, the effectiveness of disclosure-based regulatory strategies as enablers of sustainability is limited by the lack of regulatory clarity regarding the system thresholds within which companies operate and the under-specification of the benchmarks against which companies should measure their corporate sustainability progress. Moreover, sustainability disclosure is also facing a corporate backlash in some jurisdictions, particularly in the United States, where the pending climate disclosure rules of the Securities and Exchange Commission (SEC) have polarised business leaders.

Likely trajectory

In the future, there are signals that the trend is likely to converge towards more comparable disclosure standards and increasingly mandatory disclosure requirements, reinforced by third-party assurance systems and stronger penalty provisions. However, the proliferation of sustainability disclosure initiatives might also leave scope for paradigmatic rifts and regulatory arbitrage. Although there is evidence of regulatory efforts towards the harmonisation of a global baseline of disclosure standards, political and technical disagreements will likely create many challenges ahead.

Implications for boards

- Boards are exposed to new liability risks arising from mandatory disclosure rules. Board members therefore face heightened responsibility to create internal systems for sustainability disclosure to reduce compliance risk. This might involve actions to ensure the accuracy and verifiability of sustainability-focused claims according to accepted standards. Failure to do so might be interpreted as a fiduciary breach.
- As sustainability disclosures are increasingly integrated into company valuations and transactional due diligence as part of M&A deals, boards might be further incentivised to consider how sustainability disclosures affect their organisation's cost of capital and potential for business partnerships.
- Boards might have to rethink materiality assessment sustainability disclosure as a decision-making tool rather than a tick-box exercise, and take a holistic view of how financial performance and sustainability performance interrelate.
- Meeting new disclosure requirements calls for greater company-level functional co-ordination and allocation of adequate resources for data-collection tools, internal controls and assurance systems.
- More disclosure of sustainability data might pave the way for greater board-level stakeholder engagement with civil society actors, who will likely increasingly rely on this data with which to hold companies accountable for their adverse environmental and social impacts.
- Sustainability disclosure requirements could require the upgrading of board governance structures to help board members fulfil their risk oversight mandate.
- Boards retain discretion to identify and decide which sustainability-related risks may be material to the business and should therefore be reported.
- Boards are well positioned to help the executive management understand how enhanced disclosures create opportunities for building sustainable competitive advantages. This is also an opportunity for better strategic positioning against competitors, positive signalling of sustainability readiness, and pre-emptive risk mitigation against potential regulations.

- It is difficult for boards to compare sustainability data among industry peers and across jurisdictions due to the lack of common frameworks.

3.3 Trend 3: Sustainability risks have created new litigation and liability risks

Introduction and geographical spread

Litigation is becoming a key arena where the future of the sustainability orientation of companies is adjudicated. Although wider sustainability-themed cases are rapidly multiplying, climate litigation is currently the most contentious area. This trend is predominantly happening in Western countries, being largely shaped by the legal cultures and the level of civil society activism within different jurisdictions. As of 2022, over two-thirds of climate lawsuits worldwide had been filed in the United States, followed by Australia, the UK and the EU. The trend is also spreading in South America.

Drivers

A primary driver of sustainability-related litigation has been the use of tort-based causes of action arising from breaches of existing legal duties, such as the duty of care. Additionally, the rising volume of sustainability-related regulations has exposed companies and their boards to more potential causes of legal action. Furthermore, stakeholders are increasingly taking judicial action to enforce compliance with this legislation as demands for more corporate accountability for adverse impacts soar. Civil society actors pursue high-profile cases and deploy strategic litigation as a tool for enacting broader systemic change. Litigation is also becoming part of the toolkit of shareholder activists as a value-realisation strategy. Furthermore, as more funds flow into ESG or sustainable investment funds, sustainability credentials are under greater legal scrutiny. However, growing anti-ESG sentiment, most notably in the US, is coalescing into a counter-trend, one that acts in some ways to raise the role of litigation as an arena in which the future alignment of companies with sustainability considerations is being decided.

Alignment with business sustainability

Litigation is a multi-purpose tool that can be deployed not only to advance, but also to deter corporate alignment with sustainable outcomes. It is both a pull and a push factor. While exposing companies that operate reactively and partially through their CSR practices, it may equally become a barrier for companies seeking to become fully aligned with the Purpose-driven approach, if the pushback against the implications of this approach coming from political circles, the financial community and contradictory court rulings becomes too strong.

Some sustainability-focused lawsuits, such as *Milieudefensie et al. v. Royal Dutch Shell plc* in the Netherlands, *Australasian Centre for Corporate Responsibility v. Santos* in Australia, *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others* in South Africa, or *Future Generations v. Ministry of the Environment and Others* in Colombia illustrate the potential of litigation to enforce corporate compliance with science-based threshold stewardship, compatible with the underlying principles of ESV and Purpose.

However, sustainability-related lawsuits have worked in opposing ways. Although some litigants resort to the courts to enforce sustainability requirements, litigation is also being used to overturn ESG legislation.

The consideration of ESG criteria in investment decision-making, for example, has recently prompted a judicial backlash in some parts of the US. Litigation is therefore an ambivalent trend in terms of its sustainability orientation, which is producing mixed and conflicting results.

Enablers, barriers, limitations

The trend towards sustainability-focused litigation has been enabled by a series of landmark rulings, particularly on climate and environmental issues. These actions have paved the way for more related lawsuits. Furthermore, this trend is enabled by a growing market for litigation funding, as evidenced by the institutionalisation of litigation finance as an asset class largely uncorrelated with broader market fluctuations and the emergence of ESG litigation investment funds. Additionally, the availability of advanced data analytics tools helps actors in the litigation market to cherry-pick cases that have higher chances of success.

However, there are also some barriers and limitations to relying on courtrooms as forums for aligning corporate behaviour with sustainable outcomes. Litigation trends are largely shaped by the political and legal culture, and the technical legal rules of each jurisdiction limiting the situations in which parties can resort to litigation. In some climate-related cases, difficult issues of causation and attribution complicate the process of judicial resolution. The cost of litigation can also be prohibitively expensive in some countries, particularly for individuals and civil society actors.

Likely trajectory

Sustainability-related litigation will likely become greater in scale, scope and complexity, driven by more prescriptive regulations, stronger enforcement practices, divisive investor sentiment and public demands for more corporate accountability. It is possible that a shift towards more 'purpose-driven' companies may exacerbate this trend in both positive and negative directions.

Implications for boards

- Boards are increasingly having to navigate a legal minefield in the context of conflicting expectations – and related litigation risks – arising from: (1) salience of sustainability issues to the investor, public policy and consumer agendas; (2) new regulatory requirements and the reinterpretation of tort law obligations; (3) some political backlash against ESG-themed strategies; and (4) intensifying public scrutiny of potentially deceptive sustainability practices and statements.
- Boards are under pressure to factor sustainability considerations across multiple corporate dimensions – strategy, operations, product, workforce, governance, risk management, compliance – while appeasing shareholders who might question the impact of these practices on shareholder value.
- Board members are personally becoming targets of litigation based on alleged breaches of fiduciary duties. There is a rise in civil – and in some cases criminal – 'causes of action' against directors triggered by perceived failures of oversight, failures to address climate risks, non-compliance with sustainability regulations, breaches of disclosure rules and misleading statements on sustainability. This might deter some professionals from sitting on boards, although it also creates greater awareness and focus for those who continue to exercise board mandates.

- The board's non-financial risk oversight function – including operational risks, compliance risks, supply chain risks, climate and environmental risks – becomes more salient, as non-financial risk management failures can trigger litigation risks.
- Litigation trends also suggest boards might need to ensure the functioning of more coherent internal systems to overcome fractured, episodic and informal flows of materially relevant information.

3.4 Trend 4: There is mounting stakeholder pressure to clarify the fiduciary duties of boards and make them consistent with sustainability considerations

Introduction and geographical spread

Fiduciary duties are under legal pressure to be elucidated, and potentially changed, challenging traditional answers to the question: in whose interest should boards' obligations be exercised and for what end? Across our sample, directors owe their duties primarily to the 'best interests' of the company itself in such jurisdictions as Australia, Hong Kong, Japan, the Netherlands, Sweden, Singapore, South Africa and the UK.

In the US, the picture is mixed. In Delaware, the pre-eminent jurisdiction for US-registered business entities, the prevailing judicial interpretation is that directors should ultimately maximise the interests of shareholders. In China and Colombia, directors are required to act in the interests of the company and its shareholders. However, legal ambiguities exist around the latitude of directors to consider broader factors, such as ESG criteria, or to align their corporate activities with sustainability outcomes. These have fuelled, in the last 3–4 years, a legal – and increasingly ideological – crossfire that is increasing stakeholder demands for more regulatory clarity and guidance.

Drivers

One of the key drivers of this trend is the rise of sustainable finance regulations in some jurisdictions, such as the EU, which aim to redirect capital flows towards sustainable activities. This approach requires regulatory permission to factor sustainability criteria within capital allocation decisions. The trend is also driven by changes in the legal and policy discourse, pressures from international organisations, and support from institutional investors and activist investors who call on boards to account for their sustainability-related risks. Various coalitions of actors in financial markets, as well as civil society actors, also advocate a greater latitude for fiduciary duties to move beyond driving shareholder profit. In the last two years, a backlash in the US against ESG practices in the investment landscape has further intensified this pressure for more regulatory guidance, since some claim that ESG investing practices constitute fiduciary breaches. Although there is scope for the anti-ESG backlash to get more traction politically, boards' ESG commitments will likely remain strong due to greater recognition of the interlinkages between ESG values and financial value.

Alignment with business sustainability

The legal provisions in some jurisdictions, such as the UK, India, Singapore and South Africa, are aligned with ESV to the extent that they explicitly require the consideration of stakeholders' interests in the exercise of a board's fiduciary obligations. The laws of other countries clearly stipulate that directors must

act in the interests of the company, implicitly permitting boards to consider sustainability factors, as long as they contribute to the long-term viability of the enterprise for the benefit of its members.

This potential shift is reinforced by the growing recognition in corporate governance codes and investment stewardship codes (Trend 1) that sustainability is material to long-term financial viability. This indicates a broadening support to mandate boards to integrate sustainability considerations into their decision-making.

Current pressures for expanding boards' discretion also signal potentially more enabling conditions for a broader alignment of corporate activities with the Purpose-driven approach.

However, the legal landscape around fiduciary duties remains a fluid and heavily contested domain, which is currently subject to growing politicisation and polarisation. Hence, the alignment of this trend with the three approaches remains open ended.

Enablers, barriers, limitations

Ongoing debates are intensifying this trend since some of the resulting polarisation of views makes the need for legal clarity ever more pressing. In the investment landscape, the demand for sustainable finance products creates an enabling factor to expand boards' latitude to embrace sustainability-focused factors. Another enabler would be the rethinking of accounting standards and norms to better price in sustainability-related externalities.

However, a key barrier to this trend remains the heated disagreements over the permissibility afforded to boards to make sustainability-oriented decisions that could hurt shareholders' financial interests, at least in the short term. Furthermore, blending fiduciary duties with ESG criteria has also led to concerns about conflicts of interest and anti-trust violations.

Likely trajectory

This trend is likely to continue in the direction of intensifying stakeholder pressure to align fiduciary duties with sustainability considerations, increasingly conflicting expectations imprinted on fiduciary mandates, and concerns about the harm that the expansion of directors' authority and the lack of clear regulatory guidance could have on shareholder value and investment managers' clients. Hence, legal changes in this contested area could remain in stalemate. Any future renegotiation of the latitude of fiduciary duties will likely be determined by the extent to which sustainability-related factors are seen as material to the interests of the ultimate beneficiaries.

Implications for boards

- Boards are exposed to contradictory expectations as ideological arguments intensify the politicisation of fiduciary duties. This might lead to a fiduciary trap in which the question of whether the consideration of ESG criteria is considered a fiduciary duty or a fiduciary breach is contingent on political interpretations.
- Embracing complexity and ambiguity becomes pragmatically necessary, yet legally risky, as existing gaps and ambivalences generate compliance risks.
- This implies that board members have an increased set of liability risks without clear benefits for shareholders.

- Navigating the distinction between financial versus non-financial interests, and the competing interpretations of 'materiality', become key challenges in making the discharge of directors' duties consistent both with company law and securities laws, and sustainability considerations.
- Boards' fiduciary mandates are increasingly challenged by shareholder activism.

3.5 Trend 5: Legislators and regulators are increasingly adopting board diversity requirements

Introduction and geographical spread

Diversity-related provisions, including targets, quotas and disclosure requirements, can increasingly be found in corporate governance codes, listing rules and legislative acts across the world. Across our sample, diversity-related provisions can be found in the corporate governance codes and/or listing rules of Hong Kong, Japan, the Netherlands, Singapore, South Africa, Sweden and the UK. Legislative board quotas can also be found in over 20 countries worldwide. Furthermore, EU legislators have recently reached a landmark consensus on mandating EU-level board quotas for large, public companies. In the US, although there is a strong cultural push for diversity (and some states, such as Washington, have adopted board diversity quotas), such provisions are often challenged in court, and in some cases quashed. Hence, corporate self-regulation continues to be the prevailing approach to promote board diversity in the US.

Drivers

Although the trend started about two decades ago, converging factors have spurred this trend in the last 4–5 years. This includes: (1) a greater cultural push for female representation in the corporate world; (2) ESG-related pressures from activist investors and asset managers to broaden board representation as a safeguard against groupthink, corporate echo chambers and ethical transgressions; (3) greater scrutiny of board composition from regulators, investors, proxy advisors, NGOs and governance rating agencies; (4) the belief that diversity of background and skills could fill board capability gaps and improve board effectiveness; and (5) changes in the labour market giving rise to more activist employees.

Alignment with business sustainability

Stronger legal requirements around board diversity could facilitate organisational transitions from CSR to ESV and Purpose. For example, promoting diversity in boardrooms could enable more holistic visions of how broader representation in the boardroom helps to anticipate and mitigate sustainability-related risks that influence the long-term viability of the company. Having in place both board-level and workforce-level diversity policies based on clear targets and progress disclosure rules could contribute to fostering the human capital of the company. Board diversity requirements could also potentially enable more inclusive approaches to stakeholder engagement, helping companies to gain the social trust needed from consumers, employees and investors.

In some contexts, board diversity could also help companies aggregate the necessary skills, resources and networks required to better understand the social and environmental thresholds in which companies operate and effectively steward the scarce capitals on which the long-term viability of companies depend. In some organisational contexts, more diversity on boards – in terms of gender, demographics, background, skills, age, cognitive frames – could also lead to a corporate alignment with elements of the

Purpose-driven approach. However, this would depend on the capacity of boards to mobilise shareholder support for such Purpose-driven transformations.

As diversity-related legal and regulatory changes continue to target predominantly large, listed companies and/or state-owned enterprises, the trend remains limited in scope.

Enablers, barriers, limitations

Changes in corporate culture but also larger demographic shifts and sociological factors are enabling the pursuit of board diversity, although the intensity of preferences for legally requiring more diversity in the boardroom widely varies across jurisdictions. These pressures increasingly – albeit still slowly – translate into legal changes as they filter through political and regulatory institutions into corporate governance reforms. However, shareholders are the primary gatekeepers of this trend. Some shareholders could express preference for diversity policies in their regular engagement with boards, and demand that companies report on their progress in achieving prescriptive targets. Support from institutional investors and asset managers can also further propel this trend, such as by increasingly expressing diversity-related expectations in their proxy voting guidelines.

However, other shareholders might oppose equity-based arguments for diversity considerations and reject the materiality of board diversity to corporate governance and financial performance. The trend is also hindered by resistance to legally mandated quotas as a solution to promoting greater diversity. This approach has triggered judicial backlash in some jurisdictions such as the US. There is also a risk that mandatory gender quotas could lead to tokenism, diluting the role of diversity in sustainability by a tick-box approach to diversity targets that fails to deliver sustainability-related benefits. In some organisational contexts, balancing diversity criteria with the ambition to create an inclusive meritocracy is also stirring debates. Furthermore, mandatory board quotas do not necessarily change board dynamics, which are influenced by more than the diversity criteria of board members. Disagreements over which diversity criteria are relevant, which diversity ratios are appropriate, and which timelines are realistic, also constitute a barrier to mainstreaming board diversity.

Likely trajectory

Although board diversity requirements take a long time to be enshrined in law, pressures from coordinated networks of actors might accelerate the trend, thus making board diversity a more prescriptive requirement. However, debates on the appropriate diversity ratios and diversity criteria will likely continue to be a contentious area of negotiation.

Implications for boards

- Boards are increasingly expected to factor gender, demographic, professional and cognitive diversity criteria into board appointment procedures, succession planning and compensation schemes.
- Boards are required to evaluate their diversity ratios across a wider range of criteria in response to legislative changes and regulatory requirements.
- Diversity policies, quotas, and targets, as well as board-level diversity data disclosure obligations, pressure boards to accelerate their diversity agenda.

- Boards need to reconsider the role of committees, especially nomination and governance, with respect to diversity-based recruitment.
- There is an expectation to develop talent pipelines to ensure succession processes are geared towards broader future representation and diversity in corporate decision-making.

3.6 Trend 6: Supply chain due diligence requirements are gaining momentum

Introduction and geographical spread

Supply chain and private procurement practices are increasingly under regulatory scrutiny. In some jurisdictions in our sample, such as the UK, the Netherlands and the US, they are increasingly regulated through more binding legal requirements. The trend is also spreading to other countries, notably France and Germany. At the EU level, a landmark directive on promoting corporate sustainability through supply chain due diligence is pending.

Drivers

Over the past decade, several companies have been forced to deal with suppliers' labour and environmental abuses, which have brought supply chains into the global spotlight. In the aftermath of these corporate scandals, an increasing number of private enterprises have set up and enforced strict supply chain internal regulations to assess the social, environmental and integrity performances of prospective suppliers. The diffusion of sustainability procurement practices has accelerated the adoption of supply chain due diligence requirements. Human rights and environmental responsibility in supply chains have been promoted for many years by international organisations, particularly the UN and OECD, through soft law instruments. However, as supply chain risks increase, reinforced by COVID-19 and geopolitical disruptions, regulators are creating new requirements to promote supply chain integrity by filling gaps in corporate self-regulation. Civil society actors are also paying more attention to the negative sustainability impacts of international supply chains and demanding more corporate transparency and ethical sourcing.

Alignment with business sustainability

As supply chain legislation fills the gaps in voluntary CSR initiatives, companies in a limited number of jurisdictions, such as France, Germany, the UK, the Netherlands and Australia, are increasingly not only permitting, but requiring, the audit of supply chains against adverse impacts. Notable supply chain regulation is also pending at the EU level. These emerging legal rules upgrade supply chain governance and create new pressures on boards to synchronise their companies' practices along the lines of the ESV approach. Sustainability procurement practices also require more transparent and active engagement with affected stakeholders, further pushing companies towards integrating ESV into their DNA. Eliminating suppliers involved in harmful practices, such as land-grabbing, oil spills and human rights violations, from the supply chain, might also tilt companies towards more sustainable outcomes.

Existing supply chain due diligence requirements focus on preventing and mitigating adverse impacts, which both enhance corporate accountability and help companies better manage external risks to their financial performance. They do not impose constraints on financial maximisation per se but rather

encourage companies to better recognise their embeddedness in system thresholds and address the impacts of their practices on wider society and the environment. However, the ongoing move from issue-specific (eg, slavery, child labour) disclosure requirements (as found in the UK, the US, the Netherlands, or Australia) towards more general and substantive obligations focused on both human rights and environmental protection (eg, France, Germany and at EU level) raises the standards of socially and legally acceptable behaviour. As a result, these legal changes might create pressures for boards to consider future alignment with the Purpose-driven approach.

Enablers, barriers, limitations

This trend is enabled by regulatory pressure to make companies' value chains consistent with the Paris Agreement and compliant with international human rights norms. Consumer trends towards socially and environmentally friendly products, and instantaneous digital information flows, support this trend by further exposing human rights and environmental abuses arising in supply chains. Investors are also scrutinising companies' supply chain risks as part of their investment due diligence. Furthermore, supply chain due diligence is finding its way into company valuation and M&A transactions, creating increased practical incentives for supply chain integrity.

However, some proposals have become very contested and instigated strong opposition from corporate managers, particularly in the EU. Another barrier to the trend is related to company-level practical challenges such as new administrative costs, limited numbers of professionals with supply chain due diligence skills, and the challenge of ensuring co-operation between different business departments to meet compliance requirements in the absence of clear, immediate and practical benefits. The trend is also undermined by possible regulatory arbitrage since, notwithstanding the general extra-territorial application of these rules, some companies might seek to circumvent regulations through dissolution and relocation in less stringent jurisdictions.

Likely trajectory

Although the regulatory burdens arising from more stringent supply chain due diligence requirements are becoming more contentious, there is strong stakeholder support for promoting sustainable procurement practices. Hence the trend will likely continue in the direction of higher corporate accountability standards. As the complexity of navigating new rules around supply chain governance increases, pursuing ethical and transparent value chains will likely become a more important topic in boardrooms. Additionally, considering that, generally, supply chain regulations have an extraterritorial reach, the trend is likely to spread rapidly and have effect also in countries not directly regulating the issue.

Implications for boards

- Boards' supervisory powers will expand beyond the company's internal practices, processes and operations. As private procurement and supply chains become targets of regulation, the legal boundaries of companies become more fluid.
- New sources of risk arise from the legal trend towards supply chain integrity, suggesting boards might have to increase their supply chain oversight capabilities.
- Boards' decision-making must consider not only efficiency criteria but also human rights and environmental impacts across the supply chain.

- Boards might increasingly consider supply chain transparency and engagement with affected stakeholders across supply chain networks integral to companies' supply chain management.
- More attention might be paid to ethical sourcing, as well as deploying more resources for mapping often opaque supplier relationships and ensuring the collection of reliable data on supplier practices.
- Mitigating supply chain risks requires boards to ensure that their organisation has in place due diligence systems, contractor policies, codes of conduct, disclosure channels, accountability mechanisms and escalation processes to set out expectations, monitor supplier compliance and address supplier misconduct.
- Ongoing supply chain risks might create the need to consider diversifying the supplier base and upgrading corporate procurement to improve supply chain resilience and manage evolving risks. Boards might also consider 'onshoring' critical operations to bring supply chain activities under closer management control.

3.7 Trend 7: States are enacting innovative corporate forms that bring private and public benefit together

Introduction and geographical spread

The conventional purpose of corporations is to distribute to shareholders the residual profits generated from business activities. In some jurisdictions (for example, Germany) the legal corporate form is however 'neutral'. It can be used to conduct different types of activities (self-interest, ie profit-making, and altruistic, ie non-profit purposes), while in other jurisdictions (for example, in Japan, Italy, or France) statutes explicitly require companies to have a profit distribution purpose. In these kinds of situations, particularly, the emergence of 'dual-purpose' corporate forms provides entrepreneurs with a recognised legal vehicle designed expressly for the pursuit of financial, social and environmental co-benefits. Various forms of 'benefit corporation' statutes can be increasingly found in a range of jurisdictions, including the US, Italy, Colombia, Ecuador, Peru, Uruguay, British Columbia (Canada) and Spain. In France, mission companies – *sociétés à mission* – fulfil a similar function.

By adopting these legal forms, consumers and investors can gauge a company's commitment to social and environmental benefits based on its legal status. It also enables boards to pursue public interest goals, as well as profit, with a legal mandate.

Drivers

The diffusion of benefit corporations has been driven partly by cultural trends towards so-called 'stakeholder capitalism'; the lobbying efforts of B Lab, a non-profit organisation, to enact benefit corporation statutes and stakeholder demands to counteract presumed 'impact-washing' practices of traditional corporations by formalising in company law a legal form with higher accountability standards.

Alignment with business sustainability

Benefit corporations potentially provide a legal vehicle for companies willing to embrace the Purpose-driven approach. They permit companies to contribute to the equitable long-term wellbeing of people and planet while also generating profit, and hence be 'purpose driven'. These legal forms enable a company's

value-creation goals to focus on wider stakeholders, wider society and the environment, rather than exclusively on shareholders.

The benefit corporation in effect dilutes the doctrine of 'shareholder primacy', protecting directors from liability for deviating from the duty to maximise shareholders' financial interests, and explicitly mandates boards to consider the interests of other constituencies.

However, the adoption of corporate forms specifically designed to pursue both public benefit purposes and profit could be interpreted as implicitly reinforcing the assumption that the Purpose-driven actions of the boards of other corporate forms could constitute fiduciary breaches. Thus, the proliferation of these corporate forms risks legitimising and reinforcing the distinction between sustainability-oriented companies that use specialised legal vehicles and mainstream companies that continue business as usual. Additionally, by encouraging investors and consumers to evaluate companies' sustainability performance based on their corporate form, rather than their actual practices, these new legal forms could perpetuate a potentially harmful division between benefit corporations and other types of corporations.

The success or otherwise of these dual-purpose organisations also rests on whether the spirit of non-maximisation of profit for shareholders enables them to thrive if they become listed public companies, and on the wider availability of appropriate growth finance.

Enablers, barriers, limitations

This trend is currently slow, being adopted in only a few countries. It is, however, enabled by the growth of ESG funds that seek to invest capital in companies that pursue social and environmental goals, the growing population of socially and environmentally conscious consumers, and regulatory pressure for more corporate accountability and transparency.

But the pace of this trend could be hindered by concerns about the practical benefits of this legal form, particularly when companies can opt for a B Corp certification without changing their legal form. The accountability and transparency standards could also involve higher costs, which might deter existing shareholders and entrepreneurs, and hurt competitiveness.

There is a challenge to creating appropriate checks and balances since this model skews power over decision-making to managers at the expense of shareholders. And there is also a lack of both regulatory and practical guidance on how to prioritise and reconcile competing stakeholder interests in different contexts.

Such models are also more transparent and open to reputational issues and potentially new liability challenges from failure to meet stakeholder expectations.

Likely trajectory

Benefit corporations are likely to remain a niche corporate form. However, if the current consumer trends, and flows of capital into ESG funds, continue at the same pace, we might see a rising number of companies opting for this legal form to boost consumer confidence and attract such capital.

Implications for boards

- Since benefit corporations disrupt the traditional shareholder-centric systems of checks and balances by mandating the consideration of non-shareholder interests, boards need to adopt new ways to

create checks and balances on managerial power to ensure that managerial and shareholder incentives continue to be aligned.

- They might also face challenges in balancing and adjudicating between the competing interests and accountability demands of different stakeholders.
- Benefit corporation statutes grant boards full legal discretion to consider the interests of non-shareholder constituencies, thus shielding directors from the liability of not having to maximise the pecuniary interests of shareholders.
- Board members of dual-purpose entities may be conflicted between serving shareholders, who have the power to re-elect them onto a board, and discharging their duties for the public benefit.
- As corporate purpose changes in dual-purpose entities, this has implications for how boards evaluate the success of their multiple goals.
- B Corp certification and the use of contractual enhancements via directors' service agreements and articles of association ahead of changes in the primary legislation regarding the scope of fiduciary duties challenges the understanding of directors' duties.

4. Analysis of Trend 1: Corporate governance codes and stewardship codes embrace sustainability principles

The recent wave of revisions to corporate governance codes and stewardship codes reflects a growing trend towards the integration of sustainability factors into these soft law instruments. The recent revisions and upgrades of these codes around the world indicate that there is a converging consensus on the importance of mainstreaming long-term horizons and materially significant sustainability factors into corporate governance and investment stewardship.

Corporate governance codes provide a normative framework of standards, guidelines and recommendations to encourage responsible corporate behaviour by setting out expectations and good practices in areas such as corporate purpose, board duties and composition, stakeholder engagement and disclosure requirements.

Stewardship codes are a collection of norms, standards, good practices and recommendations that institutional investors (in other words, asset owners and asset managers) are expected to follow in the capital allocation, management, oversight and engagement with investee companies to create long-term value for their clients and beneficiaries.

Although corporate governance codes and stewardship codes are non-binding in most jurisdictions, non-compliance with the codes is not without consequence and carries regulatory, financial and reputational implications. In some cases, non-compliance can trigger regulatory fines, reputational damage, or rising cost of capital. The codes capture the latest normative expectations of industry associations and regulators. In effect, these soft law instruments act as sounding boards for what might later become

binding requirements. As these regulatory tools increasingly set expectations for embedding sustainability principles in corporate governance and stewardship practices, they exert growing normative pressure on boards to take proactive action on sustainability, and as a result potentially also increase public confidence in their companies' sustainability behaviour.

Despite the relatively recent integration of sustainability provisions into corporate governance codes and stewardship codes, these tools have shaped the role of companies and their boards for almost three decades, becoming a common regulatory tool for encouraging good governance principles in the private sector. Since 1991, 140 countries worldwide have adopted corporate governance codes and over 40 countries have enacted stewardship codes.[19] The UK has been the main influence in this area, setting influential corporate governance benchmarks.[20] These codes are typically designed for listed companies and are mostly applicable on a 'comply or explain' basis. This approach means that companies have discretion in deciding whether or not to adhere to the norms set out in the codes, as well as providing flexibility in how they comply, but requires them to explain their reasons for any non-compliance. This flexibility makes them, in many ways, more adaptable and receptive to amendments than parliamentary legislation.

Appendices 4 and 5 set out the key sustainability-linked provisions in corporate governance and stewardship codes across the different countries in our sample.

4.1 Sustainability in corporate governance codes

Corporate governance codes provide a normative framework of standards, guidelines and recommendations to encourage responsible corporate behaviour. They set out expectations and good practices on matters such as corporate purpose, board duties and composition, stakeholder engagement, and disclosure requirements. These codes help foster responsible corporate governance principles and promote best practices across industries. They therefore provide a complementary – rather than alternative – mechanism to diffuse good corporate practices.

Corporate governance codes are at the forefront of the integration of sustainability considerations within corporate governance architectures. Overall, these soft law instruments tend to be more advanced in promoting sustainability-oriented governance expectations than statutory legislation. In recent years, a successive wave of revisions of corporate governance codes has accelerated the progressive incorporation of sustainability-related provisions. They have increasingly embedded ownership rights and corporate decision-making into normative frameworks focused on long-term value creation and sustainable performance.

In the EU, a recent stocktake of corporate governance codes in 2021 identified explicit references to sustainability in 17 countries. Sixteen countries require some form of non-financial disclosures, ten make direct reference to sustainability-related corporate compensation plans, and 20 have explicit provisions for stakeholders other than shareholders.[21]

However, changes in the wording of these soft instruments do not necessarily go along with materially significant changes in corporate governance and investment practice. Although it is both hard – and in some cases premature – to empirically trace the effectiveness of these tools in accelerating sustainable outcomes, the evolution of their provisions illustrates how the expectations of regulators, market

participants and society have interacted to create sustainability benchmarks against which to monitor corporate conduct and investment performance.

South Africa's Corporate Governance Code, also known as the King IV report, has been heralded as an important and influential example of good corporate governance, and one which is emulated around the world.[22] The Code is applicable on a 'comply or explain' basis. The King Code is voluntary unless prescribed by law or by stock exchange listing requirements. For example, companies listed on the Johannesburg Stock Exchange (JSE) must implement specified corporate governance practices and must disclose compliance in their annual reports.[23] The JSE Listings Requirements further state that the effect of incorporating certain practices from the King Code in the Listings Requirements is to make their implementation mandatory, notwithstanding the fact that the application of the King Code corporate governance practices is generally voluntary.[24]

The Code provides recommendations based on a comprehensive framework of sustainability concepts: integrated thinking, corporate citizenship, stakeholder inclusivity and organisations embedded in society. These are seen as routes to achieve sustainable development. The Code recommends that the governing body of an organisation appreciates that delivering value is a function of the interdependencies between the organisation's core purpose, risks and opportunities, strategy, business model, performance and sustainable development.[25] King IV also recognises that the board's cognitive diversity, independence and balance of experience are key ingredients in discharging its governance role impartially, responsibly and effectively.[26] Furthermore, the Code calls on governing bodies to embrace stakeholder-inclusive approaches that identify and respond to the needs, interests and expectations of different constituencies that are material to the organisation's interests.[27]

The Swedish Corporate Governance Code was last amended in 2020 and is applicable to companies listed in Sweden. (Other companies, both public and private, may choose to apply the Code.) It introduced the task of "identifying how sustainability issues impact risks to and business opportunities for the company" as a primary task of boards of directors.[28] The Code also requires boards to set out the necessary guidelines to ensure the company's long-term value-creating ability. Furthermore, compliance with the Code's chapter on corporate governance, sustainability and remuneration is mandatory for all listed companies that apply the Code. No explanation of non-compliance is permitted.[29]

In the UK, the latest revision of the Corporate Governance Code, which dates from 2018, stipulates that companies should describe in their annual reports the sustainability of their business model, and how their governance contributes to the delivery of their strategy.[30] The Code also requires the board to consider in the nomination process the contribution of elected directors to the company's long-term sustainable success. It also stipulates that compensation policies should be designed to promote long-term sustainable success, not short-term performance horizons. The Code also has explicit stakeholder engagement provisions. Principle 3 of the Code states that a company should take into account wider stakeholder and social responsibilities, and their implications for long-term success.

In the **Netherlands**, the latest version of their Corporate Governance Code dates from 2022. This document sets out benchmarks for how listed companies are expected to design their corporate governance structure and practices, defining 'long-term value creation' as the primary mission of the management and supervisory boards.[31] The Code also recognises that "long-term sustainability is the key consideration when determining strategy and making decisions". It also requires the consideration of stakeholders' interests, as well as environmental and social factors, in the development of corporate strategy.[32]

The 2022 revision of the Dutch Corporate Governance Code expands the number and specificity of provisions for long-term value creation, including accountability for the company's ESG strategy, actions and results (including in the value chain), while encouraging a more prominent role for stakeholders in formulating corporate ESG strategies. The Code defines a company as being "a long-term alliance between the various stakeholders of the company", stating that "the management board and the supervisory board have responsibility for weighing up these interests".[33]

In **Australia**, the Corporate Governance Code, formally called the ASX Principles, is not mandatory. However, listed companies must benchmark their corporate governance practices against the Code's tenets. The ASX Principles, last updated in 2019, require listed entities to consider what behaviours are expected from its officers and employees in order "to build long term sustainable value for its security holders".[34] Although the document remains strongly anchored in the principle of shareholder primacy, it includes some elements that seek to align corporate conduct with sustainability risks and rewards. For instance, the ASX Principles require companies to release an annual sustainability report, as part of its integrated reporting requirements, which ensure that the board's risk management framework deals adequately with sustainability and climate change risks, and to disclose whether the company has any material exposure to environmental and social risks, as well as how it manages or intends to manage them.[35]

In the **UAE**, the Securities and Commodities Authority (SCA) is a key driver of aligning markets with sustainable outcomes. The SCA's Code introduced a general obligation on boards to create sustainable value for shareholders, taking into account other stakeholder interests.[36] The Code also requires boards to set a policy towards the local community and the environment, and ensure a balance between the objectives of the company and those of the community to promote the socio-economic conditions of the latter. Boards are also under an obligation to implement a mechanism to engage with stakeholders to strengthen board accountability towards them.

In the UAE, corporate governance codes for small and medium-sized enterprises (SMEs) have also been introduced to support SMEs in improving their governance practices and long-term viability.[37] The Corporate Governance Code for Small and Medium Enterprises issued by the Department of Economic Development of Dubai, first introduced in 2011, is a voluntary guideline. The Code recommends that SMEs recognise the needs of stakeholders, including the community and the environment, and formulate policies, targets and key performance indicators for monitoring and measuring the management of stakeholder relations. However, the Code does not provide guidelines on other sustainability-related

matters and focuses mostly on basic governance benchmarks that do not directly facilitate company alignment with sustainable outcomes.

The evolution of corporate governance codes in Asia demonstrates that corporate goals and governance principles, while strongly tied to the legal culture of a jurisdiction, are converging internationally on long-term sustainable value creation and stakeholder engagement. Sustainability-themed concerns have been formally enshrined in the good corporate governance principles adopted in some Asian countries for over two decades.

In **China**, Article 86 of the inaugural Corporate Governance Code of 2002, which is still applicable to companies whose shares are listed on the Chinese stock exchanges, was written in terms that seek to balance shareholders' material interests with sustainability factors: "[w]hile maintaining the listed company's development and maximizing the benefits of shareholders, the company shall be concerned with the welfare, environmental protection and public interests of the community in which it resides, and shall pay attention to the company's social responsibilities".[38] The Code was revised in 2018. Although the Code remains largely shareholder-centric, Article 46 stipulates that boards of directors "...shall be concerned with the interests of stakeholders".[39] The Code also requires listed companies to "actively co-operate with its stakeholders" and provide necessary conditions and remedial channels to ensure and protect the legitimate rights of stakeholders.[40]

The Corporate Governance Code of **Hong Kong** was last updated in 2021, and entered into force in 2022. It also encourages boards to strike a balance between long-term shareholder value and stakeholder value, stressing that the "entire board should be focusing on creating long-term sustainable growth for shareholders and delivering long-term values to all stakeholders".[41] The Code is applicable to listed companies on a 'comply or explain' basis.[42]

In **Japan**, their Corporate Governance Code came into effect in 2015, and underwent revisions in 2018 and 2021. Japan also adopted the 'comply or explain' approach. Its Code applies to companies listed on the Tokyo Stock Exchange (TSE). The Code recognises that there is a growing awareness that sustainability is an important management issue from the perspective of risk mitigation, and for increasing mid- to long-term corporate value.[43] The Code also sets expectations on the need to integrate sustainability factors, by setting sustainable growth and mid- to long-term value, as target aims for companies.[44] More particularly, the Code requires companies to:

- take appropriate measures to address sustainability issues (Principle 2.3)
- recognise that the existence of diverse perspectives and values, reflecting a variety of experiences, skills and characteristics, is a strength that supports sustainable growth (Principle 2.4)
- develop a basic policy for the company's sustainability initiatives (Supplementary Principle 4.2.2) and
- appropriately disclose their initiatives on sustainability as part of their management strategies.[45]

Singapore revised its Corporate Governance Code in 2018. Listed companies are required under the Singapore Exchange Listing Rules to comply with the Code's tenets or give explanations for deviations

from the Code in their annual reports. The Code declares that the role of corporate governance is "enhanc[ing] long-term shareholder value, whilst taking into account the interests of other stakeholders".[46] The Code's tenets revolve around helping businesses "achieve long-term sustainable business performance" while defining a "sustainably successful company" as one that "is good for myriad stakeholders: employees, suppliers, customers, shareholders, as well as society at large".[47]

4.2 Sustainability in stewardship codes

Stewardship codes are a bundle of norms, standards, and recommendations that asset owners and asset managers are expected to follow in order to create long-term value for their clients and beneficiaries. Stewardship strategies, which include demanding public disclosures, monitoring, proxy voting and direct engagement with investee companies, have become important mechanisms through which investors can influence corporate conduct. Institutional investors, in particular, as key providers of capital to public companies, are facing greater scrutiny regarding how their assets are protected against the risks stemming from sustainability challenges and how they contribute to or undermine sustainable outcomes. Stewardship codes provide a framework for guiding investors in their capital oversight activities and set normative benchmarks for stewardship practices.

Capital reallocation is a key lever for aligning investment portfolios with a sustainable future. However, this strategy of exiting investee companies by selling shares is a less viable option for asset managers in charge of index funds and those who manage largely diversified shareholdings across public equity markets. In addition, institutional investors increasingly recognise that securing their beneficial owners' long-term financial wellbeing and mitigating systemic risks requires more than just capital reallocation strategies. Hence, stewardship activities are expected to help investors make more informed decisions, exercise their voting rights more responsibly, signal expectations and offer feedback to investee companies about the drivers of performance, anticipate regulatory action, and enhance research capacities that would allow investors to keep a more granular track of the economy.

Investment stewardship is a resource-intensive activity, and the effectiveness of engagement varies widely across sectors and asset classes. Selective and episodic company-level engagement is often hindered because the lack of sector-level or system-level stewardship might lead to inter-company risk shifting or the transfer of risks, eg climate risks from high-emitting activities, to the portfolio of other investors without real risk mitigation effects. Moreover, the effectiveness of stewardship is highly contingent on regulatory requirements, the incentives of market players, technological and organisational feasibility as well as the broader 'rules of the game' that set boundaries to what is permissible and pragmatically viable.[48] Stewardship practices have also stirred opposition and a regulatory backlash in some jurisdictions, most notably in the US, arising from concerns that institutional investors might exercise undue influence on corporate strategy and thus overstep their fiduciary authority.

In contrast, regulators in other jurisdictions are concerned about the lost opportunities of under-engagement by institutional investors in exercising their governance rights rather than focusing solely on their capital distribution rights. Institutional investors' minimal incentives to engage with their investment portfolio at company level can create a form of 'absentee shareholding', which has been on the policymakers' agenda.[49] Hence, in some countries, regulators are mandating institutional investors to exercise their voting rights at general meetings and disclose their voting records. The 2021 *OECD Corporate Governance Factbook* identified over 21 jurisdictions from a sample of 50 where regulators

have introduced laws or regulations requiring the disclosure of voting policies, and 16 jurisdictions in which companies are required to disclose voting records.[50]

Although these regulatory requirements generally refrain from providing specific guidance regarding the ultimate ends of stewardship activities, stewardship codes in our sample of jurisdictions display an increasing focus on aligning corporate conduct with sustainable outcomes.

The UK has been both the first country in the world to adopt a stewardship code, and a trend-setter in the worldwide adoption of sustainability-oriented stewardship principles. Other key players have been transnational initiatives such as those from the International Corporate Governance Network and the European Fund and Asset Management Association.

The latest version of the UK Stewardship Code came into force in 2020. The revised version has a greater focus on ESG matters than previously, calling for a greater stewardship role of asset owners and asset managers as custodians of market integrity, and recognising that environmental and social factors have become material factors that investors should consider.

The key changes regarding sustainability aspects include:

- a new definition of 'stewardship' to lead to "sustainable benefits for the economy, the environment and society", and
- the expectation of signatories to take ESG matters into account and to ensure their investment decisions are aligned with their clients' needs.[51]

Furthermore, the principles for asset managers and asset owners state that:

- signatories should systematically integrate material ESG issues into their stewardship and investment, and
- enable stewardship that creates "long-term value for clients and beneficiaries, leading to sustainable benefits for the economy, the environment and society".[52] The document also features specific provisions for service providers, such as proxy advisors, who provide support to investors in exercising their stewardship mandates.

In this context, data and rating agencies are also under regulatory scrutiny due to their role as providers of ESG-related services to the financial industry. In November 2022, the UK Financial Conduct Authority also announced a taskforce Code of Conduct for Environmental Social and Governance (ESG) data and ratings providers to improve the transparency and credibility of the market for ESG data and ratings.[53]

South Africa has arguably created one of the most progressive stewardship codes in the world. The Code for Responsible Investing aims to cultivate integrated thinking and build the investment industry's capacity across six capitals (financial, manufactured, intellectual, human, social and natural), while encouraging investors to be embedded in the societal, economic and environmental context in which they operate, and on which their capitals depend.[54] The Code's provisions include five principles: ESG integration, stewardship, capacity building and collaboration, sound governance, and transparency. The Code calls investors to adopt a systematic approach to the integration of ESG factors into investment and

stewardship activities, make more disclosures to relevant stakeholders, and facilitate collaborative synergies between all stakeholders in the investment value chain.

In **Sweden**, the Guideline for Fund Management Companies' Shareholder Engagement, the functional equivalent of a stewardship code, is applicable on a 'comply or explain' basis and recommends that asset managers invest in companies that are managed sustainably and responsibly.[55] However, the guideline does not define any relevant benchmarks. The document requires asset managers to monitor the social and environmental impact of the companies in their portfolio and recommends investment in companies that report their environmental, corporate social responsibility and governance progress.

In 2018, the **Netherlands** adopted its first Stewardship Code under the direction of Eumedion, the Dutch foundation representing the interests of institutional investors with stockholdings in Dutch listed companies.[56] The Code, which also adopts the 'comply or explain' principle, recognises growing societal expectations that asset owners and asset managers take more proactive responsibility to steer listed investee companies towards long-term value creation and sustainability practices. The Code pays attention to correlation between ESG criteria and investment performance, highlighting the material effects of investee companies' environmental and social impacts as key dimensions of investors' stewardship function. Furthermore, Guidance Principle 2 of the Code states that "it is critical to consider environmental (including climate change risks and opportunities), social and governance information (including board composition and diversity)" in assessing the investee companies' long-term value-creation trajectories.[57]

In **Australia**, the Asset Owner Stewardship Code is directed at Australian asset owners with equity holdings in Australian-listed companies and is based on the 'comply or explain' principle. Enacted in 2018 to aid fiduciaries in fulfilling their duties, the Code states that ownership rights should be exercised "to protect and enhance long-term investment value for their beneficiaries by promoting sustainable value creation in the companies in which they invest".[58] The Code's principles include expectations to publicly disclose the asset owners' approach to stewardship responsibilities, including voting policy and activity; engage with companies and monitor asset managers' stewardship activities; encourage better alignment with the financial interests of long-term investors; and report to beneficiaries about their stewardship activities. Asset owners and investment managers also have discretion in using policy engagement and public advocacy to pursue sustainability impact goals, where it is in the best interest of the beneficiaries.

The Stewardship Code in **Japan**, formally known as the Principles for Responsible Institutional Investors, was first established in 2014, and revised in 2017 and 2020. The Code is non-binding and applies on a 'comply or explain' basis.[59] The Code expects institutional investors to enhance the medium- to long-term investment return for their clients and beneficiaries by improving the investee companies' corporate value and sustainable growth based on, among other things, consideration of sustainability. According to the principles of the Code, institutional investors should:

- monitor investee companies to promote their sustainable mid- and long-term growth
- have a clear voting policy designed to contribute to the sustainable growth of investee companies, and
- develop skills and resources needed to appropriately engage with the companies and make business judgements consistent with sustainability considerations.[60]

Like Japan, **Hong Kong**'s Securities and Futures Commission also adopted a set of Principles of Responsible Ownership rather than a formal stewardship code.[61] The Principles were released in 2016. Compliance is voluntary and non-binding, although investors are encouraged to apply the principles, or explain why they do not. Non-compliance can also have other indirect implications, such as reputational damage and higher cost of capital.

Similar to the stewardship codes found in other countries, the Principles revolve around tenets for guiding investors to responsibly discharge their ownership rights by engaging with their investee companies and promoting their long-term success. For instance, Principle 17 of the document recommends investors encourage the investee companies in their portfolio to develop ESG policies and engage with them on the most materially significant ESG issues that could impact on a company's goodwill, reputation and performance.

Singapore revised its Stewardship Code in 2022. The Code, formally known as the Stewardship Principles for Responsible Investors, guides investors "in discharging their responsibilities and creating sustainable long-term value for all stakeholders".[62] The Code encourages active ownership that supports the integration of ESG factors into investment decision-making and stewardship practices.[63] For instance, the Code calls institutional investors to hardwire ESG considerations into the exercise of due diligence in overseeing their investment portfolios.

5. Analysis of Trend 2: Sustainability reporting and disclosure requirements move from corporate voluntary self-regulation to being increasingly enshrined in mandatory legal frameworks

Information on sustainability impacts is a prerequisite for boards to be able to oversee the management of sustainability risks and steer their businesses towards sustainable outcomes.[64] However, there is growing evidence that public disclosures to evidence this impact can suffer from omissions, hyperbole ('impact-washing'), inconsistencies and inaccuracies.[65] As a result, regulators are filling gaps in what had previously been market-led and voluntaristic sustainability reporting initiatives, through the mainstreaming of

mandatory non-financial disclosure requirements into law. This development responds to stakeholder demands for credible, comparable and consistent information on sustainability risks and performance.

However, the global sustainability disclosure regime, despite its increasingly widespread diffusion and prescriptive character, remains rather limited in scope, typically lacks third-party assurance requirements, and involves lenient sanctions for non-compliance, or no sanctions at all. It also remains prone to enforcement problems.

Furthermore, companies are facing a complex reporting environment as they navigate inconsistencies and competing expectations of the disclosure regime, or of the different regimes, under which they operate. The availability of sustainability reporting platforms helps to manage multi-jurisdictional disclosure management processes. However, companies face higher liability risks and regulatory costs as they navigate a growing patchwork of statutory obligations, international instruments, industry-led standards and stock exchange guidelines (further explored in Trend 1).

Appendix 3 gives an overview of how different legal frameworks relate to sustainability disclosure.

5.1 Drivers, spread and speed

Although the sustainability disclosure landscape is still largely dominated by private taxonomies and competing methodologies, governments are increasingly endorsing mandatory disclosure requirements as a regulatory tool to strengthen data-driven corporate sustainability performance. As a result, this trend exposes companies to new reputational, financial and legal liability risks, while also helping combat misleading claims and forge greater transparency and accountability around companies' corporate sustainability credentials.

A 2020 stocktake of the global diffusion of sustainability reporting requirements documented over 300 mandatory sustainability reporting instruments adopted by countries across the world.[66] Many more are underway. The large majority of these provisions target only large private and listed companies. However, some regulatory proposals, such as the EU's *Corporate Sustainability Reporting Directive*, have built-in provisions for the phased applicability of sustainability reporting requirements for small and medium-sized enterprises. This general shift towards mandatory disclosure has accelerated in recent years, building on the political momentum created by the salience of sustainability on the agenda of G7 and G20 forums.

Among the jurisdictions in our sample, we can see a fast-moving trend towards the incorporation of specific sustainability reporting requirements. Many requirements apply only to public companies, and some remain non-mandatory.

Corporate sustainability disclosure is likely to gain more traction in future from a range of influences. Both consumers and investors are demanding credible, consistent and reliable sustainability data to inform better decision-making. This sub-trend benefits from the strong support of coalitions of institutional investors who wield considerable influence over capital markets. For instance, in 2018 some of the world's largest institutional investors, with assets exceeding $30 trillion, signed up to the *Embankment Project for Inclusive Capitalism*.[67] This initiative illustrates the unification of investor efforts to demand more sustainability-linked disclosures from investee companies and develop metrics for keeping track of activities that create long-term value and generate impacts on stakeholders.[68] Climate Action 100+, an investor-led initiative made up of global investors overseeing over US$68 trillion in assets, is also

spearheading a high-level agenda aimed at enhancing climate-related financial disclosures.[69] However, despite numerous market-driven initiatives, regulators are increasingly taking the driving seat in re-purposing corporate reporting towards sustainability ends.

In the future, more standardised and mandatory requirements, third-party assurance systems and stronger penalty provisions might be added to ensure enforceability and conformity with agreed standards. Among sustainability reporting topics, supply chain due diligence is particularly gaining pace as an important theme, increasingly enshrined in legal frameworks (Trend 7).

This fragmentation of approaches across jurisdictions, however, increases the transaction costs of doing business, opens up opportunities for regulatory arbitrage, and hampers investor and consumer confidence in sustainability credentials, encouraging more focus on regional and even international harmonisation. The harmonisation and consolidation of sustainability standards is therefore another trend advocated both by industry leaders and regulators. The currently fragmented ESG ecosystem makes it hard for boards to clearly navigate and prioritise the best actions. However, despite broad rhetorical support for regulatory convergence towards shared reporting frameworks, philosophical and technical disagreements over the details of sustainability disclosure regimes risk descending into several competing initiatives. Influential regulatory powers such as the EU are, however, at the forefront of defining a global sustainability reporting baseline. Amid transatlantic competitive regulatory dynamics, international standard-setting bodies, and other stakeholders, will play a key role in forging a shared baseline framework.

5.2 Approaches adopted in individual countries

In 2021, the United Arab Emirates introduced mandatory sustainability reporting requirements for listed companies. Following the Securities and Commodities Authority (SCA) Code, listed companies in the UAE are required to publish an annual sustainability report or integrate non-financial information into their annual reports by way of an 'integrated report'.[70] The report must follow the Global Reporting Initiative (GRI) standards, replacing previously voluntary and ad hoc statements on Corporate Social Responsibility (CSR) initiatives with a transparent and standardised sustainability reporting methodology. The report must reflect the company's long-term strategy and impacts, including:

- the impact of the company's operations and decisions on the environment and the communities in which it operates
- the impacts on social justice, the wellbeing of workers and employees, and
- the economic benefits on society and the local economy.

In Japan, there are no mandatory reporting requirements specific to corporate sustainability. In practice, however, many companies listed in Japan make voluntary sustainability-related disclosures by including relevant information in their annual securities report by publishing sustainability reports. There are no third-party assurance requirements to verify the accuracy of such information. However, any matters voluntarily disclosed by companies, including sustainability matters that might qualify as a false statement, could make them subject to liabilities under the sanctions regime for breaches of listed companies'

reporting obligations. Making false statements, including on sustainability matters, in annual securities reports or any other mandatory disclosure document may create obligations for companies to indemnify investors for damages arising from such statements. Company officers can also be held liable for investors' losses unless they can show that they did not know and could not have known, after exercising reasonable care, of the false statements.

Additionally, publicly listed asset owners and investment management companies are required to annually prepare and disclose an annual securities report that must include business risk and measures to that risk. Hence, if the company recognises any sustainability-related material risk that is a 'business risk', it must report it in the annual securities report.

In the case of public companies, the Corporate Governance Code recommends companies listed on the Prime Market in particular to collect and analyse the necessary data on the impact of climate change-related risks and earning opportunities on their business activities and profits. Companies listed on the Prime Market are also expected to enhance the quality and quantity of their disclosures based on the Task Force on Climate-related Financial Disclosures (TCFD) recommendations. Furthermore, the Tokyo Stock Exchange has published guidelines on ESG reporting that provide instructions on public disclosure of ESG investments.[71]

The Japanese government has also announced that it is aiming to legislate climate change disclosure requirements in the near future.

In **China**, sustainability reporting is still fragmented and mostly voluntary. Since 2018, listed companies have been encouraged to disclose ESG information in line with the Corporate Governance Code (see Trend 1). In 2020, China's central bank released trial guidelines on environmental disclosure for financial institutions, and in 2021, China's Securities Regulatory Commission also issued updated guidelines on the format of listed companies' annual and semi-annual reports, a move prompted by the revision of China's Securities Law.[72] Under the new rules, listed companies are mandated to consolidate their reports by adding an Environmental and Social Responsibility section. Under this section, listed companies are encouraged to disclose environmental data such as types and volume of discharged pollutants; information about actions undertaken and results achieved regarding the reduction of carbon emissions; their social responsibility efforts; and any actions related to poverty alleviation and rural revitalisation.

In **Hong Kong**, unless exempted under the Companies Ordinance, Hong Kong companies are required to include a discussion of the company's environmental policies and performance in the business review section of the directors' report for each financial year.[73] Listed companies are subject to a more stringent regime, being required to publish annual ESG reports, including specified mandatory disclosures. Other 'comply or explain' disclosures are set out in the *ESG Reporting Guide*.[74]

The *ESG Reporting Guide* provides a framework for listed companies to, among other things, identify and consider what environmental risks and social risks may be material. The members of the board are encouraged to focus on creating long-term sustainable growth for shareholders and deliver long-term value to all stakeholders, while being responsible for the effective governance and oversight of ESG risks. Hong Kong regulators of listed companies and investment firms and the Securities and Futures

Commission (SFC) have introduced requirements in recognition of the duties that companies and firms owe the community in relation to their environmental impact, and in response to increased investor demand for actionable information on how companies manage their ESG risks. An SFC Circular, effective from 1 January 2022, sets out further guidelines on enhanced disclosures for funds that incorporate ESG factors as a key investment focus.[75]

In **Singapore**, the market regulator issued a regulation in 2021 mandating ESG disclosures for Singapore-listed companies on a 'comply or explain' basis, and unveiled a roadmap for further mainstreaming the recommendations of the TCFD in the Singapore capital market.[76] All issuers (entities that sell or register securities) must provide climate reports integrated into their sustainability reporting on a 'comply or explain' basis, starting in 2022. Climate reporting became mandatory from 2023 for the financial, agriculture, food and forest products, and energy industries. In 2024, materials, buildings, and transportation sectors will follow. This approach offers flexibility to issuers by allowing them to adapt their disclosures to their particular circumstances, since material issues can vary within sectors. Failure to comply with listed rule requirements impacts the issuer's suitability to be listed. The accuracy and quality of such reports are ultimately the responsibility of the board, although external (third-party) assurance may be used.

In the **United States**, there are currently no mandatory reporting requirements explicitly targeting sustainability issues at the federal level. However, the Sarbanes-Oxley Act (SOA) of 2003, adopted in the aftermath of the high-profile Enron scandal to enhance corporate accountability, has long been recognised as a disclosure regime with implications for the reporting of environmental costs, risks and liabilities. For instance, SOA Section 404 requires systems of internal control to be established, which are certified by the CEO and Chief Financial Officer, to ensure the accuracy of a company's disclosures. The SOA also stipulates a requirement to develop comprehensive frameworks to manage environmental liability risks, which exposes executive officers and directors to higher personal accountability standards.[77]

The Securities and Exchange Commission (SEC) mandates all public companies to disclose to investors all information they might have on material effects, including environmentally related risks. The SEC Regulation S-K, Item 101 of the SOA, requires disclosure of any material impacts that existing, or anticipated, environmental laws and regulations might have on the company's financial condition and market position.[78] Similarly, the SEC Regulation S-K, Item 103 of the SOA, requires disclosure of any materially significant environmental litigation proceedings, defined as involving a claim for over 10 per cent of the company's assets or pecuniary fines in excess of $100,000.[79] Finally, the SEC Regulation S-K, Item 303 mandates companies to disclose how the company's financial position could be materially impacted by trends and events, including environmental damage.[80]

In 2022, the SEC also issued a proposal for new prescriptive climate disclosure requirements.[81] The proposed rule would require registrants to report on:

- the governance and risk management processes in place to address climate-related risks
- how climate-related risks impact their business operations and financial statements

- how climate risks can impact the registrant's business model and corporate strategy
- information about the assumptions and financial estimates that account for the impact of climate-related events on the registrant's financial situation.

At the federal level, in 2021, the House of Representatives passed the ESG Disclosure Simplification Act, which is, at the time of writing, still pending in the Senate.[82] The draft law seeks to mandate public companies to enhance their ESG disclosures and issue a clear statement about the interdependencies between ESG metrics and the company's long-term business strategy. They also have to explain how the company defines ESG metrics and assesses their impact on long-term corporate value creation.

The mainstreaming of sustainability reporting still remains primarily an industry-driven, not regulatory, trend in the US. It involves a dense and diverse ecosystem of ESG ratings, frameworks, methodologies, rankings and indexes, mostly under the stewardship of asset managers and institutional investors. In some cases, non-binding and flexible disclosure standards have been enshrined in state law. In 2018, for example, Delaware passed the Certification of Adoption of Transparency and Sustainability Standards Act in response to calls from investors and consumers for greater corporate transparency.[83] The law established a voluntary sustainability disclosure regime that allows reporting entities, which opt in, to create their own sustainability standards and assessment measures, or rely on tailored third-party standards in order to obtain certification of adoption of transparency and sustainability standards from the Delaware Secretary of State. However, the law does not require the certifying state bodies to evaluate the substantive provisions of the standards and metrics, nor does it create any sanctions for compliance failure.

In **Australia**, there are no general mandatory requirements to report on sustainability factors. However, the Australian Corporations Act 2001 requires companies, whose operations are subject to particular and significant environmental regulation, to provide details of their environmental performance in annual directors' reports.[84] However, in practice, market-driven environmental and sustainability reporting is an established practice for listed companies, generally using voluntary guidelines published by influential industry groups. Additionally, following Section 1013D of the Corporations Act, institutions offering financial products with an investment component must disclose the extent to which labour standards, or environmental, social or ethical considerations are considered in the selection, retention or realisation of the investment.

Generally, companies in Australia therefore have discretion to decide if and what sustainability information is reasonably expected to be disclosed. Under the Listing Rules of the Australian Securities Exchange, corporations are mandated to publish any information that could have a material effect on the price or value of the entity's securities, which may potentially include sustainability-related factors, such as climate risks.[85] However, the Listing Rules set out exceptions to the information that needs to be disclosed. Furthermore, since asset and investment management in Australia is premised on profit maximisation for beneficiaries, incorporating sustainable factors and understanding of what is in the best interest of the beneficiaries continues to be difficult to define.

New Zealand has been one of the first countries to enact mandatory climate disclosures that follow the recommendations of the TCFD.[86] In 2021, legislators amended the Financial Markets Conduct Act 2013, the Financial Reporting Act 2013, and the Public Audit Act 2001 by adopting a single policy aimed at broadening non-financial reporting. The bill requires certain large publicly listed companies, insurers, banks, non-bank deposit takers and investment managers to make climate-related disclosures.[87] The reporting entities are required to disclose against the climate standards issued by New Zealand's External Reporting Board (XRB), following the recommendations of the TCFD.

In Colombia, recent resolutions from the Financial Superintendency created ESG disclosure requirements for listed corporations.[88] Large corporations that meet specified thresholds have to report against the TCFD Standard and the Sustainability Accounting Standards Board's (SASB) Value Reporting Foundation (VRF) Standard.[89] Pension and private equity funds are also mandated to disclose the ESG strategy embedded in their investment portfolio, and how it relates to the fund goals, by using, for example, the Colombian Green Taxonomy.[90] Any other listed corporation has to reveal any material information related to present or future impacts, positive or negative, which are created by the company's activities, and that impact on social and environmental matters. For companies that comply with the TCFD Standard and the SASB VRF Standard, there is also a requirement for external verification by an independent third party. Failure to comply with the sustainability disclosure requirements triggers the same sanctions established for breaches of listed companies' disclosure duties.

In Sweden, the Annual Reports Act constitutes part of the Swedish implementation of the EU Non-Financial Reporting Directive.[91] It requires that the company's directors' report includes a sustainability report.[92] The report should disclose, among other things, information regarding environmental, personnel, human rights and anticorruption issues that are relevant to the company's development and financial position.[93] However, there are no third-party assurance requirements to verify its accuracy. Some companies, which require a licence or have a reporting duty under the Environmental Code, have to provide information about the environmental impact of their operations.[94] However, this requirement only applies on a 'comply or explain' basis.

In the Netherlands, the Dutch Civil Code requires a board's statement in the annual report to include a statement on non-financial performance indicators.[95] The EU Non-Financial Reporting Directive (NFRD) applies in the Netherlands, imposing an obligation on around 100 companies falling within its scope, to report on ESG factors.[96] Under the NFRD, large listed companies, banks and insurance companies ('public interest entities'), with more than 500 employees, are required to publish reports on the policies they implement in relation to: social responsibility and treatment of employees; respect for human rights; anti-corruption and bribery; and diversity on company boards (in terms of age, gender, educational and professional background). No sanctions exist for non-compliance. If an entity fails to follow the reporting obligations related to its non-financial disclosure, a clear and reasoned explanation must be provided in the management report. However, the recently adopted EU Corporate Sustainability Reporting Directive, which will be transposed into Dutch law within two years, will replace the NFRD and introduce penalties for non-compliance.

In the UK, company law, as well as the Financial Conduct Authority's (FCA) listing rules for public companies, and its Disclosure Guidance and Transparency Rules, require certain companies (depending on which market they are listed in) to report annually on non-financial matters in their directors', strategic, and annual reports. The UK was one of the first countries to incorporate the recommendations of the TCFD into law, mandating certain companies to incorporate TCFD-aligned climate disclosures in their annual reports.[97] Fines for non-compliance range from £2,500 to £50,000. Furthermore, following amendments to the UK Listing Rules, premium listed companies and most standard listed companies on the London Stock Exchange main market must disclose whether the company has included in its annual financial report climate-related financial disclosures and other ESG-related provisions. An example of the latter is progress towards meeting the target of at least 40 per cent of women on the board of directors, at least one board member from a minority ethnic background, as well as the requirement that at least one member of the senior leadership (eg Chair, CEO, CFO) should be a woman.[98] The FCA's Disclosure Guidance and Transparency Rules also require an issuer's management report to include an analysis, where appropriate, of non-financial key performance indicators, particularly relating to environmental and employee matters.[99,100]

Sustainability disclosure requirements for listed companies have also been introduced in India. In 2021, the Securities and Exchange Board of India (SEBI) adopted disclosure requirements for the top 1,000 listed companies by market capitalisation. The new rules mandatorily require in-scope entities to report, starting from 2022, on their ESG policies according to the standardised format approved by the SEBI.[101]

5.3 Regional harmonisation

Alongside these country-level initiatives, there is also a rapid trend towards the regional harmonisation of sustainability-related reporting standards.

The EU has been the main driver globally, creating directives and regulations to anchor corporate sustainability within mandatory legal rules, and to create a level playing field for sustainability reporting standards.[102] Up until now, the 2014 Directive on Non-Financial Reporting (NFR) has been the main EU tool for encouraging more sustainable business practices. The Directive imposed on certain large public-interest companies disclosure requirements on environmental and social matters such as treatment of employees, human rights, anti-corruption, bribery, and diversity on company boards in terms of age, gender, educational and professional background.[103] However, the NFR Directive has been recently replaced by the Corporate Sustainability Reporting Directive, which entered into force in January 2023. Furthermore, the EU's Sustainable Finance Disclosure Regulation upgraded disclosure requirements on entity- and product-level ESG metrics. Additionally, the EU Taxonomy Regulation harmonised criteria for classifying 'green' or 'sustainable' economic activities in the EU. There are also other similar EU-level initiatives in the pipeline, such as the Corporate Sustainability Due Diligence Directive, which is still pending.

In 2022, the EU enacted the Corporate Sustainability Reporting Directive (CSRD), which revised the NFR and extended the reporting requirements for non-financial information to all large undertakings that meet at least two out of three criteria:

1) a net turnover of more than EUR40 million

2) balance sheet assets greater than EUR20 million

3) more than 250 employees.[104]

The CSRD standardises reporting duties and requires assurance by statutory auditors. It is supported by the adoption of sustainability reporting standards developed by the European Financial Reporting Advisory Group (EFRAG). The first set of new standards were published in November 2022 and should be approved by the European Commission by the end of 2023, while the second set of standards (specifying complementary sustainability information, including sector-specific considerations) is expected for October 2023.

The CSRD follows the 'double materiality' principle, requiring reporting entities to disclose both how sustainability issues impact them, as well as how the reporting entity affects sustainability matters. The CSRD, which entered into force in January 2023, requires reporting entities to disclose how sustainability risks impact their company's business model, including possible risks arising from interdependencies, and how these risks will be mitigated. Companies within the scope of the Directive are also required to publish a Paris Agreement-aligned plan in compliance with the targets enshrined in the European Climate Law, as well as to establish, monitor and report on clear sustainability targets and processes. The Directive affects over 50,000 companies.

Furthermore, in the context of the Action Plan on Financing Sustainable Growth, the Sustainable Finance Disclosure Regulation (SFDR) that has been applicable since 2021, introduced both organisation-level and product-level sustainability disclosure requirements on asset managers and investment advisors.[105,106] The aim of the Regulation is to further standardise and increase the transparency of the ESG disclosure regime in the EU, while fighting greenwashing. Adopting a 'comply or explain' approach, the SFDR requires asset managers and investment advisors to report on how they address the adverse impacts of their investments on sustainability factors. It imposes obligations to consider sustainability risks in the investment and advisory processes, as well as to disclose sustainability information regarding their financial products, including in pre-contractual and periodic documentation.

In EU financial law, the 2014 Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products also requires product-level disclosure relating to environmental and social requirements objectives.[107]

In 2020, the EU Commission also adopted the EU Taxonomy Regulation to further combat greenwashing and redirect capital towards sustainable activities by establishing a classification system for environmentally sustainable activities.[108] Financial market participants must disclose how their financial products align with the Taxonomy Regulation's sustainability criteria.

The Taxonomy sets out four conditions for economic activities to be recognised as aligned:

1) making substantial contributions to at least one environmental objective

2) doing no significant harm to any other environmental objective

3) complying with minimum social safeguards

4) complying with the technical screening criteria.

Companies with more than 500 employees, operating in the EU, are required to disclose:

- the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable, and
- the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable.

5.4 Global harmonisation

Despite EU-level progress on harmonising sustainability disclosure taxonomies and metrics, and wide stakeholder endorsement for standard-setting initiatives, the global landscape of reporting standards remains fragmented.

In response, governments are increasingly endorsing the global harmonisation of sustainability disclosure frameworks and standards. Building upon existing initiatives, the formation of the ISSB is a landmark initiative.[109] The global conversation on sustainable investing standards is also steered by the International Platform on Sustainable Finance (IPSF). The IPSF has devised a shared framework of sustainability reporting to improve information availability in the markets and facilitate the interoperability of disclosure initiatives.

The IPSF will help provide a consistent picture of the adoption of sustainability reporting initiatives across the world.[110] Its building blocks include:

- disclosure content – type of information to be disclosed and level of specification
- disclosure basis – mandatory versus voluntary basis of disclosure
- materiality – inside-out versus outside-in direction of impact
- scope – who shall report and what products or services are subject to the measure
- assurance – who will verify the disclosed information
- disclosure channel – where the information should be disclosed, and
- reporting standards – aimed to ensure cross-jurisdictional comparability on key performance indicators, metrics and methodologies.

In October 2021, the G20 Leaders' Declaration welcomed the ISSB's work on developing a baseline global reporting standard that built on the work of the TCFD and other standard-setting bodies. Additionally in 2021, the leaders of the G7 countries announced that: "We support moving towards mandatory climate-related financial disclosures that provide consistent and decision-useful information for market participants", with the recommendations made by the TCFD as the standard guiding the legalisation of disclosure requirements.[111]

Further sustainability-oriented measures and proposals focus not only at organisational level, but on products, services and portfolios, such as the UK initiative on climate-related disclosures for FCA-regulated

providers.[112] According to a 2021 report by the IPSF, 18 out of 19 jurisdictions analysed had enacted at least one mandatory ESG disclosure measure, and most jurisdictions have pending mandatory measures.[113] Moreover, seven jurisdictions had product and service-level ESG disclosure measures already in force. Although the effectiveness of these initiatives is yet to be evaluated, the co-operation between regulatory bodies has clearly accelerated the harmonisation of reporting standards, and this trend is likely to continue.

6. Analysis of Trend 3: Sustainability risks have created new litigation and liability risks

The proliferation of sustainability-related lawsuits is gaining pace as a global trend that reframes sustainability risk as litigation risk. The sustainability issues that are being litigated in courtrooms have a direct impact on boardrooms. Sustainability litigation has emerged at all levels (local, regional, national and international) between a variety of litigants (for example, governments, companies, activists and civil society organisations). Its use aims to control and change the behaviour of actors (mainly companies and government) with regard to sustainability-related issues. Sustainability litigation is also fuelling a growing market for litigation funding, as seen in the emergence of ESG litigation investment funds. Industry reports estimate that the global litigation funding market will reach up to $18 billion by 2025.[114]

Sustainability-themed lawsuits are most prominent in the area of climate change. However, the wave of new regulations targeting other sustainability topics, such as disclosure of sustainability information, ethical supply chains, labour conditions and board diversity, will likely continue to widen the scope of litigation trends beyond climate change.

Since 2015, more than 1,200 climate-related lawsuits were filed worldwide, around a quarter between 2020 and 2022.[115] In 2022, the Intergovernmental Panel on Climate Change recognised the active role of courts in shaping climate governance outcomes.[116] However, the trend varies widely across countries depending on the roles that courts and litigation play across legal traditions and political systems. To date, over two-thirds of the lawsuits identified worldwide have been filed in the United States, followed by Australia, the UK and the EU. [117] The trend, however, is also spreading elsewhere, particularly in South America.

The adoption of legally mandatory climate targets, and the global regulatory convergence towards standardisation and interoperability of sustainability standards, might also increase the use of litigation as a pressure tool on corporate boards and executive management. On the other hand, despite the emerging body of case law, there have so far been mixed results in terms of their effect on promoting sustainability outcomes. Furthermore, the legal and technical complexity of sustainability, and the fragmented landscape of sustainability approaches, objectives and metrics, create formidable challenges for plaintiffs who resort to litigation to align markets with sustainability outcomes. However, as the body of mandatory sustainability-related rules grows, it is likely that litigation risks for companies will rise.

6.1 What is driving the increasing litigation?

The rise of sustainability litigation comes from three drivers. Firstly, lawmakers and regulators are enacting new sustainability requirements that aim to realign market forces with environmental imperatives and societal expectations. This therefore exposes businesses to growing legal liability risks on their sustainability performance.

Second, public scrutiny by civil society, supported by an expanding litigation funding market, is taking an increasingly judicial form as activists and NGOs seek to ensure compliance with existing legal rules, combat misleading sustainability credentials, and enforce the implementation of climate pledges and sustainability commitments.

Third, the institutionalisation of ESG practices and the rise of ESG-motivated shareholder activism have further stimulated the rise of sustainability-linked lawsuits. These kinds of lawsuits have, however, worked in opposing ways. On the one hand, some litigants resort to courts to enforce ESG requirements, and on the other, ESG practices have prompted a judicial backlash. This is currently mostly geographically limited to the United States, fuelled by shareholder discontent that the pursuit of ESG practices allegedly constitutes a fiduciary breach.

Litigation claims target primarily companies and governments. Public law actions are usually initiated by civil society organisations and individuals, typically about constitutional, human rights, international law and administrative claims. Private law actions are mostly initiated by NGOs, groups of individuals, shareholder activists or other corporations, and often use tort law (in other words, a wrongful but not criminal act that infringes the rights of another and leads to legal liability). They have also focused on fiduciary duties, sustainability (particularly climate-related) disclosure obligations, urban planning and company law claims.

Companies and governments are therefore facing increased sustainability-related litigation risks around their progress in implementing sustainability commitments; their responsibility for high greenhouse gas emitting activities; sustainability disclosure obligations; enforcement of climate policies; flow of money to projects that violate net-zero pledges; failure to adapt to and account for sustainability impacts; misleading sustainability credentials; and failure to adequately manage sustainability risks.

Sustainability litigation has been on the rise in both common law and civil law systems. The trend is most widespread in Europe and the US, with less evidence in Asia and Africa. The diffusion of the trend is partly conditioned by the legal cultures of different countries.

6.2 Examples of litigation claims against companies

In the case of corporations, the common legal grounds for action involve:

- the reinterpretation of the ‘duty of care’ as giving rise to a corporate duty to cut emissions and comply with the Paris Agreement
- the requirement to integrate climate policies, targets and metrics into corporate operations and decision-making

- greenwashing and failure to adhere to climate regulation or voluntary corporate sustainability commitments and climate pledges
- the requirement of corporations to actively participate in respecting human rights and conducting continuous evaluations of the impact of company activities on human rights
- personal responsibility of officers and directors for failing to manage climate-related risks.[118]

Among claims against companies, climate and environmental litigation currently plays a central role in shaping how sustainability issues are adjudicated in courtrooms, not doubt because such targets are more clearly defined. However, in future, greater convergence and agreement around social issues may increase similar litigation.

Lawsuits based on the failure of companies to cut emissions are a prominent area of litigation. In some cases, this gives rise to liability risks that can directly impact the business model of corporations.

In *Milieudefensie et al. v. Royal Dutch Shell plc*, a landmark case of this kind, a Dutch court ruled in 2021 that Royal Dutch Shell has an obligation to reduce its worldwide CO_2 emissions by 45 per cent by 2030.[119] The ruling effectively imposed an obligation on the company to revise its business model and strategy to ensure that it meets internationally agreed reductions obligations, even if such business decisions might hurt the company's financial position in the short term. Following a class action lawsuit filed by a coalition of NGOs, and over 17,000 individual plaintiffs, the court established that Shell has a corporate duty of care to mitigate climate change and respect the claimants' human rights. This ruling was the result of interpreting an unwritten 'standard of care' in Dutch tort law in a way that is understood to be a duty to cut emissions that would harm Dutch citizens. The court also relied, when weighing the facts of the case, on the provisions of the Paris Agreement, the norms of conduct embedded in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Although Royal Dutch Shell appealed the decision in July 2022, this ruling has been considered a landmark lawsuit in which a corporation was held accountable under the provisions of the Paris Agreement.

This high-profile case has broader implications for wider corporate law and financial regulation in terms of how it interprets directors' fiduciary duties. The corporate liability risks in tort law (for failing to meet the requirements of the Paris Agreement, or other climate targets) implicitly create duties on directors to design business strategies compliant with sustainability goals. Directors may therefore be held accountable for breaching their duty of oversight, or duty of care and diligence, if they disregard litigation risks stemming from non-compliance with the Paris Agreement, or other climate targets. Furthermore, the same logic applies to investment managers, who might be required to consider such risks in the investee companies in their portfolio in order to meet their fiduciary duties.[120]

The growing number of lawsuits targeted against directors' acts or omissions to monitor and address sustainability-related risks is an emerging area of legal risk for boards.[121] Claims based on a breach of fiduciary duties have been a particular issue underlying climate and environmental cases.

In 2022, an environmental organisation that uses the law to effect change filed a case in the UK against the board of Royal Dutch Shell, alleging that the board breached its fiduciary duties by failing to implement a climate strategy consistent with the Paris Agreement.[122] Although the case is still pending, its outcome will have important ramifications for the future legal interpretation of directors' fiduciary duties in the UK and the US.

Although discussions about the personal responsibility of professionals for sustainability risks have been primarily limited to academic discussion, a number of recent legal cases indicate that individual board members are increasingly exposed to the broader risks arising from strategic litigation based on the personal liability of professionals (for example, executives, board members, trustees, lawyers) for failing to address sustainability-linked risks.[123] These lawsuits seek to create broader societal transformation by changing the behaviour of individuals regarding their personal role in managing sustainability risks.

The *Trotter v. Chew and Ors* case from the US provides an example of the use of a derivative action (one made by shareholders against other shareholders or the company) to hold directors of a company accountable for sustainability-related risks. In the aftermath of 2017 and 2018 wildfires in drought-affected California allegedly caused by the power transmission equipment of the Pacific Gas and Electric Company (PG&E), the shareholders of PG&E brought a derivative action against certain former and present directors and officers of the company for alleged breaches of their fiduciary duties, such as the duty of oversight and duty to act in the best interest of the company.[124]

Derivative actions, such as the example above, differ in whether they are possible across jurisdictions. For instance, they are not permissible in the Netherlands under Dutch law.

In Singapore, a shareholder must first obtain the court's permission to proceed with a derivative action. The court will consider a number of factors when deciding whether to grant this permission – including whether the shareholder is acting in good faith, and whether it appears to be in the best interest of the company for the permission to be granted. Notwithstanding, a shareholder (who is acting on the company's behalf with the court's permission) will not benefit directly and personally from a derivative action, as any damages or remedies awarded will be payable to the company.

Such cases highlight the uncertainty surrounding the scope of liability risks faced by directors. This results in a situation where there is a need for directors to build internal systems to better understand, communicate and operationalise their duty of oversight, care, skill and diligence.[125]

Tortious claims are also a contentious area of sustainability litigation.

Apart from the landmark *Milieudefensie* case, the concept of environmental liability was at the heart of a 2022 case on tort law grounds in front of Colombia's Supreme Court.[126] The plaintiffs, a group of Colombian rice farmers, filed a tort claim against a cement producer alleging that particles emitted by the defendants' factory caused a decrease in rice production. In its ruling in favour of the plaintiffs, the Court shifted the theory of causation in cases of environmental liability from *beyond all reasonable doubt* to *probable causation*. This established that when a company affects the right to a healthy environment, and there is evidence of particular damage suffered by the plaintiff, this harm to the collective right to a healthy environment, plus *probable causation*, are sufficient to award damages to the plaintiff.

Litigation based on misleading sustainability claims, commitments and policies also increasingly give rise to legal liability risks.

For instance, in the *Australasian Centre for Corporate Responsibility v. Santos* case in Australia, a leading oil and gas producer was subject to a legal challenge on the grounds of not having a credible 'net zero' plan to match its claim that it would achieve net-zero emissions by 2040, and for making misleading claims about its clean fuel production.[127]

Similar cases are still pending in the US. For example, ExxonMobil and its directors have been in the spotlight due to a securities fraud class action in the *Ramirez v. ExxonMobil* case on the grounds of making materially false and misleading statements concerning climate change risks.[128] Similarly, in the *Commonwealth v. Exxon Mobil Corporation* case, the Massachusetts Supreme Judicial Court rejected in 2022 ExxonMobil's motion to dismiss a lawsuit alleging the company's communications deceived consumers and investors by failing to disclose climate risks.[129]

In the case of greenwashing allegations directed towards investment products, tracing the causal links between misleading ESG-linked claims and financial loss has proved difficult. In the US, where there have been a series of claims against ESG funds, there is a well-established rule that legal rules do not exist to "provide investors with broad insurance against market losses, but to protect them against those economic losses that misrepresentations actually cause".[130]

Another subset of climate-related lawsuits is claims on the grounds of misleading 'product attributes'.[131] Inspired by tobacco product liability litigation, this category of cases is increasing as plaintiffs seek remedies for the concealed harm caused by false or deceiving advertising of sustainability benefits, such as 'clean' or 'green' product characteristics. A 2021 report by the European Commission found that 42 per cent of the business websites, screened as part of the study, made misleading and unsubstantiated environmental claims, exposing companies to potential liability risks for deceptive commercial practices.[132] Furthermore, claims of 'impact-washing' are also being brought before administrative bodies, thus bringing more attention to product liability.[133]

Class action litigations on grounds of misleading diversity claims have also been on the rise, especially in the US. Shareholders have filed in recent years at least 12 lawsuits against large public companies and their directors and officers, accusing them of failing to honour their public diversity commitments. However, most of these claims have been unsuccessful, or are still pending.[134]

Companies are also increasingly facing liability from new sustainability disclosure obligations.

In the *Abrahams v. Commonwealth Bank of Australia* case, in 2021, an Australian court ordered a bank to grant access to its internal confidential documents to facilitate the assessment of the bank's alignment with the goals of the Paris Agreement.[135] The claimants alleged that the country's largest bank, the Commonwealth Bank of Australia, was infringing its own environmental and social policies. In its decision, the court relied on the Australian Corporations Act 2011 to grant the plaintiff the right to determine whether the bank was compliant with its own sustainability policies.

Both public and private enforcement against companies that make misleading sustainability-related claims will likely increase as regulators, investors, short-sellers, NGOs and consumers monitor corporate communications to identify deceptive practices. As more organisations make sustainability-related claims, and legislatures and governments increasingly enact mandatory and standardised sustainability disclosure rules, similar lawsuits could spill over to other jurisdictions as companies are held accountable for their sustainability credentials.

Litigation trends create multiple sources of pressure for directors. On the one hand, companies are expected to put in place sustainability-aligned systems, policies, procedures and plans, such as Paris-compliant emissions reduction plans and net-zero transition plans. This creates fiduciary expectations for directors to act consistently with these challenges – or face liability risks for failing to do so. On the other hand, companies' sustainability-related acts are also exposed to allegations of greenwashing or deceptive

practices if their sustainability claims fail to meet required standards, thus multiplying potential compliance and litigation risks.

6.3 Litigation claims against governments

Governments have also been targets of sustainability-related litigation claims, mostly in relation to climate change. It is worth considering these lawsuits in this research, since these also impact on resultant public policies that affect business.

As of July 2022, at least 80 climate litigation cases had been filed against governments around the world, and almost half of these were filed in 2021.[136] The claims against governments can be divided into the following categories:

- challenges against the climate ambitions of state entities, or their progress in the implementation of climate targets, such as seeking to enforce government compliance with the Paris Agreement
- challenges against state entities to mainstream sustainable practices, metrics and standards into decision-making and policymaking
- challenges against the public funding of non-climate-aligned projects
- challenges against government policies or projects for failing to account for climate change risks and impacts, and
- challenges against states seeking to enforce the state's evolving duty of care, duty of environmental restoration, and duty of protecting the younger generation from climate risks.[137]

The emerging transnational jurisprudence could help governments anticipate potential claims and inform the drafting of new legislation and policy decisions. The use of sustainability litigation against governments indicates a broader movement towards the strategic deployment of litigation strategies for influencing public policy and enacting broader social change via courtrooms.

Lawsuits grounded in 'duty of care' obligations that challenge governments' greenhouse gas (GHG) emissions reduction plans, and how governments manage climate risks, have been at the core of sustainability-linked litigation claims.

The 2019 *Urgenda Foundation v. State of the Netherlands* case was a landmark case in which a government was held accountable for its climate change commitments on the grounds of duty of care.[138] In 2015, a coalition between an NGO and a group of citizens sued the Dutch Government on the ground that the defendant's failure to adequately manage climate change risks constitutes a violation of its duty of care that threatened citizens' fundamental rights, enshrined in the European Convention on Human Rights. In a notorious 2019 decision, the Dutch Supreme Court upheld the decision that found the Dutch Government in breach of the European Convention on Human Rights due to its failure to fulfil its own climate targets and ordered the Government to limit GHG emissions to 25 per cent below 1990 levels by 2020.

Sustainability-driven litigation claims against state entities, on the grounds of failing to integrate sustainability-linked considerations in the decision-making of public bodies, have also been on the rise.

In **Australia**, the plaintiffs accused public bodies, in the *Nature Conservation Council v. New South Wales (NSW) Nature Conservation Council of NSW v. Minister for Water, Property and Housing* case, of violating their statutory and common law duties to consider climate change in the exercise of their powers.[139] In response, an Australian court ruled that an environmental protection public authority had a statutory duty to develop environmental quality objectives, guidelines and policies to ensure environmental protection from climate change. In a separate case, *Sharma v. Minister for the Environment*, an Australian court also found that a Federal Minister had a duty of care to children in the exercise of his powers to approve new fossil fuel projects, although the decision was overturned on appeal.[140]

In **China**, apart from general claims pursued under the law of tort, environmental public interest litigation (EPIL), which concerns lawsuits filed by plaintiffs who seek remedies not for the harm they suffered themselves but in the name of 'public interest', has emerged as a key pillar of environmental governance.[141] Following the 2014 amendments to the Environmental Protection Law, environmental public interest litigation can only be brought by environmental NGOs, the public prosecutor and local government authorities. Every year, Chinese courts hear and rule in more than 2,000 EPIL cases, providing a crucial arena for litigation aimed at promoting environmental protection in China.[142] Furthermore, in 2021, the Supreme People's Court issued guidance that encouraged courts to play an active role in climate litigation to promote the low carbon transition.[143] In contrast to the growing number of lawsuits in Western countries that seek to force state entities to adopt stricter climate change policies and targets, climate litigation in China is primarily geared towards helping the Government enforce its climate policies.

Climate litigation against state entities on grounds of failing to account for climate change impacts is also gaining pace in Africa.

In the *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others* case, a **South African** NGO asked South Africa's High Court to determine whether climate change was a relevant consideration in the environmental review of coal-fired power plants.[144] In 2017, the Court ruled in favour of the plaintiff and annulled the Government's approval of a coal-fired power plant. The Court cited in its reasoning that South Africa's commitments to the Paris Agreement obliged the Government to consider the impact of new projects on climate change as part of the environmental review. Moreover, after the Government re-approved the construction of a coal-fired power plant, the High Court in 2020 issued an order negating all government authorisations for the plant.

Sustainability-themed litigation has also given rise to new legal concepts, such as the 'rights of nature', and the state's duty of environmental restoration for protecting the younger and future generations.

For instance, in the *Future Generations v. Ministry of the Environment and Others* case in **Colombia**, a group of plaintiffs filed a constitutional claim in 2018 against a variety of state bodies and other entities alleging that government failure to address deforestation in the Amazon undermined their fundamental rights.[145] In its ruling, the Colombian Supreme Court recognised the Colombian Amazon as a "subject of rights, and beneficiary of the protection, conservation, maintenance and restoration by the state and the territorial entities that comprise it" .[146]

Similar landmark rulings have also been issued in Germany and France.

In the *Neubauer, et al. v. Germany* case, in 2020 a youth group filed a case against the state alleging that the target of reducing greenhouse gas emissions by 55 per cent from 1990 levels until 2030, which was enshrined in the German Federal Climate Protection Act, was insufficient. In 2021, the Federal Constitutional Court found, in a historic ruling, that the Federal Climate Protection Act violated the freedom rights of the younger generation. It ordered the German legislator to revise its emissions reduction targets and set clear reduction targets beyond 2030. The Court found that the legislature is obliged not only to protect the climate but should also be concerned with how environmental burdens are spread out between generations.[147]

In France, a notable case is *Notre Affaire à Tous and Others v. France*. Following a lawsuit brought before the Administrative Court of Paris by a group of NGOs and backed by 2.3 million citizens, the Court ruled in 2021 that the French state is responsible for the ecological damage caused by its failure to meet its CO_2 target for 2015–18. The Court instructed the Government to repair the ecological damage and prevent its aggravation, albeit providing discretion regarding the means to that end.[148]

6.4 Legal action attempting to block sustainability activities by companies and finance providers

The recent surge in sustainability-linked cases has therefore provided an arena through which many sustainability goals have been enforced. However, litigation can also act in the opposite direction, as other actors contest the diffusion of sustainability-related requirements. Although there seem to be greater legal liability risks arising from non-compliance with sustainability-oriented requirements, some stakeholders are resisting the embedding of sustainability norms in the corporate and investment landscapes. In particular, there is an emerging, albeit geographically limited, political backlash against ESG practices. This is taking political, legal and judicial form under the pressure of advocacy groups and shareholder discontent. It is based on allegations that ESG practices 'weaponise' financial markets for ideological interests and 'politicise' corporate decision-making.[149] This backlash against ESG criteria might therefore give rise to anti-ESG regulatory and policy changes as well as litigation claims against companies pursuing ESG policies.

In the US, a number of lawsuits have been brought to block or reverse sustainability-oriented laws, regulations and policies. For instance, in 2022, a Californian court, in the *Crest v. Padilla* case, overturned a requirement of companies to include women on their boards of directors. The court found that the statutory gender diversity rule violates the equal protection clause of the Californian Constitution. In the related *Crest, et al. v. Padilla* case, the Superior Court of California also repealed a law that required California-headquartered companies to appoint a specified minimum number of diverse (ethnically, racially, or sexually) directors on their boards.[150] In the pending *Alliance for Fair Board Recruitment, National Center for Public Policy Research v. SEC* case, a group of plaintiffs challenged SEC's approval of a NASDAQ rule promoting board diversity.[151]

In 2021, the state of Texas passed the SB13 Bill, which declares that ESG investing is potentially harmful to the oil and gas industry and requires state funds to divest the shares they hold in financial institutions. In the view of the state government, this is testament to a boycott of energy companies.[152] In 2022, West

Virginia took a similar step.[153] To date, over 20 US states have banned state pension funds from being invested in ESG funds. In the last few years, US legislators and state attorney generals have also raised antitrust concerns regarding ESG-related collaborations. Asset managers and proxy advisors have been under intensifying scrutiny over the consistency of their ESG practices with their fiduciary duties.[154]

Nevertheless, although it is possible that the anti-ESG backlash will continue to be a site of contestation and spread to other countries, shifting societal expectations towards sustainability and systemic pressure on companies to move towards renewable energy suggest that sustainable investing practices will probably become increasingly mainstream in the long term. However, it is also likely that ESG practices will become more scrutinised and regulated in future.

7. Analysis of Trend 4: There is mounting stakeholder pressure to clarify the fiduciary duties of boards and make them consistent with sustainability considerations

The fiduciary duties of directors have become a core part of the sustainability debate centred around the existential question: who is a corporation managed for? Although there are few legal changes in fiduciary duties across our sample of jurisdictions, there is however mounting evidence of stakeholder demands for the clarification, reinterpretation, or even redefinition of fiduciary duties. The dominant corporate governance paradigm, which subordinates fiduciary obligations to the doctrine of 'shareholder primacy', is increasingly considered by some stakeholders to be a key barrier to sustainability.[155] However, particularly since the Global Financial Crisis prominent stakeholders have vocally advocated the decoupling of fiduciary relationships from the implicit and single goal of shareholder value maximisation.

While the trend towards the reconsideration of fiduciary duties is being hotly debated in academic and legal circles, it is in the sustainable investing landscape that the call for the clarification of fiduciary duties appears to be strongest. In the absence of clear legal and regulatory guidance, there is growing public and private support for integrating sustainability factors into investment decision-making, primarily because of the argument that doing so leads to better investment outcomes.

However, changes in legal requirements and board practice that specifically require the integration of sustainability goals are scarce.

Appendix 4 sets out in detail how legal frameworks in our selected countries talk about 'corporate purpose', to whom fiduciary duties are owed, the different kinds of mandated board structure, and stakeholder engagement, as well as whether or not the country includes legislation for 'dual purpose' companies (generally some form of benefit corporation), which are covered in Trend 5.

7.1 Sustainable investing is a key driver

Sustainable investing is one of the few areas where the debate on fiduciary duties has increasingly been skewed in favour of sustainability. Boards are seeing a transformation of the investment landscape with the concentration of assets and investor power in the hands of fewer and larger institutional investors. These 'universal owners' have exposure not only to individual companies, but also to the long-term sustainability of the whole economy.[156] As a result, they are motivated to make the pursuit of long-term sustainable value creation consistent with fiduciary duties. However, whether the tension between needing to uphold the prevailing norm of high returns for investors ultimately squares with the returns generated by companies that take a fully sustainable, stakeholder and purpose perspective remains an open question.

Targeted legal changes in some jurisdictions are clarifying the latitude to integrate ESG factors and wider sustainability goals into investment decision-making. This reinforces the trend that long-term value creation is inextricably dependent on the input of various stakeholders, and forms of 'capital' on which corporate performance relies. However, the confusion that has arisen from diverse sustainability values, approaches, standards, methodologies and metrics has created space for continuous debate and politicisation in other jurisdictions. Although the divisions over the scope of fiduciary duties in the investment landscape are most visible in the US, this debate might permeate other jurisdictions if it continues to be framed on political lines.

7.2 Shareholder activism challenges the boundaries of directors' duties

Directors' duties are also under escalating pressure from shareholder activism. Although the degree of pressure varies widely across jurisdictions, selective support from institutional investors and proxy advisors for activist campaigns is one of the key drivers of this enhanced scrutiny of board mandates in some countries. Activist campaigns and settlements have been particularly on the rise in the US. They are spreading around the world as legislators in an increasing number of jurisdictions are strengthening shareholder rights and pushing institutional investors to play a more transparent and engaging role in corporate conduct.[157] Overall, shareholder activism is highly contingent on the ownership pattern of the jurisdiction: shareholder engagement tends to be higher in jurisdictions with dispersed ownership patterns and it is less salient in jurisdictions with concentrated ownership patterns where controlling shareholders can deter activist engagement strategies.[158]

In contrast to passive investors, activist shareholders seek to shape corporate policy and steer the direction of companies towards specific goals, such as maximising shareholder earnings or achieving some ESG-related targets. In recent years, activist campaigns driven by ESG concerns have emerged as an important site of proxy battles, putting directors' duties on ESG matters in the spotlight.[159] In a 2021 notorious case, Engine No. 1, a small hedge fund, managed to win passive shareholder support for appointing three activist directors on ExxonMobil's board of directors. Similar activist campaigns have spread at other companies, particularly in the energy sector.[160]

In the US, the greater scrutiny of how directors exercise their board mandates is likely to be further facilitated by the universal proxy guidelines released by the SEC, which entered into force in 2022.[161]

However, the greater scrutiny of directors' duties propelled by shareholder activism is not limited to the US. There are signals of the diffusion of shareholder activism in jurisdictions historically known for having legal-institutional features that make them less attractive for activists.

A recent shareholder rebellion in Japan points to the growing shareholder pressure for enhanced board accountability despite the historically weak status of independent directors in the Japanese corporate governance landscape. In 2023, an activist campaign at the Japanese listed company Fujitec in response to financial integrity and governance concerns has led to a rarely seen activist-driven board revamp. During an emergency shareholder meeting in February 2023, shareholders approved the appointment of four new independent directors nominated by an activist hedge fund, in a rare shareholder action targeting boards of directors in Japan.[162]

Shareholder activism is also enabled by institutional investors who are becoming less hesitant to direct activist campaigns at individual directors, despite being historically concerned that targeting directors might deter professionals from sitting on boards. In 2023, for instance, two of the UK's top pension schemes, USS and Border to Coast, which manage together £130 billion in assets, have threatened to vote against the reappointment of board members at BP and Shell due to the directors' weak stance on climate-related risks.[163] Board chairs at GP, Total, Petrobas and Eni have also been recently targeted by activist investors on the same ground.

These activist campaigns further exacerbate the existing tensions in the landscape of fiduciary duties.

7.3 The evolution of fiduciary duties over time

The definition and interpretation of fiduciary duties is intertwined with modern debates on corporate governance, in other words: in whose interest does the business operate? This has often been portrayed in terms of a tension between 'shareholder primacy' and 'stakeholder primacy', which dates back to the Berle-Dodd debate of the 1930s.[164]

Since the 1970s, the 'shareholder primacy' doctrine has been the most widespread paradigm of corporate governance. In this view, companies should be run primarily in the best interest of shareholders, with success measured by financial proxies, such as share price or dividend pay-outs. This view has become the axiomatic doctrine of corporate governance and prevailed both in legal and economic policy debates. The interests of other stakeholders, such as employees, customers, communities, society at large, or the environment, are secondary. The evolution of capital markets, and the financialisation of corporate law, have further reinforced the focus on shareholder value maximisation.[165] In fact, two decades ago, the undisputed hegemony of 'shareholder primacy' was even heralded as the "end of the history of corporate law".[166]

The famous and oft-repeated words of one of the leading proponents of shareholder primacy, Milton Friedman, is that "there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits".[167] In legal terms, shareholder primacy implies limits to directors' discretion to address the wider public interest, since they are primarily accountable to shareholders and to profit maximisation.

Another key argument is that this singular focus mitigates the 'principal–agent' problem.[168] This challenge comes from the separation of 'ownership from control', which creates the danger that executive board

members will act in their own interest, and not in that of the ultimate members, or shareholders.[169] Since shareholders are the residual claimants of company value, after all other financial obligations are met, this is also seen as a way to most efficiently ensure that they receive the reward for the risk they bear for investing in the company. Deviations from this accepted norm have been where boards have sometimes strategically considered stakeholder interests (for example, employees, in the case of M&A activity) in fights against hostile takeover attempts.[170] Other scholars have also rejected the principal–agent problem specifically, arguing that the board should rather be a 'mediating hierarch', balancing the competing claims of various stakeholders, regardless of shareholders' interests.[171]

However, there are competing theories of corporate governance. These also vary in practice around the world, reflecting what has been called different 'varieties of capitalism'.[172] This principal–agent problem is very much the focus and product of Anglo-Saxon theory and practice (albeit highly influential around the world).[173]

Proponents of a more 'enlightened shareholder value' perspective focus on reconciling short, medium and long-term financial performance, stressing the mutually beneficial and symbiotic interdependencies between the firm and its constituencies in ensuring sustainable corporate value creation.[174]

The communitarian critique of shareholder primacy goes a step further. It points to the social cost of shareholder wealth maximisation and stresses the moral, social and political foundations that underpin economic relationships and the embeddedness of companies in non-market relationships.[175]

Generally, stakeholder theories claim that boards have a positive duty to consider and create value for "any group or individual who can affect or is affected by the achievement of an organization's purpose".[176] Stakeholder-centric theories resurfaced in the aftermath of the Global Financial Crisis as an alternative paradigm for corporate governance, supported by legal scholars, corporate leaders, asset managers and civil society organisations as part of discussions over the concept of 'stakeholder capitalism'.[177]

Some company law scholars have also questioned the view that 'shareholder primacy' is a mandatory legal requirement, arguing instead that it is a quasi-legal social norm, or understanding, which is reinforced by the behaviour and incentives of financial markets, activist investors, the market for corporate control, and stock-based executive remuneration.[178] A 2015 international study for the UN Global Compact concluded similarly that shareholder primacy is the outcome of corporate activities rather than binding legal prescriptions.[179]

As a result, proponents of a more responsible capitalism set out "an economic system that accommodates private ownership and the pursuit of market opportunities while achieving societal goals".[180] This systematic view supports a corporate governance theory that has been called 'shareholder welfare maximisation'.[181] In this view, growing shareholder engagement reflects the shifting preferences of investors, which are no longer solely driven by profit and shareholder wealth accumulation, but also by social, environmental and ethical issues. Hence, sustainable boards should, on this basis, maximise 'shareholder welfare', rather than earnings and share price.

7.4 Who should companies be run for?

Beyond scholarly debates and mounting pressure from stakeholders, as well as some coalitions of large institutional investors and asset managers advocating long-term corporate strategies, there is yet little evidence of fundamental legal reform of fiduciary duties across our sample of jurisdictions.

An investigation of differences in directors' duties shows that, with few exceptions, the law prescribes that directors promote and protect the interests of the company itself, rather than those of the shareholders (Appendix 4), which is an important distinction. Hence, in principle, directors have in fact far wider latitude to exercise their duties than may be presumed.

Directors' room for manoeuvre is also reinforced by the 'business judgement' rule, variants of which exist in most jurisdictions. This rule introduces a good faith presumption for directors, which shields them from personal liability for losses incurred by the company if they have acted prudently, rationally and economically defensibly, and in a manner that is reasonably believed to be in the interests of the company. Recent surveys of company law across the world have concluded that, in many jurisdictions, there is in fact no legal requirement that obliges directors to act solely in the interests of shareholders.[182] However, the issue is still hotly debated, exacerbated by the different realisation of fiduciary duties across legal traditions. In common law jurisdictions, fiduciary duties are largely developed through case law; whereas in civil law jurisdictions, they are usually codified in statutes and other regulations that create equivalent effects.

In the **Netherlands**, Dutch company law requires directors (Article 2:239) to act in the best interests of the company.[183] Furthermore, the Supreme Court has defined the 'interest' of private companies as achieving 'sustainable success', considering the interests of all stakeholders involved. Hence, it is possible (but infrequent) that a director could be held liable for not adequately considering the interests of other stakeholders.

Similarly in **Sweden**, directors have a fiduciary duty to act in the company's interest, as codified in Chapter 8, Section 4 of the Companies Act.[184] **Australia**'s Corporations Act also states that directors must act in the best interests of the company.[185] The same principle is found in the **UAE**, where directors are generally required to act in the best interest of the company for the benefit of all its members.[186]

A convergence around the same principle can also be found in Asia. In **Hong Kong**, for example, directors must act in good faith in the best interests of the company.[187]

In **China**, directors also owe primary duties to the company, and then to the shareholders.[188] The second draft of the revised PRC Company Law incorporates more stakeholder-oriented provisions. For instance, Article 20 of the draft PRC Company Law issued in December 2022 requires companies – and their boards – to "fully consider the interests of the company's employees, consumers and other stakeholders".[189] However, there is no clear regulatory guidance on how to factor these interests into corporate decision-making.

In **Japan**, directors of a joint stock corporation (*kabushiki kaisha*), the most common corporate form used in the country, are required to faithfully discharge their duties for the benefit of the company. Directors owe duty of care, loyalty, supervision and duty to establish internal control systems. No legislation or

regulation, including the Companies Act, expressly sets out the extent to which duties of directors are owed to shareholders over all other stakeholders. However, since the residual benefits generated by the company are ultimately distributed to its shareholders, it can be considered that the duties of directors are owed to shareholders over all other stakeholders.[190]

In other countries, although directors owe their duties primarily to the company, they are subject to more specific statutory duties regarding the factors that they are required to consider in the exercise of their duties in the interest of the company.

In **South Africa**, Section 76(3) of the Companies Act No. 71 of 2008 requires directors to exercise their powers "in good faith and for a proper purpose; in the best interests of the company".[191] However, South Africa has also experimented with legal innovations, such as in Section 72 of the South African Companies Act, which requires certain companies to appoint a Social and Ethics Committee to oversee company's activities related to social, environmental, consumer, labour and employment issues.[192] The law requires committee members to draw the board's attention to these matters and report them to shareholders at the company's annual general meeting. This provision therefore requires companies to identify certain stakeholders and their interests. However, no legal duty is expressly owed to them.

In **Singapore**, board directors are required to act in good faith "in the best interest of the company".[193] Directors must act in a way that they consider, in good faith, would be the most likely to promote the success of the company for the benefit of its members as a whole, having regard (among other matters) to:

- the long-term consequences of decisions
- the interests of the company's employees
- the need to foster the company's business relationships with customers, suppliers and others
- the impact of the company's operations on the community and the environment
- the desire to maintain a reputation for high standards of business conduct, and
- the need to act fairly between members.

There is no hierarchy to these factors and, where they conflict, a director will need to use their business judgement in weighing them against one another. Although there are no legal restrictions against directors taking into account different concerns, ultimately, relevant corporate actions or decisions should be in the best interest of the company as a whole.

The **UK** adopted an 'enlightened shareholder value' perspective in its 2006 amendments to the Company Act. Section 172 of the Company Act 2006 requires directors to pursue the company's best interests while "having regard", to the extent that this contributes to the interests of the company, to:

- the likely consequences of any decision in the long term
- the interests of the company's employees

- the need to foster the company's business relationships with suppliers, customers and others
- the impact of the company's operations on the community and the environment
- the desirability of the company maintaining a reputation for high standards of business conduct, and
- the need to act fairly as between members of the company.[194]

The drafting of Section 172, however, demonstrates the importance of benefiting shareholders above other stakeholders. Although directors must have regard (among other matters) to the interests of non-shareholder constituencies, this obligation is ultimately subordinate to the overarching duty to promote the success of the company for the benefit of its members as a whole.[195]

The overall situation, in many jurisdictions, even in those that formally require directors to act in the best interest of the company, is that the interest of the company is seen to be ultimately that of generating financial benefits for its members, generally the shareholders. In some jurisdictions in our sample, directors are expressly required to prioritise shareholder interests.

In **Colombia**, Article 23 of Law 222, 1995 states that directors' "actions will be carried out in the interest of the company, taking into account the interests of their shareholders".[196] Although this does not necessarily mean that company law prohibits the consideration of non-shareholder interests, a hierarchy is clear, and alternative views are difficult to realise in the absence of clear regulatory guidance on how to balance the interests of different constituencies.

In the **United States**, there is a varied picture of directors' duties. Since the early 1980s, over 40 US states have adopted statutes that do not require directors to prioritise the interests of shareholders.[197] For example, Article 515(a) of Pennsylvania's Business Corporation Law states: "In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors […] may, in considering the best interests of the corporation, consider to the extent they deem appropriate: (1) The effects of any action upon any or all groups affected by such action, including shareholders, members, employees, suppliers, customers and creditors of the corporation, and upon communities in which offices or other establishments of the corporation are located".[198] Similar statutes can be found in most other US states.

However, shareholder primacy is still widely viewed as the bedrock of Delaware corporate law, which is the most widely used by companies. The Delaware statute is unclear about the balance between shareholder and non-shareholder interests. Section 141 of the Delaware General Corporation Law states: "The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors…",[199] which effectively turns directors into agents of the corporation's shareholders. However, Delaware case law is more explicit. In *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.* the court recognised the board's primary duty to shareholders by ruling that the "duty of the board had thus changed from the preservation of Revlon as a corporate entity to the maximization of the company's value at a sale for the stockholders' benefit".[200]

In the context of the relationship between parent companies and their subsidiaries, the court summarised in the *Trenwick Am. Litig. Trust* case that "directors of the subsidiary are obligated only to manage the

affairs of the subsidiary in the best interests of the parent and its shareholders".[201] Fiduciary duties were also clarified in the *In re Trados* case, where the court stated that "stockholder's best interest must always, within legal limits, be the end" of directors' decisions.[202] This view was reinforced by the ex-Chancellor of the Delaware Court of Chancery, William Allen, who wrote: "broadly, directors may be said to owe a duty to shareholders as a class to manage the corporation within the law, with due care and in a way intended to maximize the long run interests of shareholders."[203]

Some dissenting legal voices still claim that the directors of Delaware-based corporations are permitted under the business judgement rule to run corporations for the long-term benefit of all stakeholders.[204] This view is reinforced by authoritative statements, such as The New Paradigm for corporate governance issued in 2016 by the World Economic Forum.[205] However, the prevailing view was firmly summed up by the ex-chief justice of the Delaware Supreme Court: "Despite attempts to muddy the doctrinal waters, a clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end."[206]

A pluralistic approach to directors' duties is codified in India's Companies Act 2013, which states that "a director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment".[207] However, scholars have challenged the material implications of adhering to this pluralist approach, claiming that, despite the formal dismantling of the hierarchy between shareholders and stakeholders, practical obstacles severely restrict stakeholders' rights.[208]

7.5 Directors' duties under legal pressure for change

In some jurisdictions, there is evidence of attempts to clarify and align the scope of fiduciary duties with long-term value creation and wider sustainability concerns.

The PACTE law enacted in 2019 in France introduced an amendment to Article 1833 of the French Civil Code that explicitly requires directors to manage the company "while taking into consideration the social and environmental issues related to its activity", thus potentially creating a social and environmental filter for every business decision.[209] The law does not provide further definitions, or details about how to prioritise diverging considerations and interests, nor is non-compliance sanctioned (for example, by preventing management decisions that are inconsistent with this requirement). However, it has been interpreted as a pioneering step to use statutory law to align corporate conduct with social and environmental concerns.

In the EU, the proposed Directive on Corporate Sustainability Due Diligence is seen as a globally significant attempt to harmonise some aspects of directors' duties in European large and 'high impact' sector companies, which fall under the scope of the pending Directive.[210] Article 25 of the draft Directive introduces a general obligation of duty of care, affirming that directors, in fulfilling their duty to act in the best interests of the company, must consider the consequences of their decisions for sustainability matters (including human rights, climate change and environmental consequences) and across time

horizons (short, medium and long term). Any breach of this enlarged duty of care – as defined by the proposal – would lead to the application of domestic provisions for breaches of directors' duties.

Furthermore, Article 26 of the proposed Directive also affirms that directors are responsible for putting in place, and overseeing, the implementation of due diligence policy, and its integration into all corporate policies. If enacted, the inclusion of this specific duty, as well as the provision of directors' responsibility, would allow due diligence to become strategic and penetrate relevant corporate functions. In performing this activity, directors will also have to take into consideration relevant input received from stakeholders and civil society organisations. It is unclear whether this consideration is a duty, or is 'comply or explain', or if directors will only have to report to the board. However, directors will be required to adapt the corporate strategy to consider actual and potential adverse impacts identified through the due diligence policy, as well as to take the necessary measures to prevent and mitigate their impacts.

Attempts at aligning statutory fiduciary duties with wider sustainability goals are also taking place in the UK, in the context of the campaign for the Better Business Act.

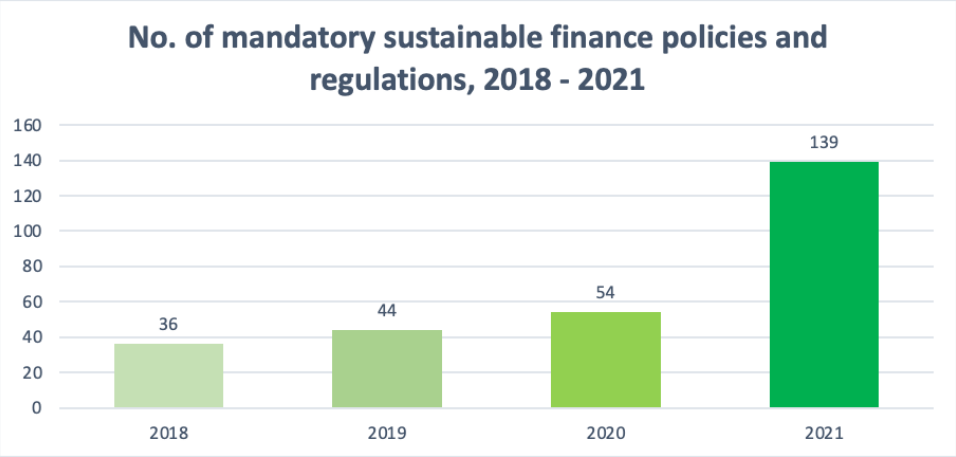
The proposed Act aims to amend Section 172 of the UK Companies Act 2006 by introducing a director's "duty to advance the purpose of the company".[211] The proposed Act also defines the purpose of the company as benefitting its members as a whole "whilst operating in a manner that also benefits wider society and the environment in a manner commensurate with the size of the company and the nature of its operations and reduces harms the company creates or costs on wider society and the environment".[212]

7.6 Fiduciary duties and investment

The reconsideration of fiduciary duties is also being debated in sustainable finance. Traditionally, the fiduciary duties of investment managers have been defined exclusively as the pursuit of the beneficiaries' financial return. In practice this was disciplined by quarterly reporting practice. However, the institutionalisation of sustainable investing and a recent wave of legislative and regulatory changes are supporting a trend towards the incorporation of sustainability factors into fiduciary duties.

The UN Principles for Responsible Investment (UN PRI), a UN-supported network of investors, has mapped the proliferation of almost 1,000 sustainable investing policies adopted since 2000.[213] These include: corporate and investor ESG disclosure requirements; financial products classification and labelling criteria; national sustainable finance plans; stewardship codes; and other sector-specific policies. These developments support, encourage or require investors to consider long-term value, including sustainability factors, in their decision-making. Figure 1 shows the growth of mandatory sustainable finance policies and regulations around the world between 2018 and 2021. In the first quarter of 2022, 36 new mandatory sustainable policies and regulations were adopted.

Figure 1: Sustainable investing policies around the world



Source: UN PRI Regulation Database

One of the effects of the institutionalisation of sustainable investing is the growing attention paid to the discretion of investment managers in discharging their fiduciary duties. Under the pressure of international bodies and alliances of institutional investors, there is a growing pressure over the mainstreaming of sustainability factors into investment decision-making.

Back in 2005, an influential report commissioned by the United Nations Environment Programme Finance Initiative (UNEP FI) concluded that "integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions".[214] The 2021 edition of the report on fiduciary duty published by the UN PRI and UNEP FI similarly found that "policy change has clarified that ESG incorporation and active ownership are part of investors' fiduciary duties to their clients and beneficiaries".[215] From the authors' perspective, integrating ESG considerations is already a legal requirement – albeit one which is often implicit. On this basis, "investors that fail to incorporate ESG issues are failing their fiduciary duties and are increasingly likely to be subject to legal challenge".[216]

A similar conclusion was reached in the 2021 edition of another UNEP FI and Freshfields report, which examined the extent to which institutional investors can legally discharge their duties to pursue sustainability across a sample of 11 global investment hubs. The report found that, although instances of seeking to generate sustainability impact for its own sake are limited across the sample, "where sustainability impact approaches can be effective in achieving an investor's financial goals, the investor will likely be required to consider using them and act accordingly".[217]

The scope of fiduciary duties in investment is still fluid and contested. Overall, there is little evidence in our sample of jurisdictions of legal reform to clarify the fiduciary duties of investment managers. However, there are some exceptions.

In the UK, asset owners and investment managers are permitted, and encouraged, to pursue sustainability goals through stewardship. In 2000, the UK introduced the world's first regulations mandating disclosure by occupational pension funds of their policies on ESG issues.[218] From 2019, amendments to the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) Regulations also further clarified the latitude of trustees in exercising their fiduciary duties in relation to

ESG matters by making the "financially material considerations" informing trustees' decisions more permeable to ESG factors.[219]

In the last years, regulators have stepped up their actions to encourage companies go beyond a tick-box approach to compliance by exercising their shareholder rights more proactively and responsibly and engaging deeper with their duties as fiduciaries. One of the FCA's target outcomes stipulated in its ESG Strategy is "active investor stewardship that positively influences companies' sustainability strategies, supporting a market-led transition to a more sustainable future". [220] The FCA's ESG strategy also set out that one of its key actions will be to "encourage effective investor stewardship of net zero and sustainability, including through active investor engagement, voting and responsiveness to clients' and consumers' preferences and objectives".[221] The FCA rules specify that the engagement policy must describe how the firm integrates shareholder engagement in its investment strategy and how it monitors investee companies on relevant matter including, but not limited to, social and environmental impact and corporate governance.

In 2023, the FCA also launched a discussion about best practices to align executive compensation with sustainability factors, further signalling its support for embedding ESG criteria into financial sector's risk management frameworks, capital allocation decision, and engagement policies.[222]

Another notable exception is South Africa.

The South African Pension Funds Act states that, upon investing in an asset, the fund and its boards must "consider any factors which may materially affect the sustainable long-term performance of the asset including, but not limited to, those of an environmental, social and governance character".[223] The Pension Funds Act is therefore consistent with a provision of the Code for Responsible Investing in South Africa, which recommends that institutional investors: "incorporate sustainability considerations, including ESG issues, into their investment process as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries".[224]

The situation in the US is far more complex.

In the United States, the Department of Labor (DoL), which oversees and enforces the laws applicable to those investment fiduciaries that manage and advise on private sector retirement plans, issued a new rule in December 2022 on the scope of the fiduciary duties of prudence and loyalty. It clarified that "fiduciaries may consider climate change and other environmental, social, and governance (ESG) factors when they make investment decisions and when they exercise shareholder rights, including voting on shareholder resolutions and board nominations".[225] However, this ruling has fuelled political backlash against ESG investing, which is dismissed in some political and corporate circles as a variant of 'woke capitalism' in the United States.[226] After the US House of Representatives voted to repeal the DoL rule that would have permitted more discretion for investment managers to filter their decisions through ESG-related criteria, in March 2023 the US President Joe Biden vetoed the bill in the first veto of his presidency.[227]

The trend towards incorporating ESG factors into capital markets and corporate conduct is being spearheaded by alliances of asset managers and institutional investors. The anti-ESG movement has started to target these financial players. For example, a letter submitted in 2022 to BlackRock's CEO Larry Fink by a group of Republican state attorney generals alleged that BlackRock's ESG investing practices constituted a fiduciary breach because it uses the "money of our states' citizens to circumvent the best

possible return on investment, as well as their vote".[228] The politicisation of ESG investing in the US has further intensified after 17 Democratic state attorney generals defended the argument that the fiduciary duties of asset managers require them to consider ESG factors in front of various US Senate committees.[229]

The contentious debate over fiduciary duties is also illustrated by some fractures in collaborative corporate engagement initiatives, which have previously acted as key fora for catalysing collective action on corporate alignment with sustainable outcomes, in particular decarbonisation targets. In 2022, following the backlash against ESG investing, Vanguard, the world's second-largest asset manager, pulled out of Net Zero Asset Managers, a global alliance of more than 300 asset managers with over US$60 trillion under management as of December 2022.[230] The growing polarisation over the scope of fiduciary duties indicates the challenges encountered by financial players in speaking with one voice about shared climate-related concerns.

In the **EU**, the concept of 'fiduciary duties' is not embedded in EU law. Until recently, the most direct reference to the concept of fiduciary duty in the legal framework of the EU was found in Article 24 of the Markets in Financial Instruments 2 Directive, which requires investment firms to "act honestly, fairly and professionally in accordance with the best interests of its clients".[231] However, it does not specify what constitutes the 'best interests' of clients, nor the ultimate discretion of fiduciaries to incorporate non-financial risks to pursue clients' interests.[232] There are, however, provisions on directors' duties under the proposed Corporate Sustainability Due Diligence Directive.

The European Commission has also drafted amendments to delegated acts under the Undertakings for Collective Investment in Transferable Securities Directive,[233] Alternative Investment Fund Managers Directive,[234] Markets in Financial Instruments Directive II[235] and the Insurance Distribution Directive,[236] which clarify that sustainability must be integrated into day-to-day investment operations, including internal policies and procedures, product governance obligations, organisational requirements, and the risk management of relevant entities. Similar sustainability-associated requirements have also been incorporated in the proposed amendments to the Solvency II Directive.[237]

To further strengthen investment stewardship and responsible ownership, in 2017 the EU also adopted the Shareholder Rights Directive II, which improved shareholder identification and required listed companies to publish their engagement policy, as well as disclose how their investment strategy contributes to the medium to long-term performance of their assets.[238] The Directive also created an obligation for proxy advisors to adhere to a code of conduct and disclose information regarding their voting recommendations. Furthermore, the Directive introduced, on a 'comply or explain' basis, a requirement for institutional investors and asset managers to consider social and environmental issues in their investment strategies, and disclose how they monitor the ESG performance of their investee companies. Hence, the EU is a leading jurisdiction where there is evidence of broad support for expanding fiduciary duties and empowering investors to promote ESG factors in investment decision-making and stewardship activities.

8. Analysis of Trend 5: Legislators and regulators are increasingly adopting board diversity requirements

Legally mandated board diversity rules are also gaining momentum on the corporate governance agenda as a result of mounting political, regulatory and investor pressure.[239] Over the last few years, the theme of boardroom diversity has increasingly changed from corporate self-regulation, into prescriptive regulatory and legislative reforms that enshrine statutory board diversity requirements. Provisions aimed at promoting diversity in boardrooms also increasingly feature in stock exchange listing rules and corporate governance codes. Although this trend is most prominent in Europe, it is gaining traction in other parts of the world.

The growing number of hard and soft law rules on board diversity generally divide into:

- board composition quotas, particularly gender quotas, and
- disclosure requirements and guidance on board selection and target-based diversity representation.

This impetus is driven by a reinforcing mix of political, cultural and institutional factors, such as greater political support for improving the ratio of female representation in boardrooms (based on the principle of equality of treatment); mounting ESG-related pressure from institutional investors and asset managers to make boards more inclusive; and militant racial and social justice movements, especially in the US.[240] There is also a growing understanding that creating demographic, professional and cognitive diversity in boardrooms can enhance board effectiveness by strengthening board independence and corporate governance controls, deterring groupthink, tapping into under-explored talent pools and improving investor relations.[241]

Regulatory guidance on reforming board composition is seen as a way to change board dynamics. However, mandatory board quotas continue to create opposition in some countries, occasionally giving rise to litigation claims and repealed laws. Evidence on the most effective strategies for improving corporate governance through board diversity is still inconclusive.[242]

Overall, the issue is receiving unprecedented attention in both legislative debates and other regulatory forums. Mandatory gender balance on boards is highly variable. Board diversity requirements are often limited in scope to listed companies and state-owned enterprises. Additionally, existing rules tend to have weak sanctions for non-compliance. Board quotas also tend to be future oriented, giving companies time to adapt to the new rules.

8.1 Listing rules, corporate governance codes and stock exchanges

The ‘comply or explain’ logic of corporate governance codes has long been the dominant mechanism for promoting board diversity as good corporate governance practice. Recent revisions and updates of corporate governance codes internationally include a growing emphasis on providing normative guidance to strengthen board diversity and independence. This includes encouraging the separation of the CEO and

board chair, and requiring listed companies to adopt, disclose and operationalise board diversity policies. Furthermore, financial regulators in some countries have started to revise listing rules by introducing diversity and inclusion requirements for company boards. Recently, stock exchanges have required board diversity in capital markets.

In Europe, the UK has been a leading example of promoting board composition requirements to strengthen board transparency and diversity.

New UK FCA rules, which entered into force in 2022, require issuers to report on their progress in meeting the FCA's minimal board diversity targets of: 40 per cent women on boards; at least one woman in a senior board seat; and a target for ethnic minority representation; while also encouraging market participants to consider wider characteristics in their diversity policies.[243] Under the Listing Rules, the FCA requires listed companies to include in their annual report a 'comply or explain' statement on whether they have achieved certain targets for women and ethnic minority representation on their board.[244]

The UK Corporate Governance Code requires companies, on a 'comply or explain' basis, to undertake an annual evaluation of the diversity of their board composition, and promote demographic and cognitive diversity through their board appointment policies.[245] The Code also requires that at least half of the board (excluding the chair) must be made up of independent non-executive directors.

Using 'comply or explain', the 2016 revision of the Swedish Corporate Governance Code requires that public companies listed in Sweden have a diversity policy and apply it during the nomination process.[246]

In the Netherlands, using again a 'comply or explain' approach, Principle 2.1 of the Dutch Corporate Governance Code of 2022 encourages companies to compose their boards "in such a way as to ensure a degree of diversity appropriate to the company".[247] However, the Code provides discretion for how a company promotes diversity on its board, without prescribing specific board diversity quotas or targets. Furthermore, the Code requires companies to have a diversity policy, regularly report on it publicly, and set targets in order to ensure gender balance across the company, including on boards.[248]

The trend towards board diversity through corporate governance codes, listing rules and stock exchange requirements has also been on the rise in Asia.

Hong Kong's Corporate Governance Code requires issuers to have a policy on board diversity and report on their progress towards implementation, including how and when gender diversity will be achieved; the numerical targets and timelines; and what measures have been adopted to develop a pipeline of potential successors to the board to achieve gender diversity.[249]

Japan's Corporate Governance Code also requires listed companies to recognise the value of 'thought diversity'; promote the participation of women in corporate decision-making; disclose their diversity

policies; and ensure that boards are well balanced in terms of gender, international experience, work experience and age.[250]

Singapore's Corporate Governance Code requires boards to have an appropriate level of diversity of thought and background in its composition, ensure a balance and mix of skills, knowledge and experience, as well as demographics such as gender and age; and to disclose the board's diversity policy and progress towards implementing it in the company's annual report.[251]

South Africa's King IV Corporate Governance Code does not include reference to board diversity quotas. However, Principle 7 of the Code states that boards "should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively".[252] The Code recommends that governing bodies set compositional targets for race and gender representation, and take diversity targets into account when determining the structure and composition of boards. However, it refrains from prescriptive guidelines.

Female board representation continues to be scarce in the Middle East. Nevertheless, some progress on board diversity has been recorded in the last years.

In 2016, the **United Arab Emirates'** Securities and Commodities Authority (SCA) introduced 'comply or explain' targets on female board representation. The SCA Code requires listed companies to disclose the percentage of female representation on boards in the annual corporate governance report, and ensure that the representation of women is not less than 20 per cent of the board of directors.[253] Non-compliant companies are required to disclose the reasons for the failure to achieve the target.

In South America, although progress has been slow, in recent years these issues have risen onto the corporate and public agenda in some countries.[254]

Argentina's 2019 revision of their corporate governance code stressed the importance of board diversity, asking for incorporation of gender equity into compensation decisions.[255]

Similarly, the market regulator in **Chile** has introduced new rules requiring companies to disclose, on a 'comply or explain' basis, the diversity characteristics of board members and the actions taken to inform shareholders about the diversity attributes of candidates during the board appointment process.[256]

Recently, some stock exchanges have also emerged as normative actors seeking to enhance board diversity. In 2021, the **US** Securities and Exchange Commission approved Nasdaq's 'comply or explain' board diversity requirements, which ask listed companies to disclose board-level diversity data and appoint at least two diverse directors, or explain the reasons for non-compliance.[257]

In 2021 the Stock Exchange of Hong Kong (SEHK) also revised listing rules to mandate all companies listed on the SEHK to have at least one woman on the board, creating over 1,000 vacant board seats to be filled by women.[258] There is mounting stakeholder pressure on other stock exchanges to take proactive action to enhance the representation of women on boards.

8.2 The legislative path to board diversity

Apart from mainstreaming board diversity policies, targets and quotas in corporate governance codes, listing rules and stock exchange guidelines, legislative reform mandating board quotas is slow-moving. However, it is an increasingly widespread approach taken by states to promote board diversity, particularly female representation. In 1999, Israel was the first country to introduce the legal requirement for listed companies to appoint at least one woman on the board of directors. As of 2022, nearly 20 countries around the world have adopted gender quota laws for corporate boards, a trend which has intensified in the last two years.

The statutory board diversity requirements currently in force around the world target almost exclusively gender representation. Some have other diversity criteria, such as ethnicity, experience, or age. Existing laws are almost invariably only applicable to listed companies, state-owned enterprises, or state majority-owned enterprises. Most countries that enact board representation quotas have established a one-third gender quota, albeit with much variance across jurisdictions. Board representation quotas enshrined in law vary from at least one member of the under-represented gender on company boards (for example, Pakistan, UAE) to at least 40 per cent allocated to the under-represented gender (for example, Norway, Iceland, EU).

Table 3 provides a chronological overview of the evolution of statutory board quotas around the world.

Table 3: Board diversity quotas across jurisdictions

Country	Date of adoption	Description
Israel	1999	Law requiring any new non-executive director appointments of listed companies with boards composed of only one gender to be of the other gender.
Colombia	2000	Law requiring at least 30% gender quota in state-owned enterprises and state majority-owned enterprises
Norway	2003	Law requiring at least 40% gender quota on the boards of listed companies.
Spain	2007	Law requiring (non-compulsory) at least 40% gender quota target by 2015 applicable to public limited companies and listed firms.
Iceland	2010	Law requiring at least 40% gender quota for companies with over 50 employees.
Kenya	2010	Law requiring no more than 33% directors of the same gender on the boards of state-owned enterprises and state majority-owned enterprises.
France	2011	Law requiring at least 40% gender balance among the non-executive directors of the largest companies. Gender quota was repeatedly amended. Currently, the law requires a target of at least 30% representation of both genders by 2026 and 40% by 2029.

		Applicable to listed companies, state-owned enterprises and some large private companies.
Canada (Quebec)	2011	Law requiring at least 50% gender quota on the boards of state-owned enterprises in Quebec.
Belgium	2011	Law requiring at least 1/3 representation of each gender on the boards of listed companies.
Italy	2011	Law requiring at least 1/3 of the board members of listed companies and members of the statutory auditors to be elected from the less represented gender. Since 2020, listed companies that renew their corporate bodies have to increase the quota to 2/5.
India	2013	Law requiring at least one female director on the board of listed companies and some public unlisted companies.
Germany	2015	Law requiring at least 30% gender quota on the supervisory boards of large companies with full employee representation. Since 2021, the law expanded the rules to also require at least one woman and one man on the executive board of large, listed companies and on the boards of some non-listed companies with over 2,000 employees.
Austria	2018	Law requiring 30% gender quota on the supervisory boards of Austria's largest companies and quota of 40% gender for supervisory boards of state majority-owned enterprises.
Portugal	2018	Law requiring at least 1/3 gender quota on the supervisory boards of state-owned enterprises and publicly listed companies.
United States	2020	Law requiring at least 25% gender quota (Washington state).
Chile	2021	Law requiring a 60% ceiling for each gender on boards of state-owned enterprises or state majority-owned enterprises.
Greece	2021	Law requiring at least 25% gender quota for the boards of listed companies.
Netherlands	2021	Law requiring at least 30% gender quota on the boards of public companies with more than 250 employees.
United Arab Emirates	2021	Law requiring at least one woman on the board of directors of listed companies.
European Union	2022	Law requiring all public companies to achieve a 40% quota of non-executive director posts for the under-represented sex by 2026.

In Europe, after **Norway** passed a law in 2003 that mandated public limited companies to achieve a 40 per cent target quota for women on boards, or risk dissolution, many countries have followed suit by introducing various statutory board diversity rules.

In 2007, **Spain** became the first country in the EU to introduce a board representation quota law that set a 40 per cent gender diversity target to be achieved by 2015 by large companies. The law, however, did not stipulate any sanctions for non-compliance, and provided instead public tender incentives to compliant companies.

Other countries have adopted more stringent legal requirements.

An act on gender diversity in the boards of **Dutch** companies, which entered into force on 1 January 2022, applies to supervisory boards and non-executive directors of Dutch companies listed on Euronext Amsterdam. It contains two measures to promote diversity:

- an appointment quota for the supervisory boards of listed companies that requires at least one-third of the seats on the supervisory board to be held by women, and
- a mandatory rule for large public and private limited liability companies to set appropriate and ambitious target ratios – and report annually on their progress – to improve the gender diversity on their boards and among their senior management personnel.[259]

Overall, at least eight EU countries have introduced gender quotas on boards in the last few years, varying from 25 per cent to 40 per cent gender diversity targets. The sanctions for non-compliance also vary: from monetary fines and denying directors' compensation to nullifying appointments or even company dissolution.

In the **EU**, the European Commission has been an early supporter of mandatory gender diversity quotas in boardrooms. It introduced a proposal in 2012 for a directive aimed at harmonising board quotas by requiring listed companies in the EU to appoint women on at least 40 per cent of their non-executive board seats.[260] Although the Commission's proposal was subsequently put on hold for almost a decade, the EU adopted the Directive in 2022, and it recently entered into force. Member States will have to transpose it within two years into their own domestic law.[261] The Directive obliges listed companies in all 27 EU member countries to appoint at least 40 per cent women on their non-executive boards, or 33 per cent women in their executive and non-executive roles by mid-2026.

In the **US**, in 2018 California became the first state to pass a board quota after the California State Legislature enacted a law requiring all publicly traded companies, headquartered in the state, to have a specific number of female directors on the board by 2021. This means at least one woman on a board with up to four members; two women on boards consisting of five members; and three women on boards with six or more members.[262] In 2020, California also passed a law requiring all California-headquartered publicly traded companies to appoint at least one board member from an under-represented community (defined according to ethnic and sexual criteria) by the end of 2021, and then increase the number, dependent on board size.[263] The penalties for non-compliance in both cases are substantial.

Washington State became the second state in the US to adopt a board quota law, passing a 2020 bill that obliges public companies to either appoint at least 25 per cent women on boards, or explain why they have not reached the target.[264] However, in 2022, both Californian laws mandating board quotas were repealed by courts on grounds of unconstitutionality, illustrating the politicisation of sustainability in the US.[265]

In the last few years, board diversity has also been on the legislative agenda in **Canada**. In 2011, Quebec was the first province to impose a 50 per cent gender quota on the company boards of state-owned enterprises. Canada has generally adopted a 'comply or explain' model to promote diversity on boards. In 2020, legislators made amendments to the Canada Business Corporations Act, introducing annual board diversity disclosure requirements, with specific targets in order to enhance the representation of women, indigenous peoples, people with disabilities, and members of visible minorities on company boards.[266]

India introduced a mandatory bill in 2013 that requires at least one woman on the board.[267] Since the introduction of this rule, female representation on Indian boards increased from 6 per cent in 2013 to 18 per cent in 2022.[268] However, there are concerns that progress is partly overshadowed by the incidence of tokenism due to India's large share of family-owned companies that nominate female family members on boards.

The Corporate Governance Code of Pakistan implemented under the Companies Act of 2017 a compulsory requirement – in contrast to the otherwise 'comply or explain' provisions of the Code – that all listed companies have at least one female director.[269]

A similar law was passed in South Korea. Since the entry into force of the amendments to the South Korean Financial Investment Service and Capital Markets Act in 2022, listed companies with assets exceeding a certain threshold (2 trillion Won) are required to have at least one female director on boards.[270]

Singapore does not have quotas. However, its Corporate Governance Code expects that "The Board and board committees are of an appropriate size and comprise directors who as a group provide the appropriate balance and mix of skills, knowledge, experience, and other aspects of diversity such as gender and age, to avoid groupthink and foster constructive debate. The board diversity policy and progress made towards implementing the board diversity policy, including objectives, are disclosed in the company's annual report."[271]

Board diversity has also been on the corporate governance agenda in South America. In 2000, Colombia introduced a 30 per cent female representation quota on the boards of state-owned enterprises and state majority-owned enterprises.[272]

Argentina has experimented with the introduction of gender quotas applicable to the boards of certain companies registered in the city of Buenos Aires, triggering a wave of litigation claims against the resolution.[273]

A law on gender representation adopted in 2021 by Chile established that no board of public enterprises and state-owned corporations can have over 60 per cent of members of the same gender.[274] Meanwhile, a pending bill introduced in 2021 in Brazil proposes a 30 per cent quota for women on boards.[275]

In the Middle East, Israel's Companies Law enacted a rule in 1999 that effectively required public companies to have at least one woman on the board by mandating that any new non-executive director appointments be of the other gender, if the board is composed of only one gender.[276]

In 2021, the UAE mandated listed companies to have at least one woman on the board of directors.[277] Prior to that, listed companies were subject to 'comply or explain' board representation provisions issued by the UAE Securities and Commodities Authority (SCA). Article 40 of the SCA Code set a target of minimum 20 per cent female representation on boards. However, slow progress in achieving the soft target has prompted the market regulator to introduce compulsory female representation on the boards of listed companies.

In Africa, an early initiative on board composition was pioneered by Kenya. The 2010 Constitution of Kenya mandates that no gender should occupy more than two-thirds of boardroom seats in state-owned enterprises and state majority-owned enterprises.[278]

Apart from gender quotas, some countries have other mechanisms for promoting board effectiveness through specific board representation requirements. In some European countries there is a long tradition of employee representation.

Although Sweden does not have a compulsory quota for boards (though it is expected to transpose the EU Women on Boards Directive within two years of its adoption), the Board Representation Act allows employees in almost all companies, with more than 25 employees, to elect board members.[279]

In Germany, where a co-determination dual board structure is in place, the Co-determination Act and the One-Third Participation Act established significant quotas for employee representation on the supervisory boards of large companies.[280,281] The law requires at least one-third of the supervisory board seats of companies, with at least 500 employees, to be filled by employees, and at least one half of the board seats of companies, with more than 2,000 employees, to be filled by employees.

9. Analysis of Trend 6: Supply chain due diligence requirements are gaining momentum

Ethical sourcing and responsible corporate behaviour in supply chain management have risen up the legal and policy agenda in the last 4–5 years. The growing number of supply chain due diligence obligations for companies are emerging as a legal trend affecting boardroom decision-making.[282] Supply chain due diligence is a systematic process of identifying, mitigating and accounting for the human rights and environmental risks involved in working with different contractors and suppliers.

Legislators increasingly recognise that the proliferation of international supply chains has not only created huge economic benefits, but also a wide range of negative effects, from human rights violations to environmental degradation, resource depletion, land grabbing and corruption.[283] The effect of COVID-19, as well as changes in the geopolitical context, such as the sanctions on Russia, have also led to a strong focus on the location and integrity of supply chains. After decades of corporate self-regulation through voluntary standards, such as the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises, several countries have moved beyond voluntary frameworks to

enact supply chain due diligence rules.[284] These legal requirements promote corporate transparency more systematically and address sustainability impacts and risks in supply chains.

Specific human rights and environmental due diligence obligations have existed for several years in the US, the UK and the EU.[285] However, there is an emerging wider legal trend towards more general sustainability due diligence legislation across jurisdictions.[286]

This evolution creates new legal risks for companies and their boards. Meeting fiduciary duties to promote the best interests of a company increasingly calls for the development of adequate systems to identify and mitigate a growing number of supply chain risks, including human rights and environment-related risks. Although legal frameworks for supply chain due diligence are moving slowly, and substantive obligations are still scarce compared with disclosure rules, legislators and regulators in a growing number of jurisdictions are moving towards new standards of supply chain integrity. Companies that fail to meet these standards or make false statements about their supply chains' related ESG credentials face significant legal and reputational risks.

Where no statutory due diligence duty exists, companies can still voluntarily adopt and enforce supply chain requirements through contractual clauses, codes of conduct, audits, or divestment. However, because of the complex, dynamic and non-transparent nature of global supply chains, traceability is a major challenge. The development of tools and methodologies for operationalising supply chain due diligence obligations will therefore continue to be a hot area of legal-technical debate. Although mostly happening in high-income countries, such as countries in the EU, the UK or the US, this trend will likely have a notable impact on lower income countries, adding another factor to decisions about the location and coverage of global supply chains. For instance, the EU's proposed Corporate Sustainability Due Diligence Directive may give rise to extra-territorial effects that would create obligations for companies located outside the EU. Furthermore, companies required to comply with supply chain due diligence might need to enforce more stringent procurement policies on their suppliers and contractors in order to be compliant with the new rules.

As the complexity of navigating regulatory requirements around supply chain governance increases, pursuing ethical and transparent value chains will likely become an important topic for board oversight. In light of proliferating regulatory obligations, and problems caused by geopolitical disruption and COVID-19, companies will be reconsidering the design of supply chains, and the integration of corresponding due diligence systems across corporate functions.

9.1 Issue-specific supply chain due diligence disclosure requirements

More limited forms of supply chain due diligence requirements can be found in several countries, such as the US, the UK, Australia and the Netherlands. These laws focus almost exclusively on certain areas of human rights and are mostly limited to disclosure obligations.

The first example was the California Transparency in Supply Chains Act adopted in 2010.[287] This law requires companies with a turnover of over US$100 million to report on their efforts to combat slavery and human trafficking in their supply chains across five areas: verification, audit, certification, internal accountability and training. The law does not require companies to secure the integrity of their supply

chains by eradicating such practices or building adequate safeguards. Rather, it mandates only disclosure of efforts to fight slavery and human trafficking and ensure that customers have access to transparent information about how inputs are sourced.

At the federal level in the **United States**, the 2016 US Trade Facilitation Act allows US Customs to seize imported goods if an importer is unable to provide a certificate proving which measures were taken to ensure that the goods were not produced using forced labour.[288] Additionally, the Uyghur Forced Labour Prevention Act entered into force in 2021, aims to prevent the import of items produced by forced labour, including by requiring companies to disclose any dealings in the Chinese region of Xinjiang.[289] Furthermore, the Slave-Free Business Certification Act of 2022, which is pending in the US Senate at the time of writing, would require businesses with an annual revenue greater than US$500 million to audit their supply chains on labour practices.[290]

In the **UK**, there is a specific supply chain due diligence law, the Modern Slavery Act of 2015 (MSA).[291] The MSA requires any commercial organisation with an annual turnover exceeding £36 million, and carrying out a business or part of a business in the UK, to publish an annual modern slavery statement. This should describe the organisation's supply chain slavery and human trafficking policies, due diligence processes, and vulnerabilities in the supply chains, as well as the measures taken to prevent such practices. Although best practice dictates that a company making such a statement should reference the steps it has taken to ensure that no slavery or human trafficking has taken place in its supply chains, including business partners established in other jurisdictions, there is as yet no legal requirement to do so. An organisation could therefore lawfully comply with the MSA by making a Slavery and Human Trafficking Statement to the effect that they have taken no steps to ensure that no slavery and human trafficking activities take place in their supply chains.[292]

In terms of legal consequences for breaching the MSA, the relevant Secretary of State can bring civil proceedings in the High Court for an injunction requiring publication of a company's Slavery and Human Trafficking Statement. If a company fails to comply with an injunction, it could face an unlimited fine.

The **Netherlands** adopted in 2019 the Dutch Child Labour Due Diligence Law, which mandates companies that perform due diligence to prevent child labour and submit a statement of due care to a supervising authority.[293] The law, which applies to all companies that sell or supply goods or services to Dutch consumers, requires companies to undertake investigative efforts to determine whether there is a reasonable suspicion that a product or service in its supply chain has been produced using child labour. Where such a practice is identified, the company is not required to end the relationship with the supplier, but to devise an action plan for avoiding such practices in the future. Companies are also mandated to submit an annual declaration about their due diligence efforts. The law stipulates that the fines for non-compliance can go up to EUR870,000, or 10 per cent of the company's total worldwide revenue.

Similar statutory supply chain due diligence obligations can also be found in **Australia**. The Modern Slavery Act of 2018 requires companies carrying out business in Australia, with an annual turnover over AU$100 million to report on their actions to identify, assess and address the risks of modern slavery in their

operations and supply chains.[294] The report must describe: the structure, operations and supply chains of the reporting entity; the risks of modern slavery practices; the actions taken by the company; and consider the effectiveness of such actions. Although there is no third-party assurance regime for supply chain due diligence, the Minister for Customs, Community Safety and Multicultural Affairs has the power to verify compliance with the due diligence requirements under the Modern Slavery Act. The law also imposes penalties for non-compliance with a maximum annual penalty of AU$1.1 million.

Similar legislation regulating modern slavery in supply chains has been proposed in **New Zealand** and **Hong Kong**.[295]

In 2022, the **United Arab Emirates** also introduced issue-specific supply chain due diligence obligations. However, these regulations focus on combatting financial crime-related practices in a particular sector: gold. The 2022 Due Diligence Regulations for Responsible Sourcing of Gold issued by the UAE Ministry of the Economy established due diligence obligations for gold refiners to consider the risks of financial crimes in their supply chain.[296] The regulations follow OECD principles and prescribe five steps:

1) the creation of integral governance systems in regard to the due diligence, including acquiring board-level expertise, ensuring adequate training, establishing information sharing and controls systems, and ensuring that suppliers comply with supply chain policies in accordance with the regulations
2) the performance of supply chain due diligence to identify potential risks, according to risk indicators, as well as ensure the monitoring and reporting of risks in gold supply chains
3) in-scope entities are also required to design and implement risk response strategies
4) the gold refiners' due diligence practices should be reviewed by independent third-party reviewers according to an audit plan
5) in-scope entities should disclose annually their supply chain due diligence audit reports.

9.2 General supply chain due diligence requirements

Over the past five years, a second generation of supply chain due diligence statutes has appeared, aimed at the more general protection of human rights and the environment. These create not only disclosure requirements but also substantial obligations.[297]

In 2017, **France** was the first country to adopt a broad cross-sectoral duty of vigilance, which requires all large French companies to undertake human rights and environmental due diligence with respect to their subsidiaries, contractors and suppliers.[298,299] The law also requires large companies to implement and publish a vigilance plan developed in consultation with trade unions, following the UN Guiding Principles on Business and Human Rights. The law introduced civil liability for the behaviour of both direct and indirect suppliers. Companies breaching the law are subject to fines of up to EUR10 million.

In 2021, **Germany** also adopted the Supply Chain Due Diligence Act, which will enter into force in 2023.[300] The law requires large companies to ensure that social and environmental risks are monitored and addressed in their supply chain.[301] Companies subject to the law will have to publish an annual report detailing how they identify, assess, prevent and remedy human rights and environmental risks in their

operations and supply chains. Companies failing to comply with the law will face a penalty of up to EUR50,000 and administrative fines of up to 2 per cent of their average annual revenue, if that exceeds EUR400 million.

At the **EU** level, apart from existing industry-specific supply chain due diligence regulations, the European Commission has undertaken proactive efforts to create a level playing field for companies operating in the EU market.[302] Following a study on due diligence requirements throughout the supply chain, the European Commission issued the Proposal for a Directive on Corporate Sustainability Due Diligence in 2022.[303,304] The pending Directive stipulates that large companies in high-impact sectors within the scope of the Directive have to comply with due diligence obligations to prevent, mitigate, end or minimise the adverse impacts that have been identified.[305,306] They have to additionally implement a prevention and correction action plan with a clear timeline of actions and include impact measurement indicators.[307] Moreover, the proposed Directive requires companies to make all the necessary investments, for example into management or production processes and infrastructures, to support the achievement of sustainability targets and other requirements of their policy.[308]

The proposal on Corporate Sustainability Due Diligence also mandates the disclosure of corporate plans to ensure compatibility with the net-zero transition.[309] The proposed mandatory rules aim to improve legal certainty around due diligence obligations and develop more effective enforcement mechanisms. They also aim to improve access to remedies for those who are negatively affected by the expansion of international supply chains.

The proposed Directive provides both public and private enforcement mechanisms. Public enforcement is assigned to national supervisory authorities appointed by Member States. In terms of private enforcement, the proposal recognises civil liability in case of failure of a company to comply with due diligence obligations. Such failure leads to adverse impact and damages that could have been avoided if all necessary measures had been taken. Therefore, only foreseeable risks can trigger liability.[310]

The proposal requires Member States to ensure that the civil liability regime for companies has an overriding mandatory application in cases where the relevant law is not the law of a Member State (for example, when damages occur outside the EU). Moreover, it stipulates that civil liability of a company is without prejudice to the civil liability of its subsidiaries, or any direct and indirect business partners in the value chain. Therefore, a company could be liable for any harms that could have been prevented, mitigated or ended in its own operations and in its subsidiaries.[311]

In **Japan**, there are currently no statutory supply chain due diligence requirements. However, in 2020 the Japanese Government published the National Action Plan on Business and Human Rights.[312] This report sets out expectations on companies to

- establish a human rights policy
- conduct human rights due diligence, and
- provide remedies when companies cause or contribute to adverse human rights impacts.

The Ministry of Economy, Trade and Industry issued a working draft of *Guidelines on Respect for Human Rights in Responsible Supply Chains* in August 2022, which promotes human rights due diligence.[313] It provides guidance on:

- establishment of a human rights policy
- conduct of human rights due diligence, and
- provision of remedies when business enterprises cause or contribute to adverse human rights impacts.

In South America, there are ongoing initiatives to address the potential impact of corporate operations and their supply chains, especially in **Brazil**[314] and **Mexico**.[315,316] In **Colombia**, there are currently no such supply chain due diligence obligations, although this practice is common among Colombian companies incorporated as benefit corporations.

10. Analysis of Trend 7: States are enacting innovative corporate forms that bring private and public benefit together

The ongoing debates on corporate purpose, fiduciary duties and sustainability have led to the statutory development of new corporate forms that explicitly pursue public benefit purposes alongside profits. In recent years, a growing number of countries have created legal frameworks for the formation of hybrid corporate forms that bring financial and non-financial aims together.[317] Although they are at present niche, these so-called 'benefit corporations' (following the name of the original US model) provide a legal vehicle that brings more transparency and greater accountability into business activities. These could be seen as a move in the direction of enabling businesses to fully pursue a Purpose-driven approach. But, as we have seen from the history of social enterprises and non-profits, a focus on public or social benefit does not necessarily mean that an organisation is sustainable in every way. However, their values and intent tend to be more aligned in this direction, since they do not seek to maximise profit and have no external pressures to act in ways contrary to their primary aims. At its core, the proliferation of hybrid legal forms reflects a willingness by legislators and policymakers to promote the repurposing of the corporate form for the public benefit.

In the US, there are currently fewer than 20 publicly listed benefit corporations out of over 3,000 benefit corporations.[318] However, most of these companies became public or converted into public benefit corporations only in the last few years. Others have signalled that they are also considering changing to this status. The requirements and impacts of the finance industry on how these businesses negotiate shareholder demands with those of the public benefit and other stakeholders will be interesting to observe.

Renewed interest in the legal features of this corporate form is partly driven by the growth of ESG investment products, and the continued public scrutiny of corporate purpose and corporate sustainability metrics.[319] The public benefit corporation can potentially turn into a legal vehicle that helps corporations

to distinguish themselves and gain interest from ESG-focused investors. Overall, these hybrid corporate forms, if widely embraced by entrepreneurs, investors and consumers, carry significant potential to promote corporate sustainability, though the incentives for transforming traditional corporate forms into benefit corporations still lack clarity.

10.1 The development of the benefit corporation

Traditionally, the corporate legal form has been conceptualised in company law as a legal vehicle designed to distribute to shareholders the residual profits made from its business activities. Hence statutory law in many jurisdictions proscribes that a company's purpose should have some level of commerciality (for example, in Japan, Italy, or France). In some countries, such as Australia, Sweden and Colombia, company law has permitted commercial companies to pursue more altruistic businesses if the shareholders agree to include these activities in the Articles of Incorporation. However, this legal discretion is rarely used in practice. Alternative corporate forms, such as the benefit corporation, provide a statutory form tailored to legitimate and incentivise the pursuit of 'purpose-driven' profit-making activities.

Benefit corporations also differ from traditional business corporations in directors' accountability and transparency. These new entities are able to make profits while also generating 'public benefit', such as positive environmental and societal impact. Their directors have an obligation to assess, in the exercise of their duties, the impact of their decisions on all company stakeholders (for example, shareholders, society, workers, the community and the environment) and consider, or balance (depending on the legislation) the shareholders' pecuniary interests with the interests of the other corporate constituencies that are materially impacted by the corporation. Benefit corporations are also subject to higher disclosure requirements, often being required to publish annual benefit reports on their positive impact, and have this assessed against a transparent, independent and credible third-party standard. They are, however, subject to the same tax regimes as ordinary business corporations.

The first benefit corporation statute was passed in the US, in Maryland, in 2010. Today, 36 US states, as well as Washington DC and Puerto Rico, have passed benefit corporation statutes. Most of these are inspired by the Model Benefit Corporation Legislation (Model Act) proposed by B Lab – a global non-profit organisation that promotes higher standards of social and environmental performance, corporate accountability and transparency.[320] The most important exception is Delaware, which, in 2013, introduced its own statute, the Public Benefit Corporation Act.[321] Directors of US benefit corporations, in discharging their duties, are required to consider (or balance in Delaware) the impact of their decisions on shareholders and all the other stakeholders of the company (such as employees, customers, the community), the environment, and the achievement of the public benefit purpose.

This new legal form has also diffused to Europe.[322] Italy was the first state to follow the US example. It enacted legislation in 2015 for for-benefit corporations, the so-called '*società benefit*' [323] Similar corporate forms have also appeared in several South American countries. These '*Sociedades de Beneficio e Interés Colectivo*' are in Colombia,[324] Ecuador,[325] Peru[326] and Uruguay.[327]

Similarly, there are '*Sociedades de Beneficio e Interés Común*' in Spain,[328] and a benefit company in British Columbia, Canada.[329]

France introduced a similar legal status in 2019, the '*société à mission*'. They amended the Civil Code and Commercial Code in order to allow a company to incorporate social and environmental objectives into its corporate objects clause.[330]

A proposal to enact a benefit corporation was attempted in Australia, although it failed, mostly because the Australian Corporations Act already permits companies to combine profit-making with altruistic purposes.[331]

The benefit corporation, similar to emerging 'purpose-driven' governance models (ISO 37000, PAS 808), therefore represents a new governance model that goes beyond philanthropy, corporate social responsibility and codes of ethics. These latter approaches underpin voluntary obligations undertaken by the company. In effect, they constitute externally inspired self-restraint on the dynamic of pure profit maximisation. The adoption of the benefit corporation model, however, enables internally imposed limitations on its profit distribution goals, and rephrases, in environmental and social terms, the guiding principles of directors' discretionary activity.[332] The benefit corporation allows a voluntary choice by founding shareholders or, by existing shareholders at their annual general meeting, to internalise public benefit within the corporate purpose clause.

The formation of a corporation is the expression of the private autonomy of shareholders (though within mandatory legal limits) who, opting for the new model characterised by a dual purpose, decide to include the purpose of public benefit in the articles of association. By doing so, the boundary of the company's purpose is widened to include two purposes desired by the shareholders – 'for profit' and those 'for benefit'. This imposes an internal limit on the dynamic of maximising shareholder returns and consequently, on the directors' management activity. The latter's goals are therefore to strike a balance between shareholders' for-profit interest, the public benefit and the interests of a vast audience of stakeholders.

The boards of companies that opt to take up, or transition to, the benefit corporation model are usually required to set clear public benefit objectives, adopt high standards to measure impact performance, and assess the company's success in meeting its impact objectives. These hybrid corporate forms are in effect a 'legal shield' that protects corporate managers and boards from being sued by shareholders for pursuing corporate strategies that hurt short-term profits.[333] An unintended consequence of this approach, however, could be that it implicitly reinforces the assumption that traditional limited liability companies, and their boards, are not mandated to pursue public benefits without breaching fiduciary duties. Otherwise, these hybrid entities would not be necessary.

Alongside, or separately from, adopting a benefit corporation legal status, there is also the rising popularity of voluntary third-party certifications, such as B Corp certification. For example, as of February 2023 there were over 6,000 certified B Corp entities across 89 countries.[334] The B Corp certification is a designation that a business is meeting high standards of verified performance, accountability, and transparency in providing, for example, employee benefits, charitable giving, or supply chain practices. In order to become certified, a company must:

1) meet specific social and environmental metrics (the so-called Benefit Impact Assessment – BIA) and pass a risk review
2) ensure legal accountability by amending their corporate governance structure to expand corporate accountability to all stakeholders, not just shareholders, and

3) display high standards of reporting transparency by making public its performance against B Lab's standards.

The B Corp certification can also act as a voluntary proxy for the benefit corporation legal form in jurisdictions where these legal forms are unavailable.

11. Concluding comments

Law serves not only to delineate the realm of possibilities but also to signal the direction of travel in societies. Our examination of sustainability-related legal trends reveals an accelerating momentum towards enhancing the alignment of corporate activities with a sustainable future.

This shift is particularly pronounced within certain countries or jurisdictions such as the UK, South Africa and EU, but their influence, promoted and supported by international bodies such as the UN and the OECD, seems to be informing and driving change elsewhere.

The trends are currently fastest in relation to corporate governance codes, stewardship codes and more mandatory sustainability disclosure requirements. This speed of movement reflects the flexibility, for example, of codes of practice, which, although generally applicable to only certain, listed companies, could be seen to be a leading indicator of societal expectations concerning corporate conduct and board practices. In addition, the greater codification, comparability, and ever more sophistication of disclosure requirements for businesses exposes boards to new regulatory burdens and legal risks that might drive a compliance-driven, box-checking mentality. However, the movement toward the harmonisation of disclosure initiatives also creates the prerequisites for more corporate transparency and accountability, which can facilitate more holistic decision-making, improved risk management, better resource allocation and increased stakeholder engagement. Furthermore, more comparable sustainability disclosures are also expected to catalyse sustainable finance and sharpen competitive edges.

Sustainability-oriented litigation operates as both an impetus for and a deterrent to enhanced sustainability actions. As boards test the boundaries of the shifting legislative and regulatory landscape, the drive towards a purpose-driven approach may lead to increasingly contentious debates.

The age-old, cyclical discourse regarding the role and purpose of corporations is once again intensifying. A growing international consensus appears to be gravitating towards a more permissive stance on matters such as fiduciary duties, which could potentially alleviate the adverse effects of short-term shareholder primacy and pave the way for a shift from CSR to ESV, ultimately leading to a purpose-driven orientation. However, these discussions can be highly politicised in certain places and contexts and may challenge deeply ingrained norms and practices within wider systems such as business teaching, scholarship and the wider finance sector. These factors, in turn, can both enable and hinder boards' sustainable trajectories.

For board members, legislation and regulation offer a discernible path towards greater alignment with public interest and sustainability outcomes. Yet, these instruments only supply guiding principles or penalties, rather than clear and practical pathways to effectively achieve these goals.

The increasing availability of a dual-purpose benefit corporation legal model could either be seen as an alternative corporate form, a stepping stone to a more sustainability aligned corporate landscape, or a potentially counter-productive dead-end to general boards' alignment with the Purpose-driven approach.

Benefit corporations do, however, act as a testbed of the practical implications of pursuing public interest goals and sustainability outcomes. This already identified need to move beyond principles to a better understanding of practice may also benefit from learning from other organisational models that are not shareholder-owned and pursue primarily public interest objectives.

Board diversity and supply chain considerations, as highlighted in Trends 6 and 7, underscore two essential aspects of boards' sustainability journeys. Board diversity challenges cultural norms in some jurisdictions. Our assessment of its moderate extent illustrates how this trend has in recent years shifted up a gear, not just because of normative pressure but also a greater realisation of the pragmatic necessity for diverse perspectives in addressing complex sustainability issues.

Increased attention to supply chains also signals a shift away from purely focusing on the interests of the firm itself to expanding the attention of the board to wider society and recognising its dependency not just on multiple capitals, but also on the actions and motivations of other economic players, particularly, but not only, in their supply chain. This shift adds an additional layer to any move through the three sustainability approaches as boards navigate between enhanced business risks, legal compliance duties, ethical responsibility, reputational concerns, and potential competitive advantage in the marketplace resulting from more resilient, robust, and efficient supply chain management practices.

Expanding upon the insights gleaned from our investigation of legislative and regulatory sustainability-related trends, the next report in this Future of Board series, Phase One: Part 3, will explore three additional domains of interest:

- Domain 2 – Board practice, including materiality, purpose, strategy and disclosure.
- Domain 3 – Board membership, structure, individuals and dynamics.
- Domain 4 – Stakeholder engagement (including investor interface).

Appendix 1

Legal questionnaire mapping legal trends in support of and obstacles to the integration of sustainability in corporate governance.

Introduction and guidelines

This legal questionnaire aims to investigate the legal and regulatory trends, in selected jurisdictions, that support or hinder the integration of sustainability considerations in corporate decision-making, operations and governance. The comparative analysis of these findings will inform and enrich discussions about the pathways to sustainable corporate governance and serve as a blueprint for incorporating sustainability factors in corporate law, regulations and soft law.

The questions cover mainly the areas of (1) company law, (2) supply chain due diligence, (3) sustainability disclosure requirements, (4) financial law and listing rules, (5) corporate governance codes and stewardship codes.

The legal forms investigated in this questionnaire are private and public companies, as well as 'dual-purpose' companies (both for private and public benefit) where existing. Considering the differences between jurisdictions, for the purpose of this study:

- A private company is defined as a legal entity with independent legal personality, limited liability, share capital, limited transferability of shares, delegated management and investor ownership.
- A public company is defined as a limited liability company that has offered shares to the general public.
- Dual-purpose companies are for-profit legal entities whose purpose, in addition to generating profits, is to reduce negative externalities and produce a positive impact on the environment, society, the workers and the community in which they operate (the so-called 'public benefit').

We kindly ask you to provide answers to the questions below, indicating the exact **references to laws, regulations, case law and other sources mentioned**.

In answering the questionnaire, please refer to the law in force highlighting, if any, recent reforms and any pending legislative or regulatory initiatives likely to promote or hinder sustainability outcomes.

Jurisdiction

1. Company law

1.1 Purpose and directors' duties

1) What is the 'legal purpose' of private companies/public companies according to law/case law in your jurisdiction (eg, pure profit-making purpose, allows the pursuit of both profit and altruistic purposes, etc)?
2) Does the law allow or require companies to state their higher 'purpose' (that goes beyond the profit orientation) in the articles of association and/or bylaws?
3) Are dual-purpose entities (for-profit and for public good/public benefit, such as the benefit corporations) regulated in your jurisdiction? If yes, what are their main features according to the law?

4) What are the duties of directors in your jurisdiction? Are they codified in law or defined by case law?
5) What are the legal effects of failing to fulfil any of these duties? Who may take action to enforce them?
6) To what extent are the duties of directors in your jurisdiction owed to shareholders over all other stakeholders?
7) Are individual directors or boards required or permitted to identify the legal entity's stakeholders and their interests?
8) Are individual directors or boards required or allowed to take into account the impact of corporate decisions and operations on stakeholders? If yes, to what extent do they have discretion in determining how to prioritise different factors affecting these impacts?
9) Does the law regulate CEO and directors' compensation? How?

1.2 Stakeholder engagement

1) Which stakeholders, if any, have a role in the enforcement of the directors' duties?
2) Does the law prescribe any stakeholder engagement mechanisms? If yes, please describe them.
3) Does the law mandate companies to disclose how they engage with their stakeholders? And is that disclosure standardised?

1.3. Board structure

1) Please describe the possible structure of board governance in your jurisdictions (eg, one-tier vs two-tier boards, executive and non-executive directors, etc).
2) Does the law allow individuals to hold at the same time the role of CEO and board chairperson?
3) Are there any legal obligations regarding the representation of specific constituencies on boards (ie, independent directors, employees, representatives of minorities based on gender, race, ethnicity, religion, or others)?
4) Are there any legal rules mandating companies to consider the environmental, social and/or human rights skills and expertise in the directors' nomination and selection process?

1.4. Obstacles and enablers

1) Are there any other company law provisions that promote the integration of sustainability factors into corporate strategy, operations and governance?
2) Are there any company law provisions that constitute an obstacle to integrating sustainability factors into corporate strategy, operations and governance?

2. Supply chain due diligence

1) Are companies/directors legally required to identify and prevent the adverse impacts of their activities – and of activities taking place within their supply chain – on human rights (eg, child labour and exploitation of workers) and/or the environment (eg, pollution and biodiversity loss)?
2) Briefly describe the scope and content of the supply chain due diligence obligations, if existing.

3) Do these due diligence obligations, if existing, apply to business established in other jurisdictions?
4) Are there legal obligations regarding the use of specific templates, guidelines, or standards for meeting supply chain due diligence requirements?
5) Are companies legally required to publicly communicate about their supply chain due diligence/monitoring activities?
6) Is there a regulator/independent authority with the power to verify compliance with the above-mentioned (substantial or disclosure) requirements?
7) What are the legal effects of misrepresentation or failure to fulfil supply chain due diligence requirements?
8) Is it allowed or required to have in place a third-party assurance regime on supply chain due diligence?

3. Sustainability disclosure requirements

1) Do companies have corporate sustainability disclosures/reporting requirements?
2) If yes, please briefly describe the scope and content of any existing or pending sustainability disclosure/reporting requirements.
3) Are there any legal requirements or regulatory guidance mandating companies to align sustainability disclosure/reporting with internationally recognised reporting standards (eg, TCFD [Task Force on Climate-related Financial Disclosures])?
4) Are there any third-party assurance requirements to verify the accuracy of sustainability disclosures?
5) What are the legal effects of misrepresentation or failure to fulfil sustainability disclosure requirements?
6) What are the most relevant disclosure provisions that promote the integration of sustainability factors into corporate strategy, operations and governance?
7) Are there disclosure requirements that constitute an obstacle to integrating sustainability factors into corporate strategy, operations and governance?

4. Financial law/capital markets law/listing rules

1) What are the legal duties that apply to directors and boards of asset owners and investment managers in managing their portfolios? In the interest of whom, legally, should board members of asset owners and investment managers fulfil their duties?
2) Do asset owners and investment managers have legal obligations and discretions to use investment powers to identify, prevent or mitigate sustainability risks?
3) Do asset owners and investment managers have a legal obligation or permission to consider the beneficiaries' interests beyond their financial interests?
4) Are asset owners and investment managers prohibited, required, or permitted to pursue sustainability goals through stewardship activities?
5) Do asset owners and investment managers carry out legal liability to third parties (including asset owners) for negative sustainability impact?

6) Are there any ESG reporting guidelines for listed entities? Please provide details.
7) Do the listing rules of stock exchanges in your jurisdiction require companies and their boards to consider the company's social or environmental impacts?
8) Are there any other provisions of financial law that promote the integration of sustainability factors into corporate strategy, operations and governance?
9) Are there any provisions of financial law that constitute an obstacle to integrating sustainability factors into corporate strategy, operations and governance?

5. Corporate governance codes and stewardship codes

1) Is there a corporate governance code in your jurisdiction? When has it been/will it be enacted/amended? To whom is it applicable?
2) To what extent does the corporate governance code set expectations and provide guidance on the integration of sustainability factors in corporate governance? Please refer to the main relevant provisions.
3) Is there a mandatory requirement to comply with the corporate governance code?
4) Is there a stewardship code in your jurisdiction? When has it been/will it be enacted/amended? To whom is it applicable?
5) To what extent does the stewardship code set expectations and provide guidance on the integration of sustainability factors in stewardship activities? Please refer to the main relevant provisions.
6) Is there a mandatory requirement to comply with the stewardship code?
7) Is there a mandatory requirement to report on compliance with any other specific code of conduct?
    a) Securities Listing Regulations
    b) Financial Instruments and Exchange Act

6. Case studies

1) Please list examples of any landmark cases on sustainability-related matters in your jurisdiction.
2) Please list any companies established in your jurisdiction that, in your view, are leading the way in sustainable corporate governance.

7. Pending legislation

1) Please list below any incoming laws or regulations that might be relevant to the topics above.
2) If so please describe, providing an indication related to the main content, references, and possible date of enactment of the legislation.

Appendix 2

Overview of the legal frameworks in company law.

Jurisdiction	Company law				
	Corporate purpose	Fiduciary duties	Board structure	Stakeholder engagement	Dual-purpose vehicles
Australia	Companies are allowed to pursue both for-profit and altruistic purposes.	Duties primarily owed to the company and for a proper purpose. Historically interpreted as purely profit-making purposes.	One-tier board structure. No requirement on non-executive directors. No legal obligations regarding the representation of specific constituencies.	No mandatory company law stakeholder disclosure or engagement requirements.	Not regulated under Australian law. Corporations Act treats altruistic corporations like any other corporation.
China (PRC)	Statutory purpose is to generate revenue and profit while bearing social responsibilities.	Duties primarily owed to the company, then to the shareholders.	One-tier board structure. No legal obligations regarding the representation of specific constituencies on company boards.	No mandatory company law stakeholder disclosure or engagement requirements.	Not regulated under PRC law.

Colombia	Sharing among partners the dividends generated by the company. Shareholders can pursue altruistic purposes if specified in articles of association or bylaws.	Duties primarily owed to the company, taking the shareholders' interests into account. Duties to workers and ethnic communities enshrined in constitutional case law.	Two-tier board structure for listed corporation. A minimum of five members and no more than ten, with at least 25% independent members.	No mandatory company law stakeholder disclosure or engagement requirements. However, special regime in some cases (eg impact ethnic and indigenous communities).	Benefit corp. legislation enacted in 2018.
EU	Company purpose is not defined in the EU legal texts.	No official definition of fiduciary duty at EU level. However, Art. 25 of the Proposal for a Directive on CSDD affirms that, in fulfilling their duty to act in the best interest of the company, directors must consider the consequences of their decisions for sustainability matters.	40% quota for women among non-executive directors of EU-listed companies and 33% among all directors by 2026 (Women on Boards Directive).	No mandatory company law stakeholder disclosure or engagement requirements.	Not regulated under EU law.

Hong Kong	Companies are allowed to pursue a pure profit-making purpose, purely altruistic purposes, or both (pursuant to the articles of association).	Duties owed to the company (meaning in the interests of all its shareholders, present and future).	One-tier board structure. Independent non-executive directors must represent at least one-third of the board of listed companies. At least one independent non-executive director must have appropriate professional qualifications or accounting or related financial management expertise.	Requirement to include in the directors' report an account of the company's key relationships with the key constituencies that have a significant impact on the company and on which the company's success depends.	Not regulated under HK law.
Japan	Statutory purpose must have some level of commerciality. Altruistic purposes allowed if stated in the articles of association.	Duties primarily owed to the company. However, since the benefits generated by a company are ultimately distributed to its shareholders, the underlying principle is that the duties of directors are owed to shareholders.	One-tier board structure. No legal obligations regarding the representation of specific constituencies on company boards.	No company law stakeholder disclosure or engagement requirements.	Not regulated under Japanese law.
Netherlands	A company can pursue pure profit-making or non-	Directors owe their duties to the company itself.	Generally two-tier model. Law requires at least 30% gender quota on the boards	No. The new version of the Corporate Governance Code changes that in the sense that	Not regulated under Dutch law.

	profit-making purposes.		of public companies with more than 250 employees.	it prescribes reporting on the 'stakeholder dialogue' for listed companies.	
Singapore	A company can pursue pure profit-making or non-profit-making purposes.	Directors owe their duties to the company itself, for the benefit of its members as a whole, having regard to: (1) the long-term consequences of decisions; (2) the interests of the company's employees; (3) the need to foster the company's business relationships with customers, suppliers and others; (4) the impact of the company's operations on the community and the environment; (5) the desire to maintain a reputation for high standards of business conduct; and (6) the need to act fairly between members.	One-tier model. No legal obligations regarding the representation of specific constituencies on company boards.	No company law stakeholder disclosure or engagement requirements.	Not regulated under Singaporean law.

South Africa	Purpose is to make profit.	Duties primarily owed to the company.	One-tier model. No specific constituencies should serve on the board of directors of a company.	No mandatory company law stakeholder disclosure or engagements requirements.	Not regulated under SA law.
Sweden	Statutory purpose of both public and private companies is to make profit. Companies are allowed to pursue altruistic purposes if stated explicitly in the articles of association.	Duties primarily owed to shareholders, pursuing the core purpose of the company (ie to generate profit for its shareholders).	One-tier model. No compulsory quotas for board representation. Employees in most companies with more than 25 employees have the right to elect board members.	No mandatory company law stakeholder disclosure or engagements requirements.	Not regulated under Swedish law.
United Arab Emirates	Statutory purpose is to generate profits for the benefit of its members.	Duties owed to the best interest of the company for the benefit of its shareholders	Both unitary and two-tiered board structures. No legal obligations regarding the representation of specific constituencies on company boards.	No mandatory company law stakeholder disclosure or engagement requirements.	Not regulated under UAE law.

United Kingdom (England & Wales)	Not defined. As a rule of thumb, the purpose of companies is to generate profit for the benefit of its members.	Duties primarily owed to the company for the benefit of its members as a whole, while taking into account the interests of employees and the impact on the community and the environment.	One-tier model. No legal obligations regarding the representation of specific constituencies on company boards.	Section 172 of the Companies Act 2006 requires directors to take into account the company's wider stakeholders beyond its members. All companies (other than exempted small companies) are required to prepare a report to inform members of the company about how directors fulfilled their duty under section 172.	Not regulated under UK law.
United States (Delaware)	Not defined. A company can promote any lawful purpose.	Duties owed to the company and its shareholders.	One-tier model. No legal obligations regarding the representation of specific constituencies on company boards.	No company law stakeholder disclosure or engagement requirements.	Public Benefit Corporation legislation enacted in 2013.

Appendix 3

Overview of the legal frameworks on sustainability disclosure and supply chain due diligence requirements.

Jurisdiction	Sustainability disclosure requirements	Supply chain due diligence requirements
Australia	• The Corporations Act requires companies whose operations are subject to particular and significant environmental regulation to provide details of their environmental performance in annual directors' reports. • Institutions offering financial products with an investment component must disclose the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment.	• The Modern Slavery Act 2018 requires companies carrying on business in Australia and with revenues above the AU$100 million threshold to report on their actions to identify, assess and address the risks of modern slavery in their operations and supply chains. • In contrast to the human rights supply chain due diligence, there is currently no legal requirement for companies to consider the environmental impact carried out by their suppliers.
China (PRC)	• Key pollutant discharging entities must comply with the Measures for the Administration of the Law-based Disclosure of Environmental Information by Enterprises (disclosure includes information on the environmental management of the enterprise, generation and control of pollutants, carbon emissions, etc).	• As of October 2022, no general supply chain due diligence obligations under PRC law.

	• In some cases, bond-issuing enterprises must disclose information on their response to climate change and measures of environmental protection of the projects developed with the proceeds of such financing. • Voluntary sustainability disclosure standards applicable to listed companies regarding relevant information conducive to protecting the ecology, preventing pollution and fulfilling environmental responsibility.	
Colombia	• No disclosure requirement for closed corporations. Yet, resolutions issued by the Financial Superintendency create ESG disclosure requirements for listed corporations. Certain corporations are required to publish sustainability reports according to the TCFD Standard and the SASB Value Reporting Foundation (VRF) Standard.	• As of October 2022, no general supply chain due diligence obligations under Colombian law.
EU	• The Corporate Sustainability Reporting Directive requires certain firms to regularly disclose information on their societal and environmental impact. The Directive enhances the Non-Financial Disclosure Directive by introducing more detailed reporting	• The European Commission's proposal for a Directive on Corporate Sustainability Due Diligence aims to establish a corporate due diligence duty for certain large companies to identify, prevent and mitigate negative social and environmental impacts in

	requirements on companies' impact on the environment, human rights and social standards, in line with the EU's climate goals. The Commission will adopt the first set of standards by June 2023.	corporate operations and supply chains, and to ensure that business strategy is aligned with the Paris Agreement.
Hong Kong	• Unless exempt, companies are required to include a discussion on the company's environmental policies and performance in the business review section of the directors' report. • Listed companies are required to publish annual ESG reports including specified mandatory disclosures and requiring other disclosures on a 'comply or explain' basis (set out in the ESG Reporting Guide). • Enhanced ESG reporting requirements and guidelines for trusts and mutual funds.	• No general supply chain due diligence obligations. For listed companies, the ESG Reporting Guide attached to the Listing Rules requires listed companies to disclose policies on emissions, measures undertaken to prevent child and forced labour, and policies on managing environmental and social risks in the supply chain.
Japan	• No mandatory disclosure/reporting requirements specific to corporate sustainability. As of October 2022, the Government was discussing making climate change disclosures mandatory in the annual securities report. Although no specific bill of amendment to the applicable law has been drafted, it has been announced that the government is aiming to	• No general supply chain due diligence requirements. However, the Japanese Government published a National Action Plan on Business and Human Rights in 2020 based on the UN Guiding Principles on Business and Human Rights, which sets out expectations on companies to (i) establish a human rights policy; (ii) conduct human rights due diligence; and (iii) provide remedies when

	legislate climate change disclosure requirements in time for application to annual securities reports to be filed in FY 2023.	business enterprises cause or contribute to adverse human rights impacts. Furthermore, the Ministry of Economy, Trade and Industry issued in August 2022 a working draft of *Guidelines on Respect for Human Rights in Responsible Supply Chains*, which promotes human rights due diligence.
Netherlands	• The Dutch Civil Code requires the board's statement in the annual report to include a statement on non-financial performance indicators. • The Non-Financial Reporting Directive (NFRD) is currently applicable in the Netherlands and imposes an obligation on around 100 companies in the Netherlands to publish reports on the policies they implement in relation to social responsibility and treatment of employees; respect for human rights; anti-corruption and bribery; and diversity on company boards (in terms of age, gender, educational and professional background). • Under the NFRD, if in-scope entities (large, listed companies, banks and insurance companies – 'public interest companies' – with more than 500 employees) do not follow the policies relating to the items in the non-financial statement, a clear and	• In 2019, the Dutch Senate adopted a bill seeking to introduce a due diligence obligation for companies bringing goods or services onto the Dutch market with respect to the use of child labour in their supply chains. It was passed and was expected to enter into force in 2022. As of January 2023, this had not yet happened. • The Dutch Government has announced that it is working on a national proposal for mandatory due diligence obligations, planned to be presented to Parliament in the summer of 2023.

	reasoned explanation must be provided in the management report. • The NFRD is the predecessor of the upcoming Corporate Sustainability Reporting Directive (CSRD), which is expected to impose this obligation on some thousands of companies. • The NFRD has no actual sanctions in case of non-compliance. The CSRD will contain potential penalties for non-compliance. • A best practice provision in the Dutch Corporate Governance Code 2022 requires the management board to report on sustainability in the management report.	
Singapore	• All listed companies must provide climate reports as integrated into their sustainability reporting on a 'comply or explain' basis. Climate reporting will subsequently be mandatory for issuers in the (i) financial, (ii) agriculture, food and forest products, and (iii) energy industries from FY 2023. The (iv) materials and buildings, and (v) transportation industries must do the same from FY 2024.	• As of October 2022, there were no specific obligations under Singaporean law.

	• For climate-related disclosures, the listed issuer should report based on the TCFD recommendations. • Failure to comply with listing rule requirements impacts the assessment on the issuer's suitability of listing.	
South Africa	• No mandatory duty to provide disclosures on environmental, social and corporate governance. • Companies listed on the Johannesburg Stock Exchange (JSE) are subjected to general disclosure obligations under the JSE Listings Requirements, which apply to financially material ESG issues. These require listed companies to set out how the organisation's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value in the short, medium and long term.	• As of October 2022, there were no specific obligations under South African law.
Sweden	• Pursuant to the Annual Report Act, the directors' report of an undertaking meeting certain conditions shall contain a sustainability report disclosing all the information necessary to understand the undertaking's development, financial position, or results and which is relevant for the	• As of October 2022, there were no general supply chain due diligence obligations under Swedish law.

	operations in question, including information regarding environmental and personnel issues, human rights, and anticorruption issues. The EU NFRD was incorporated into Swedish law through the Annual Report Act.	
United Arab Emirates	Pursuant to the Securities and Commodities Authorities Code, public joint stock companies must publish non-financial information in an annual sustainability report or integrate non-financial disclosures in their annual reports. The sustainability report should reflect the company's long-term strategy and its impacts on the environment, society, the economy and governance.	• No general supply chain due diligence obligations under UAE law. However, the Ministry of Economy issued in 2022 the Due Diligence Regulations for Responsible Sourcing of Gold, which adopt the OECD principles. The policy introduces due diligence obligations for gold refiners to combat crime in their supply chain. In-scope entities are required to set up internal systems and strategies to identify, assess and respond to crime-related supply chain risks and periodically report. In-scope entities are also required to carry out independent third-party reviews of their due diligence practices.
United Kingdom (England & Wales)	• Pursuant to the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022, certain companies and limited liability partnerships (LLPs) must disclose information following the TCFD Standard to enable users to understand the	• The Modern Slavery Act 2015 (MSA) requires organisations to prepare a statement identifying the steps they have taken to ensure that slavery and human trafficking are not taking place in its business or in its supply chain. Due diligence obligations also exist in relation to the protection

	systems and processes in place that allow risks and opportunities associated with climate change to be mapped, assessed and managed. • UK Streamlined Energy and Carbon Reporting: certain large companies and LLPs must provide in their directors' report disclosures on greenhouse gas emissions and energy consumption. • The proposed UK Sustainability Disclosure Requirements (SDRs) are intended to streamline and integrate sustainability reporting requirements for corporate and financial institutions under the same framework.	of the environment, however this is limited to those placing on the market certain raw materials and products.
United States (Delaware)	• The Delaware Certification of Adoption of Transparency and Sustainability Standards Act adopted in 2018 established a voluntary sustainability disclosure regime that allows reporting entities that opt in to create their own sustainability standards and assessment measures – or rely on tailored third-party standards – to obtain a certification of adoption of transparency and sustainability standards from the Delaware Secretary of	• As of December 2022, there were no Delaware supply chain due diligence obligations, but the federal Uyghur Forced Labor Prevention Act introduced substantive supply chain due diligence obligations. The proposed Slave-Free Business Certification Act of 2022, if passed, would strengthen the supply chain due diligence regime by requiring listed companies in the mining or manufacturing sector with an annual worldwide turnover of more than US$500 million to audit their supply chains for the

	State. No sanctions for compliance failure.	presence or use of forced labour. The pending Corporate Governance Improvement and Investor Protection Act would introduce further disclosure requirements on supply chain integrity for listed companies.

Appendix 4

Key sustainability-linked provisions in corporate governance codes.

Country	Last revision	Key sustainability-related provisions
Australia	2019	• Recommendation 1.5: "A listed entity should have and disclose a diversity policy; through its board or a committee of the board set measurable objectives for achieving gender diversity in the composition of its board, senior executives and workforce generally; and disclose in relation to each reporting period the measurable objectives set forth at period to achieve gender diversity". • Recommendation 3.1: "A listed entity should articulate, disclose its values, and consider what behaviours are needed from its officers and employees to build long term sustainable value for its security holders". • Recommendation 7.4: "A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks".
China	2018	• "The board of directors [...] shall treat all the shareholders equally and shall be concerned with the interests of stakeholders" (Art. 43). • "A listed company shall actively cooperate with its stakeholders and jointly advance the company's sustained and healthy development" (Art. 82). • "A company shall provide the necessary conditions to ensure the legitimate rights of stakeholders. Stakeholders shall have opportunities and channels for redress of infringement of rights" (Art. 83).

		• "While maintaining the listed company's development and maximizing the benefits of shareholders, the company shall be concerned with the welfare, environmental protection and public interests of the community in which it resides and shall pay attention to the company's social responsibilities" (Art. 86).
Colombia	N/A	N/A
Hong Kong	2022	• "The entire board should be focusing on creating long-term sustainable growth for shareholders and delivering long-term values to all stakeholders" (p. 2). • "The board should be responsible for effective governance and oversight [...], assessment and management of material environmental and social risks. Issuers are required to disclose environmental and social matters in ESG reports in accordance with the ESG Reporting Guide" (p. 2). • The issuer should disclose its policy on board diversity "including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives" The issuer should also "disclose and explain (i) how and when gender diversity will be achieved in respect of the board, (ii) the numerical targets and timelines set for achieving gender diversity on its board; and (iii) what measures the issuer has adopted to develop a pipeline of potential successors to the board to achieve gender diversity" (Part 1-J). • "The board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer's business" (Part 2-B.1). • The issuer should disclose its shareholders' communication policy (or its summary), which should include "steps taken to solicit and understand the views of shareholders and stakeholders" (Part 1-L(b)).

Japan	2021	• General Principle 2: "Companies should fully recognize that their sustainable growth and the creation of mid- to long-term corporate value are brought about as a result of the provision of resources and contributions made by a range of stakeholders, including employees, customers, business partners, creditors and local communities. As such, companies should endeavour to appropriately cooperate with these stakeholders. The board and the management should exercise their leadership in establishing a corporate culture where the rights and positions of stakeholders are respected and sound business ethics are ensured". • Principle 2 Note: "Moreover, given that the Sustainable Development Goals (SDGs) were adopted at the United Nations Summit and the number of organizations supporting the recommendation of the FSB's Task Force on Climate-related Financial Disclosure (TCFD) has increased, there is a growing awareness that sustainability (mid-to long-term sustainability including ESG factors) is an important management issue from the perspective of increasing mid- to long-term corporate value." • Principle 2.3: Companies should take appropriate measures to address sustainability issues, including social and environmental matters. • Principle 2.3.1: The board should recognise that dealing with sustainability issues, such as taking care of climate change and other global environmental issues, respect of human rights, fair and appropriate treatment of the workforce including caring for their health and working environment, fair and reasonable transactions with suppliers, and crisis management for natural disasters, are important management issues that can lead to earning opportunities as well as risk mitigation, and should further consider addressing these matters positively and proactively in terms of increasing corporate value over the mid-to long-term.

		• Principle 2.4: Companies should promote diversity of personnel, including active participation of women. • Principle 3.1.3: Companies listed on the Prime Market should collect and analyze the necessary data on the impact of climate change-related risks and earning opportunities on their business activities and profits and enhance the quality and quantity of disclosure based on the TCFD recommendations, which are an internationally well-established disclosure framework, or an equivalent framework. • Principle 4.2.2: The board should develop a basic policy for the company's sustainability initiatives from the perspective of increasing corporate value over the mid- to long-term.
Netherlands	2022	• Principle 1.1: Long-term value creation: The management board is responsible for the continuity of the company and its affiliated enterprise. The management board focuses on long-term value creation for the company and its affiliated enterprise, and takes into account the stakeholder interests that are relevant in this context. The supervisory board monitors the management board in this. • Principle 1.1. Explanatory note: "The management board is responsible for creating long-term value in a sustainable manner, taking into account the effects of the actions of the company and its affiliated enterprise on people and the environment. Long-term sustainability is the key consideration when determining strategy and making decisions, and stakeholder interests are taken into careful consideration." • Principle 1.1.1: Long-term value creation strategy: "The management board should develop a view on long-term value creation by the company and its affiliated enterprise and should formulate a strategy in line with this. When developing the strategy, attention should in any event be paid to the following: […]the

		impact of the company and its affiliated enterprise in the field of sustainability, including the effects on people and the environment; vii. paying a fair share of tax to the countries in which the company operates; and viii. the impact of new technologies and changing business models." • Principle 1.1.5: Dialogue with stakeholders: "To ensure that the interests of the relevant stakeholders of the company are considered when the sustainability aspects of the strategy are determined, the company should draw up an outline policy for effective dialogue with those stakeholders. The relevant stakeholders and the company should be prepared to engage in a dialogue. The company should facilitate this dialogue unless, in the opinion of the management board, this is not in the interests of the company and its affiliated enterprise. The company should publish the policy on its website." • Principle 2.1: Composition and size: "The management board, the supervisory board and the executive committee (if any) should be composed in such a way as to ensure a degree of diversity appropriate to the company with regard to expertise, experience, competencies, other personal qualities […]." • Principle 2.1.5: Diversity Policy: "The supervisory board should draw up a diversity policy for the composition of the management board, the supervisory board and, if applicable, the executive committee. The policy should address the concrete targets relating to diversity and the diversity aspects relevant to the company, such as nationality, age, gender, and education and work background". • Principle 2.1.6: Accountability about diversity: "The corporate governance statement should explain the diversity policy and the way that it is implemented in practice, addressing: i. the policy objectives; ii. how the policy has been implemented; and iii. the results of the policy in the past financial year".

Singapore	2018	• Introduction (Article 1): "Corporate governance refers to having the appropriate people, processes and structures to direct and manage the business and affairs of the company to enhance long-term shareholder value, whilst taking into account the interests of other stakeholders" • Introduction (Article 5): "A sustainably successful company is good for myriad stakeholders: employees, suppliers, customers, shareholders, as well as society at large" • Principle 2: "The Board has an appropriate level of independence and diversity of thought and background in its composition to enable it to make decisions in the best interests of the company." • Principle 2.4: "The Board and board committees are of an appropriate size, and comprise directors who as a group provide the appropriate balance and mix of skills, knowledge, experience, and other aspects of diversity such as gender and age, so as to avoid groupthink and foster constructive debate. The board diversity policy and progress made towards implementing the board diversity policy, including objectives, are disclosed in the company's annual report." • Principle 3.1: "The Chairman and the Chief Executive Officer ('CEO') are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making."
South Africa	2016	• Principle 4: "The governing body of an organisation should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development are

		all inseparable elements of the value creation process." • Principle 7: "The board should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively." • Principle 16: "In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time."
Sweden	2020	• Art. 3: "The board of directors is to manage the company's affairs in the interests of the company and all its shareholders and to ensure and promote a good company culture." • Art. 3.1: "The principal tasks of the board of directors include [...] identifying how sustainability issues impact risks to and business opportunities for the company; defining appropriate guidelines to govern the company's conduct in society, with the aim of ensuring its long-term value creation capability." • Art. 9.4: "Variable remuneration is to be linked to predetermined and measurable performance criteria aimed at promoting the company's long-term value creation." • Art. 10: "The boards of certain companies are to provide annually, in a sustainability report made available on the company's website, the information to shareholders and the capital market on sustainability issues that is necessary for an understanding of the company's development,

		position and results, as well as the environmental impact of its operations." • Art. 10.4: "Companies which are legally required to publish a sustainability report and companies which voluntarily publish such a report are to make available on their websites the ten most recent years' sustainability reports, along with that part of the auditor's report which covers the sustainability report or the auditor's written statement on the sustainability report."
United Arab Emirates	2021	The SCA Code places duties on the boards of directors of public joint stock companies (PJSCs) to ensure compliance with the Code. The requirements under the SCA Code include the following: • the board must set a policy towards the local community and environment, and must ensure a balance between the objectives of the company and those of the community to promote the socio-economic conditions of the community • the board is obliged to prepare and disclose an 'integrated report' (either as a stand-alone report or (more commonly) as a section of the company's annual report) which addresses, among other things, social and sustainable activities of the company • a 'comply or explain' obligation to achieve a minimum 20% female representation on all PJSC boards • an obligation to ensure boards maintain an appropriate balance of experience, diversity and independence and to implement an ongoing training and development programme for board members • an obligation on boards to set policies on gender diversity and a set of actions to meet those objectives

		• a general obligation on the board to perform its goals in creating sustainable value for shareholders, taking into account other stakeholder interests • an obligation to set procedures to apply governance principles across the group and to review those provisions on an annual basis • an obligation to implement a mechanism for engagement with stakeholders and enabling accountability of the board towards stakeholders.
United Kingdom (England & Wales)	2018	• Provision 1: A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society. • Provision 18: The board should set out in the papers accompanying the resolutions to elect each director the specific reasons why their contribution is, and continues to be, important to the company's long-term sustainable success. • Provision 23: The annual report should describe the work of the nomination committee, including [...] the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and the gender balance of those in the senior management and their direct reports. • Principle 5: The board should understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in section 172 of the Companies Act 2006 have been considered in board discussions and decision-making.

United States (Delaware)	N/A	N/A

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United Kingdom (England & Wales)

Financial Reporting Council. *The UK Corporate Governance Code*. Financial Reporting Council, 2018. https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf.

Appendix 5

Key sustainability-linked provisions in stewardship codes

Country	Last revision	Provisions
Australia	2018	• Stewardship is defined as "the responsibility asset owners have to exercise their ownership rights to protect and enhance long-term investment value for their beneficiaries by promoting sustainable value creation in the companies in which they invest". • Principle 5: "Asset owners should encourage better alignment of the operation of the financial system and regulatory policy with the interests of long-term investors".
China	N/A	N/A
Colombia	N/A	N/A
Hong Kong	2016	• Principle 2.17: "Investors should encourage their investee companies to have policies on environmental, social and governance (ESG) issues and engage with investee companies on significant ESG issues that have the potential to impact on the companies' goodwill, reputation and performance". • Principle 6: "To discharge their ownership responsibilities investors should engage with the companies in which they invest to promote the long-term success of these companies".
Japan	2020	• The Principles of the Code aim to "promote sustainable growth of the investee company and enhance the

		medium- to long-term investment return of clients and beneficiaries." • Principle 1.1: "Stewardship responsibilities" are defined as the responsibilities of institutional investors to enhance the medium- to long-term investment return for their clients and beneficiaries, including by considering sustainability (medium- to long-term sustainability including ESG factors. • Principle 1.2: "Institutional investors should clearly specify how they take the issues of sustainability into consideration in their policy, consistent with their investment management strategies." • Principle 3: "Institutional investors should monitor investee companies so that they can appropriately fulfil their stewardship responsibilities with an orientation towards the sustainable growth of the companies" • Principle 5: The voting policy "should be designed to contribute to the sustainable growth of investee companies." • Principle 7: "To positively contribute to the sustainable growth of investee companies, institutional investors should develop skills and resources to appropriately engage with the companies based on in-depth knowledge of the investee companies and their business environment and consideration of sustainability consistent with their investment management strategies"."
Netherlands	2018	• Principle 1: "The stewardship policy should aim at preserving and enhancing value for their beneficiaries and/or clients, and should promote long-term value creation." • Guidance principle 2: In assessing "long-term value creation opportunities, risks, strategy and performance, "it is critical to consider environmental (including climate change risks and opportunities), social and governance

		information (including board composition and diversity) besides financial information" • Principle 3: "Asset owners and asset managers monitor their Dutch listed investee companies on material issues, including, but not limited to, the company's business model for creating long-term value […] social and environmental impact, corporate governance and corporate actions such as mergers and acquisitions".
Singapore	2022	• The Code defines active ownership and engagement as "the use of investors' rights to shape better corporate behaviour and support positive environmental, social and governance (ESG) practices to sustain long-term value creation". • The principles aim at providing "guidance to investors towards fostering good stewardship in discharging their responsibilities and creating sustainable long-term value for all stakeholders". • Guidance principle 1.2: Responsible investors should "clearly articulate policies concerning investors' responsibilities and how sustainable value creation is promoted". • Guidance principle 1.4: Responsible investors should "disclose the extent to which ESG factors are integrated into the investment process, and the ways in which ESG factors are considered. In doing so, asset managers may wish to refer to the Guidelines on Environmental Risk Management for Asset Managers". • Guidance principle 3.2: Responsible investors should "engage with investee companies on a range of topics, including strategy, long-term performance, risk, financials, sustainability, culture, remuneration, corporate governance and other ESG considerations.

South Africa	2022	• Objective No. 4: "To cultivate integrated thinking throughout the investment industry, through building capacity in the six capitals (financial, manufactured, intellectual, human, social, and natural), and understanding of the triple context of society, economy, and environment within which businesses operate, as well as their relevance on the impacts on the six capitals" (financial, manufactured, intellectual, human, social and relationships, natural). • Objective No. 6: The Code also seeks to "promote the development and implementation of green and sustainability-oriented investments and investment vehicles that address ESG issues". • Principle 1: "Investment arrangements and activities should reflect a systematic approach to integrating material environmental, social and governance (ESG) factors". • Principle 5: "Investment organisations should ensure disclosures are meaningful, timeous and accessible to enable stakeholders to make informed assessments of progress towards the achievement of positive outcomes".
Sweden	2019	• "The Association recommends that the fund management company endeavours to ensure that the companies in which the fund invests are managed sustainably and responsibly, have well composed boards of directors with skills, diversity and gender equality and that they otherwise satisfy the requirements stated in the Swedish Corporate Governance Code." • "The fund legislation provides that the principles for shareholder engagement must demonstrate how the fund management company integrates the shareholder engagement in its investment strategy. The principles must describe how the fund management company monitors relevant issues regarding portfolio companies' strategies, financial and non-financial results and risks, capital structure social and environmental impact and

		corporate governance; maintains dialogues with representatives of portfolio companies; exercises voting rights and other rights attached to the shareholding; cooperates with other shareholders; communicates with relevant stakeholders in portfolio companies; and manages actual and potential conflicts of interest" • "The Association also believes that shareholder engagement is relevant irrespective of whether the fund is managed actively or passively and irrespective of whether specific sustainability issues are taken into account"
UEA	N/A	N/A
United Kingdom (England & Wales)	2020	• Principle 1: Clarifies that the purpose of stewardship is to "create long-term value for clients and beneficiaries, leading to sustainable benefits for the economy, environment and society". • Principle 5: "Signatories support clients' integration of stewardship and investment, taking into account material environmental, social and governance issues…". • Principle 7: "Signatories systematically integrate stewardship and investment, including material ESG issues, and climate change, to fulfil their responsibilities"
United States (Delaware)	N/A	N/A

Stewardship codes.

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Netherlands

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Hong Kong

Hong Kong Securities and Futures Commission. *Principles of Responsible Ownership*. Securities and Futures Commission, 2016. https://www.sfc.hk/en/Rules-and-standards/Principles-of-responsible-ownership.

Japan

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Singapore

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South Africa

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Sweden

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United Kingdom (England & Wales)

Financial Reporting Council. *The UK Stewardship Code*. Financial Reporting Council, 2020. https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Final2.pdf.

Endnotes

[1] ISO, *ISO 37000:2021 Governance of organizations – Guidance,* (ISO, 2021), https://committee.iso.org/ISO_37000_Governance.

[2] Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Random House Business, 2017).

[3] Beate Sjåfjell and Christopher M. Bruner, eds, *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge: Cambridge University Press, 2020), https://doi.org/10.1017/9781108658386

[4] Sjåfjell and Bruner, eds, *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability.*

[5] Companies in the UAE can be established as mainland ('onshore') entities in an Emirate or in one of the many free zones (approximately 30–40 across the country). Each of the free zones has its own limited regulations, which default to the mainland laws. The exceptions to this rule are the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), which have their own relatively sophisticated legal and court systems based on English law. Where relevant, our findings refer to the mainland UAE, DIFC and ADGM regimes.

[6] There is a great deal of fluidity in the classification of legal systems, and this remains a contested topic in legal scholarship: Husa Jaakko, "Classification of Legal Families Today. Is it time for a memorial hymn?" *Revue internationale de droit comparé* 56, no. 1,2004: 11–38; Husa Jaakko, "Legal Families," in *Elgar Encyclopedia of Comparative Law*, Second Edition, ed. Jan M. Smits (Cheltenham, UK: Edward Elgar Publishing Limited, 2012), 382 ss.

[7] Delaware also has a well-established and extensive body of case law on corporate matters, as well as a respected court system which includes, in particular, the Court of Chancery, Delaware's corporations court. For more information, see: Lewis S. Black, Jr., *Why Corporations Choose Delaware* (Delaware Department of State Division of Corporations, 2007), https://corpfiles.delaware.gov/pdfs/whycorporations_english.pdf; Lawrence A. Hamermesh, "The Policy Foundations of Delaware Corporate Law," *Columbia Law Review* 106, no. 7 (2006): 1749–1792.

[8] "Annual Report Statistics: A Message from the Secretary of State Jeffrey W. Bullock," Delaware Division of Corporations, accessed [[March 10, 2023]], https://corp.delaware.gov/stats/.

[9] For instance, the intersection between sustainability and competition law is an increasingly debated topic in the OECD and the EU. See for example: OECD, *Sustainability and Competition*, *OECD Competition Committee Discussion Paper* (OECD 2020), http://www.oecd.org/daf/competition/sustainability-and-competition-2020.pdf; Jurgita Malinauskaite, "Competition law and sustainability: EU and national perspectives," *Journal of European Competition Law & Practice* 13, no. 5 (July 2022): 336–348, https://doi.org/10.1093/jeclap/lpac003. Sustainability-related themes are also relevant in takeover law where boards are experimenting with using ESG factors as possible defence strategies against hostile takeovers. For example, in 2021, a French-based utility company used ESG factors in its defence against a hostile bid from Veolia, claiming that the takeover would harm the purpose of the company, which is not limited to defending shareholders' interests, but takes into account wider social and environmental factors; eg Nicola Bonucci, "Employing ESG to defend against hostile takeovers," Bloomberg Law, March 24, 2021, https://news.bloomberglaw.com/esg/employing-esg-to-defend-against-hostile-takeovers

[10] The community interest company (CIC) model in the UK has two forms, either limited by guarantee or by shares. In the former case, profit distribution is limited.

[11] These dual-purpose legal forms are one of the legal structure options that can be adopted by companies subscribing to the Purpose-driven logic.

[12] Anne-Claire Pache and Filipe Santos, "Inside the hybrid organization: Selective coupling as a response to competing institutional logics," *The Academy of Management*

[13] Kevin Levillain, Blanche Segrestin, and Armand Hatchuel, "Profit-with-purpose corporations. An innovation in corporate law to meet contemporary CSR challenges," in *The Oxford handbook of corporate social responsibility: Psychological and organizational perspectives*, eds Abagail McWilliams, Deborah E. Rupp, Donald S. Siegel, Günter K. Stahl, and David A. Waldman (Oxford University Press, 2018), 490.

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[15] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot* (London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of

Economics and Political Science, 2022), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/08/Global-trends-in-climate-change-litigation-2022-snapshot.pdf

[16] In 2018, the UK introduced corporate governance principles for large private companies, signalling that they too fall into the scope of the rising corporate governance standards. The trend is predicted to continue by encompassing smaller companies too. Financial Reporting Council, *The Wates corporate governance principles for large private companies*, (Financial Reporting Council, 2018), https://www.frc.org.uk/getattachment/31dfb844-6d4b-4093-9bfe-19cee2c29cda/Wates-Corporate-Governance-Principles-for-LPC-Dec-2018.pdf.

[17] 'Double materiality' is the idea that "companies should report information necessary to understand how sustainability matters affect them, and information necessary to understand the impact they have on people and the environment". Reporting on the implications of sustainability issues for financial risks is known as 'financial materiality', whereas reporting on corporate impacts on people and the environment is referred to as 'impact materiality'. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

[18] Code of Conduct for ESG data and ratings providers," Financial Conduct Authority, November 22, 2022, https://www.fca.org.uk/news/news-stories/code-conduct-esg-data-and-ratings-providers.

[19] "Corporate Governance Codes and Scorecards," International Finance Corporation, May 2019, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/topics/codes+and+scorecards; Dionysia Katelouzou and Dan W. Puchniak, eds, *Global Shareholder Stewardship: Complexities, Challenges and Possibilities*, (Cambridge University Press, 2021).

[20] Katelouzou and Puchniak, *Global Shareholder Stewardship*.

[21] Michele Siri and Shanshan Zhu, "Integrating Sustainability in EU Corporate Governance Codes," in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, eds Danny Busch, Guido Ferrarini, and Seraina Neva Grünewald (Palgrave Macmillan, 2021), 175–224.

[22] Institute of Directors Southern Africa, *King IV Report on Corporate Governance for South Africa, 2016* (Institute of Directors Southern Africa, 2016), https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf.

[23] Within that context, it is worth noting that Chapter 9 of King Code III dealt with integrated reporting (IR) and disclosure. In 2010, the Johannesburg Stock Exchange (JSE) required listed companies to adopt IR as set out in the King Code. However, as affirmed by a JSE Guidance Letter dated 27 June 2013, the production of an integrated report was not a mandatory principle in terms of the JSE listing requirements, and listed companies were advised to adopt IR on an 'apply or explain' basis.

[24] Johannesburg Stock Exchange, *Listing Requirements*, Article 3.84, (JSE Limited, 2019), https://www.jse.co.za/sites/default/files/media/documents/2019-04/JSE%20Listings%20Requirements.pdf

[25] Institute of Directors Southern Africa, *King IV Report*, 47.

[26] Institute of Directors Southern Africa, *King IV Report*, 50.

[27] Institute of Directors Southern Africa, *King IV Report*, 71.

[28] Swedish Corporate Governance Board, *The Swedish Corporate Governance Code* (Swedish Corporate Governance Board, 2019), 17, http://www.corporategovernanceboard.se/UserFiles/Koden/2020/The_Swedish_Corporate_Governance_Code_1_January_2020_00000002.pdf.

[29] Swedish Corporate Governance Board, *The Swedish Corporate Governance Code*, 12.

[30] UK Financial Reporting Council, *The UK Corporate Governance Code* (UK Financial Reporting Council, 2018),

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[32] Dutch Corporate Governance Code Monitoring Committee, *The Dutch Corporate Governance Code*, 10.

[33] Dutch Corporate Governance Code Monitoring Committee, *The Dutch Corporate Governance Code*, 6.

[34] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (ASX Corporate Governance Council 2019), 16, https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf

[35] ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations*.

[36] United Arab Emirates Securities and Commodities Authority, *The Governance Guide for Public Joint-Stock Companies* (Securities and Commodities Authority, 2020), https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx.

[37] Government of Dubai, Department of Economic Development, *The Corporate Governance Code for Small and Medium Enterprises: Building the Foundations for Growth and Sustainability* (Department of Economic Development), https://sme.ae/SME_File/Files/Code_of_Corporate_Governance_for_Dubai_SMEs.pdf.

[38] European Corporate Governance Institute, *Chinese Code of Corporate Governance for Listed Companies* (European Corporate Governance Institute), 14, https://ecgi.global/sites/default/files/codes/documents/code_of_cg_china_eng.pdf.

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[283] Eg Ionel Zamfir, *Towards a mandatory EU system of due diligence for supply chains* (European Parliamentary Research Service, October 2020), https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf; In the EU, the Commission released in 2020 a study on due diligence requirements through supply chains concluding that the voluntary approach is insufficient. European Commission, Directorate-General for Justice and Consumers, Francisca Torres-Cortés, Camille Salinier, Hanna Deringer, et al, *Study on due diligence requirements through the supply chain*: Final report (European Commission, 2020), https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en.

[284] Under the UN Guiding Principles on Business and Human Rights, companies have a responsibility to undertake human rights due diligence. However, analyses showcase low levels of corporate commitment and implementation of existing standards. For instance, the World Benchmarking Alliance's *Corporate Human Rights Benchmark* report showed that only 11 per cent of companies in a sample of 127 world-leading companies actively work with suppliers on key human rights issues, such as child and forced labour or living wages. Furthermore, just 2 per cent of these companies have metrics on the constituencies affected by these issues in their supply chains and disclose progress. World Benchmarking Alliance, *Corporate Human Rights Benchmark 2022 Insights Report* (World Benchmarking Alliance, 2022), https://assets.worldbenchmarkingalliance.org/app/uploads/2022/11/2022-CHRB-Insights-Report_FINAL_23.11.22.pdf.

[285] US legislation focused on extractive industries – US 2010 Dodd-Frank Act Section 1502; UK Modern Slavery Act 2015, https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted. The EU has also adopted binding legislation and voluntary initiatives to address human rights and environmental violations in the sectors traditionally worst affected, such as the extractive industries, timber, garment and leather industries. Eg Regulation (EU) No 995/2010 of the European Parliament and of the Council laid down the obligations of operators who place timber and timber products on the EU market and entered into force in March 2013, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0821.

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[288] United States Congress, Trade Facilitation and Trade Enforcement Act of 2015, https://www.congress.gov/bill/114th-congress/house-bill/644.

[289] United States Congress. H.R.1155 – Uyghur Forced Labor Prevention Act, https://www.congress.gov/bill/117th-congress/house-bill/1155/text.

[290] United States Congress, Slave-Free Business Certification Act of 2022, https://www.congress.gov/bill/117th-congress/senate-bill/3578?q=%7B%22search%22%3A%5B%22Licensing%22%2C%22and%22%2C%22registrations%22%5D%7D&s=1&r=73.

[291] UK Modern Slavery Act 2015, https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted.

[292] In 2021, the Modern Slavery (Amendments) Bill was introduced to the House of Lords, which would make it a criminal offence to supply a false Slavery and Human Trafficking Statement, introduce minimum disclosure and transparency requirements and prohibit companies using supply chains which failed to meet the minimum standards of transparency. However, this bill is still pending.

[293] Dutch Child Labour Due Diligence Law (in Dutch), https://zoek.officielebekendmakingen.nl/stb-2019-401.html.

[294] Australian Government, Modern Slavery Act 2018, https://www.legislation.gov.au/Details/C2018A00153.

[295] Linklaters, *ESG Legal Outlook 2022* (Linklaters 2022), https://lpscdn.linklaters.com/-/media/digital-marketing-image-library/files/01_insights/publications/year-in-review-year-to-come/2021---2022/legal-topics/linklaters_esg-legal-outlook-2022_january-2022.ashx?rev=aabaef0c-fc6f-4285-9b7c-862d9c6807a9&extension=pdf&hash=4DBC69561C2DCA13853723966D75FC8D.

[296] United Arab Emirates Ministry of Economy, *Due Diligence Regulations for Responsible Sourcing of Gold* (United Arab Emirates Ministry of Economy, 2022), https://www.moec.gov.ae/en/diligence-regulations-for-responsible-sourcing-of-gold?p_l_back_url=%2Fen%2Fsearch-results%3Fq%3DMinistory%2520of%2520Economy%26delta%3D8%26start%3D31.

[297] Livia Ventura, "Corporate Sustainability Due Diligence and the New Boundaries of the Firms in the European Union," forthcoming in *European Business Law Review* (category A review), 2023.

[298] France, Law no. 2017-399 of 27 March 2017 relative to the duty of vigilance (in French), https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626.

[299] The law applies to companies with over 5,000 employees in France and over 10,000 in the world.

[300] Daniel H. Sharma and Franz Kaps, *German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz) – New standard for human rights and environmental due diligence for global supply chains* (DLA Piper, 2021), https://www.dlapiper.com/en-us/insights/publications/2021/09/german-supply-chain-act-lieferkettensorgfaltspflichtengesetz.

[301] Companies based in Germany with more than 3,000 employees, or German-registered branches of foreign companies with more than 3,000 employees.

[302] eg Regulation (EU) No 995/2010 of the European Parliament and of the Council laid down the obligations of operators who place timber and timber products on the EU market and entered into force in March 2013.

[303] See European Commission et al., *Study on due diligence requirements*.

[304] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, of 23 February 2022, COM(2022) 71, 2022/0051 (COD). On the issue see Ventura, *Corporate Sustainability Due Diligence*.

[305] Large EU limited liability companies: Group 1: +/- 9,400 companies – 500+ employees and net EUR150 million+ turnover worldwide. Group 2: +/- 3,400 companies in high-impact sectors – 250+ employees and net EUR40+ million turnover worldwide, and operating in defined high-impact sectors, eg textiles, agriculture, extraction of minerals. Non–EU companies: +/- 2,600 companies in Group 1 and +/- 1,400 in Group 2 Third country companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU. Source: "Corporate sustainability due diligence: Fostering sustainability in corporate governance and management systems," European Commission, 2022, https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en.

[306] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence art. 7 and 8.

[307] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence art. 7.2 a) and 8.3 b).

[308] European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence art. 7.2 c) and 8.3 d).

[309] Article 15 of the proposed Directive states that "Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 C in line with the Paris Agreement." See European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability

Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final 2022/0051 (COD), https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF.

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[312] Government of Japan, *National Action Plan on Business and Human Rights in 2020* (in Japanese), https://www.mofa.go.jp/mofaj/files/100104121.pdf.

[313] Ministry of Economy, Trade and Industry, *Guidelines on Respect for Human Rights in Responsible Supply Chains (Draft)* (Ministry of Economy, Trade and Industry, 2022), https://www.meti.go.jp/shingikai/economy/supply_chain/pdf/20220808_2.pdf.

[314] Clara Pacce P Serva and Luiz Carlos S Faria Jr, "Mandatory human rights due diligence in Brazil," International Bar Association, June 17, 2022, https://www.ibanet.org/Mandatory-human-rights-due-diligence-Brazil.

[315] Serva et al., "Mandatory human rights due diligence in Brazil."

[316] "Business and Human Rights: Developments and What to Watch For," Lexology, 2021, https://www.lexology.com/library/detail.aspx?g=59cff31f-b54c-470b-9c0e-208a6ed5c28f.

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[325] Ecuador, Resolution of the Superintendencia de Compañías, Valores y Seguros No. SCVS-INC-DNCDN-2019-0021, of 6 December 2019, and the Law of 7 January 2020 (the so-called 'Ley Orgánica de Emprendimiento e Innovación'), published in the Registro Oficial Suplemento No. 151, of 28 February 2020.

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[331] Australia Corporations Act 2001, https://www.legislation.gov.au/Details/C2018C00031.

[332] Livia Ventura, "Philanthropy and the For-profit Corporation: The Benefit Corporation as The New Form of Firm Altruism," *European Business Organization Law Review*, no. 3 (January 2022): 603–632, https://doi.org/10.1007/s40804-021-00227-x.

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