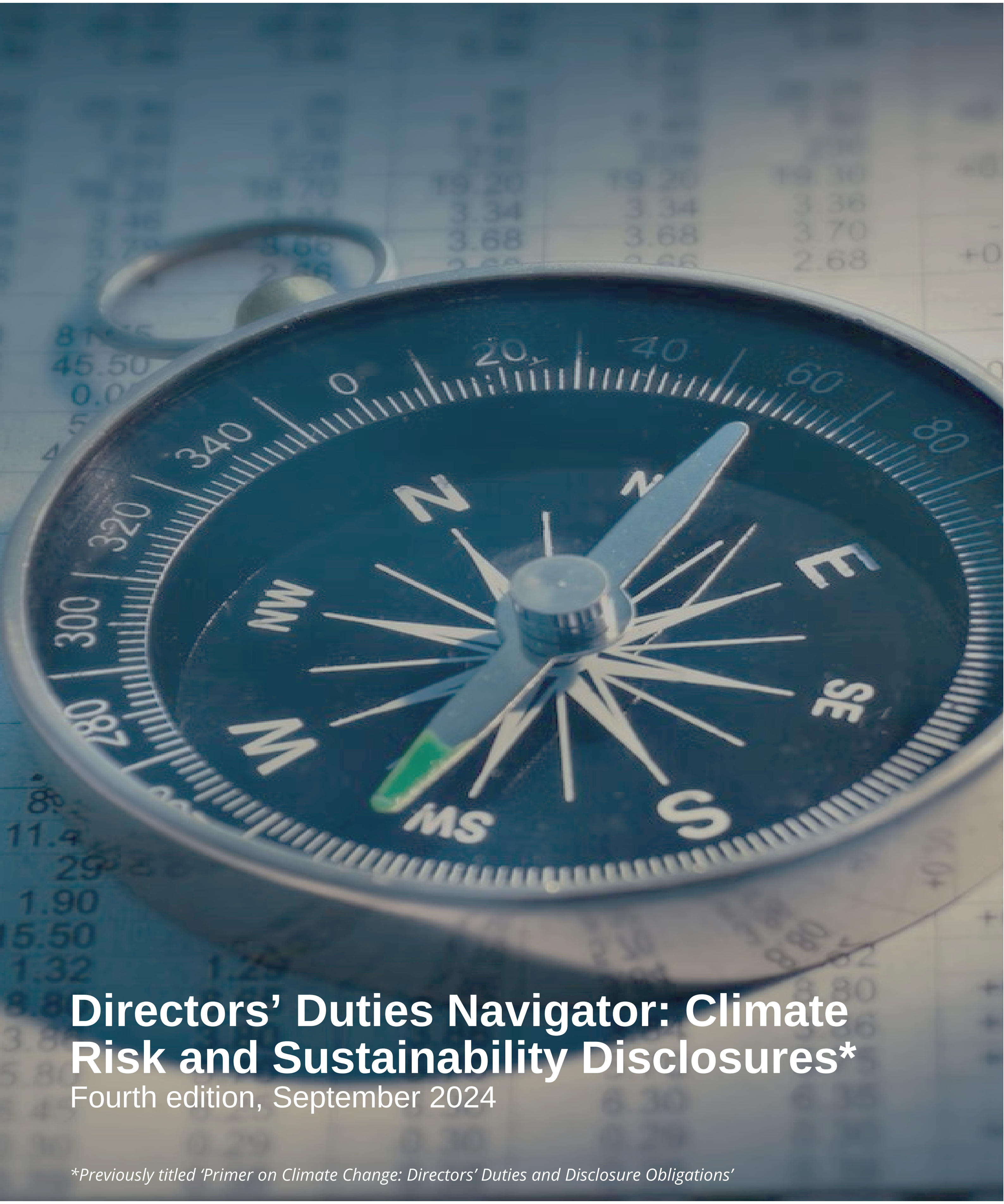
Commonwealth Climate and Law Initiative

Climate Governance Initiative



Directors’ Duties Navigator: Climate Risk and Sustainability Disclosures*

Fourth edition, September 2024

**Previously titled ‘Primer on Climate Change: Directors’ Duties and Disclosure Obligations’*

Executive Summary

Over time, our understanding of climate change – and its significance to corporations and investors – has significantly evolved. From being considered an 'immaterial', 'ethical' or 'environmental issue', climate change is now recognised as presenting foreseeable, material, financial and systemic risks (and opportunities) to corporations, investors and governments over short, medium and long-term investment horizons. As governments and regulators introduce new requirements for how corporations manage and report on climate-related risks, corporations – and their directors – must adapt.

This fourth edition of the *Directors' Duties Navigator: Climate Risk and Sustainability Disclosures* (the **Navigator**) (previously titled the 'Primer on Climate Change: Directors' Duties and Disclosure Obligations') provides an overview of contemporary evidence that climate change presents foreseeable, and in many cases material, financial and systemic risks that affect corporations and their investors. This year, the Navigator has been revamped to include new information under an updated structure. This includes more detail on the country specific regulatory landscape, climate-related disclosures in financial statements, and directors' duties concerning disclosures. Whilst the structure has been replicated throughout, the content has, to date, only been updated for 13 jurisdictions, being the 11 countries in which the Commonwealth Climate and Law Initiative (CCLI) has concentrated its work, including by commissioning in-depth legal analyses – Australia, Canada, Hong Kong, India, Japan, Malaysia, Philippines, Singapore, South Africa, United Kingdom and the United States - in addition to Belgium, which is a new addition to the Navigator, and Indonesia. We recognise that significant developments have taken place in most jurisdictions since August 2023 and will ensure that we capture these in the *fifth* edition of the Navigator in mid-2025. The start of each country section of the Navigator clearly states when the information was last updated.

The Navigator is a comprehensive tool for directors and lawyers to understand the following jurisdiction-specific information that may impact their organisation, consumers, partners and/or clients:

1) Government and regulatory approaches to climate change, including climate-related legislation and guidance;
2) directors' duties in relation to climate change, specifically how these duties and company and securities law frameworks require directors and officers to incorporate climate risk in corporate strategy, governance and management;
3) sustainability and climate-related disclosure requirements, both narrative and financial, and directors' duties and responsibilities in relation to them;
4) liability risks for companies, directors and officers who fail to comply with the above; and
5) practical tips for directors.

Although the Navigator focuses predominantly on climate-related risks to businesses, certain countries also include a 'Biodiversity Risk' box, which gives a high-level overview of biodiversity risks in that country. This reflects the growing awareness that, like climate change, the loss of nature and biodiversity represent material financial risks to corporations around the world, and therefore impact the discharge of directors' duties. As companies begin to understand their impacts and dependencies on nature, they can start to manage, and in time take advantage of opportunities arising from, nature-related risks. To find out more about biodiversity and nature-related risks to businesses, see the CCLI's report *Biodiversity Risk: Legal Implications for Companies and their Directors*, *Biodiversity as a Material Financial Risk: What Board Directors Need to Know*, and the landmark March 2024 UK legal opinion *Nature-related risks and directors' duties under the law of England and Wales*).

While legal frameworks vary between jurisdictions, it is generally the case that directors act as fiduciaries of the company in discharging their functions, and owe duties of loyalty and care and diligence to the company. The content of these duties varies as the factual context in which the directors act changes. A reasonable decision for a director 50, 10 or even five years ago might not look so reasonable today. Understanding these duties in the context of a changing external context is particularly relevant in the case of climate change, where the evidence of climate-related risks and opportunities is becoming ever more apparent and changes in regulation are gathering momentum.

As demonstrated throughout this Navigator, to discharge their duties, directors must integrate climate risks and opportunities into their governance roles.

Similarly, directors are generally subject to duties to disclose material risks facing the company to the company's investors. Climate risks are now understood by regulators and investors as being potentially material financial risks to a company, and therefore directors need to consider whether they should be disclosed. Additionally, regulatory measures requiring mandatory disclosure of climate and other sustainability-related risks are increasingly being implemented by Governments and regulators.

Litigation challenging companies' contributions to climate change is becoming a reality in many countries. Over 2,666 cases have been filed as of June 2024, seeking to recoup some of the damage caused by climate change, the costs of adaptation, or to challenge governments' or corporations' actions or failure to act. The diversity of the types of claims, and the jurisdictions in which they are being brought, are increasing. Challenges to the actions and inactions of companies and their directors are starting to emerge, evidenced in stark form by the judgment in the Netherlands on 26 May 2021, ordering Royal Dutch Shell to reduce its CO_2 emissions by 45% from 2019 levels by the end of 2030.

Where directors fail to meet the standards of good governance, they may be exposed to litigation risks themselves. In the UK, an environmental NGO, ClientEarth, brought a claim as a shareholder against the board of Shell plc, alleging that the board has failed in its duties to act in the best interests of the company and to act with due care, skill and diligence by failing to develop and implement a climate strategy that aligns with the Paris Agreement goals, therefore increasing its risk of stranded assets and having to make write-downs (due to both physical and transition risks). Whilst this case was dismissed by the UK High Court in 2023, a former justice of the UK Supreme Court has written that the dismissal of the case without trial represents a "*missed opportunity*" to examine the reasonable care, skill and diligence duty in the face of a decision to align with the global objectives of the Paris Agreement (this case is discussed in detail in the UK section of the Navigator). This case is not a bar to future claims, and future claims might succeed. Boards should ensure that they have robust plans to identify and manage climate risks to ensure that they are appropriately protecting themselves from breach of duty allegations.

We have produced this Navigator for board directors so they can be informed and prudent advocates, encouraging their boards to integrate the climate change risks and opportunities in the development of their companies' corporate strategy, risk management oversight, governance and disclosure. This, alone, is the most effective thing directors can do to fulfil their obligations to their companies while steering well clear of any personal liability exposure from the potential increase of litigatio

Foreword

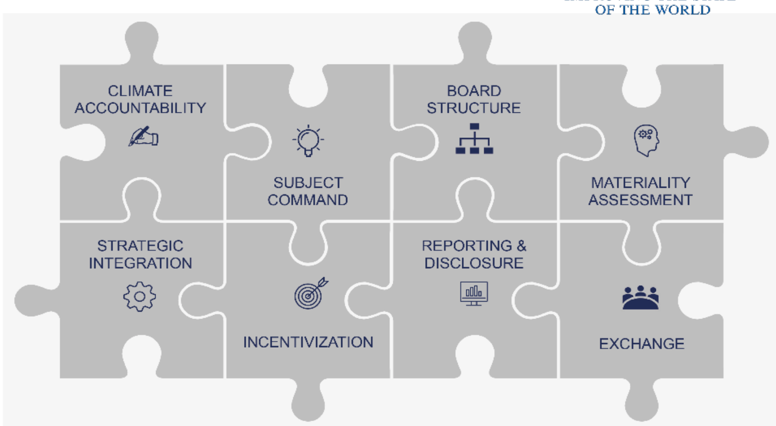
Climate change poses an existential risk to humanity, the planet and the global economy on a scale never before seen. The 196 parties to the Paris Agreement agreed in 2015 to take action to limit the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. Governments have reinforced these commitments at every annual Conference of Parties to the UNFCCC (**COP**) and Paris Agreement (**CMA**) since.

The IPCC has concluded that the worst effects of climate change will be limited by keeping global average temperature rise below 1.5°C. To limit global warming to 1.5°C, greenhouse gas emissions must peak before 2025 at the latest and decline 43% by 2030. To meet this goal, economic activity must achieve net-zero greenhouse gas emissions by 2050 or earlier, with clear interim milestones in 2040 and 2030.

We are approaching the midway point of this critical decade and the science is clear that we are not on track. In February 2024, scientists confirmed that we have breached the 1.5°C temperature threshold on average consistently for over a year. We are in unprecedented times, and the impact of surpassing climate tipping points will have disastrous and unparalleled consequences across the world. Government action alone is insufficient and businesses must step up. The new economic and geographical world in which companies are finding themselves, and will continue to find themselves, will require a wholesale shift in how companies are governed: for board directors, it means placing the climate transition at the heart of corporate strategy, ensuring that board decision-making processes properly embed climate considerations, and that boards drive a marked cultural change across their organisations.

However, despite a growing awareness of the scale and urgency of the climate crisis, far too few directors possess the specific interdisciplinary skills necessary to effect this wholesale change of culture and behaviour. It is for this very reason that the Commonwealth Climate Law Initiative (**CCLI**) and the Climate Governance Initiative (**CGI**) came into being. Since 2015, the CCLI has published or commissioned regular reports and legal opinions on the topic of directors' duties and climate change around the world, and has produced a global *Directors' Duties Navigator: Climate Risk and Sustainability Disclosures* (previously titled '*Primer on Climate Change: Directors' Duties and Disclosure Obligations*') every year since 2021. In 2019 the World Economic Forum unveiled the Principles for Effective Climate Governance (the CGI Principles), a comprehensive set of guidance principles that lay out best practice for boards and their directors in respect of the climate. To facilitate their promotion and implementation, local CGI "Chapters" have been set up around the world to serve as centres of expertise and venues for directors to exchange with each other as well as with a wide range of subject matter experts.

Figure : Guiding principles for effective climate governance on corporate boards



The first of these eight CGI Principles, entitled 'Climate accountability on boards', concerns an issue that has frequently stood in the way of board directors factoring climate concerns into their decisions: how their legal duties and obligations apply in the context of the now-universal recognition of the extreme threat that climate change poses to the global economy and therefore to individual businesses. Too often, boards are concerned that "*leaving profitable business on the table*", or acting according to "*how we wish the world to be, rather than how it is*" will place them in breach of their legal obligations to shareholders, or worse, result in litigation or removal.

This Navigator, now in its fourth edition, tackles precisely this issue, and provides a succinct, easily accessible summary that non-lawyers who serve on boards can readily understand and act on. The Navigator covers 33 countries (plus the EU) and will serve as a valuable resource to the global network of CGI Chapters, and enable directors around the world to act in a fully-informed manner on their legal obligations as they confront the twin climate and nature crisis.

The Climate Governance Initiative currently has 32 active Chapters in Australia, Brazil, Belgium, Canada, Central America and the Caribbean, Chile, Egypt, France, Germany, Greece, Hong Kong, Italy, Ireland, Kazakhstan, Malaysia, Mauritius, Mexico, the Nordic region, the Netherlands, New Zealand, Poland, Romania, Singapore, Slovenia, South Africa, Spain, Switzerland, Turkey, the United Kingdom, Ukraine & Caucasus, the United States and Uzbekistan. Additional Chapters in Europe, Africa and the Middle East are currently in formation.

This Navigator is drafted and coordinated by the CCLI, with the support of many contributing legal experts. It would not be possible without their deep expertise or the support with the World Economic Forum, to which we extend our deepest thanks.

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About the Commonwealth Climate and Law Initiative

The Commonwealth Climate and Law Initiative (**CCLI**) is a legal research and stakeholder engagement initiative founded by the University of Oxford's Smith School of Enterprise and the Environment, ClientEarth and Accounting for Sustainability (**A4S**). It is a UK non-profit organisation funded by environmental philanthropy and research grants.

The CCLI examines the legal basis for directors and trustees to consider, manage, and report on climate change and nature-related risks, opportunities and impacts, and the circumstances in which there may be liability for failing to do so. It also works to advance knowledge on effective sustainable governance practices.

The CCLI commissions legal opinions from independent experts in jurisdictions across the world to build an authoritative evidence base on the requirements of company and trust law as it relates to the climate and nature crises. The CCLI works with leading academics, law firms and civil society entities to carry out its own legal research and disseminate the findings. The CCLI's Canadian partner, the Canada Climate Law Initiative, convenes over 60 experts to educate Canadian boards on climate change under the Canadian Climate Governance Experts project. They also provide an online knowledge hub for climate risk and sustainable finance resources.

About the Climate Governance Initiative

The Climate Governance Initiative (**CGI**) mobilises boards of directors around the world to address climate change in their businesses. The CGI does this by developing and supporting national associations that equip their members with the skills and knowledge needed to make climate a boardroom priority, building on the World Economic Forum's Principles for Effective Climate Governance.

Disclaimer

Any errors or omissions, including differences between linguistic translations, in this Navigator are the authors' own. The paper reflects the law as of September 2024, unless otherwise stated. All biodiversity boxes contained within the Navigator have been authored by the CCLI.

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The information contained in this Navigator is of a general nature and it should not be relied upon as legal advice. Board directors should seek legal advice on the unique circumstances of their company and jurisdiction.

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Climate Change as a Financial and Systemic Risk

Nearly 200 governments around the world have committed to pursue efforts to limit global temperature rise to 1.5°C above pre-industrial levels. This goal was first set out in the landmark 2015 Paris Agreement, signed by 196 countries at the 21st Conference of Parties (**COP 21**) to the United Nations Framework Convention on Climate Change (**UNFCCC**), and has been upheld and reaffirmed at subsequent COPs since then, particularly since the finalisation of the 'Paris Rulebook', the rules and procedures for implementing the Paris Agreement's goals, at COP 26 in Glasgow in 2021. [1]

However, in June 2024, the World Meteorological Organisation (**WMO**) predicted an 80% likelihood that annual average global temperatures will temporarily exceed the 1.5°C level for at least one of the next five years.[2] Similar warnings have been issued by the Intergovernmental Panel on Climate Change (**IPCC**), an intergovernmental scientific body of the UN. The IPCC published its Sixth Assessment Report (**AR6**) in three tranches between August 2021 and April 2022, with its AR6 Synthesis Report following in March 2023.[3] These reports address the physical science behind human-induced climate change and its impacts, the vulnerabilities of the global system to climate change and the required adaptations, and the actions needed to mitigate its worst impacts, including limiting global temperature rise to 1.5°C.[4] AR6 served as a strong warning for the international community that we are not on track to meet the Paris Agreement's goals. The AR6 Synthesis Report confirmed that human activities, principally through emissions of GHGs, have "*unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020.*"[5] Floods (such as those faced in Pakistan in 2022[6]), freezes (such as the Texas winter freeze in February 2021[7]), fires (such as those in Australia in 2023[8]) and heatwaves (such as those in April 2024 across the Philippines, Thailand, Bangladesh and India[9]) have caused disruption to supply chains.[10] In 2023, 142 natural catastrophes led to USD 108 billion in insured losses,[11] and analysis has found that heightened climate-related physical risks have led to increased exposure for insurers.[12]

As the effects of climate change and the actions needed to address them increasingly materialise, the links between climate change and financial risk are becoming increasingly evident and inextricable.[13] Our understanding of climate change has evolved from a purely 'ethical issue' or 'environmental

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1 UNFCCC, The Glasgow Climate Pact – Key Outcomes from COP26 <https://unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact-key-outcomes-from-cop26>.

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externality' to an issue that poses foreseeable financial risks and opportunities for companies across short, medium and long-term horizons. In a 2024 survey of top executives with large companies worldwide, 70% of respondents said rising emissions and global temperatures will have a "high or very high" impact on operations, with 45% reporting that they are changing their business model to reduce emissions and prepare for a low-carbon economy.[14] Indeed, the World Economic Forum's 2024 report on global risks ranks extreme weather events and biodiversity loss and ecosystem collapse – along with impacts which may become more likely as a result of climate change, such as large-scale involuntary migration, and critical change to earth systems – within the top 10 risks by severity over the next 10 years.[15] The Global Tipping Points report published in 2023 concluded at least five major Earth system tipping points are already at risk of being triggered, including the collapse of major ice sheets such as those in Greenland and warm-water coral reefs.[16] Where tipping points are reached in one system, they can spark rapid and irreversible transformation.[17]

The scale and speed of climate change risks and opportunities in the transition to a zero-carbon economy received heightened attention in May 2021 with the release of the International Energy Agency (**IEA**)'s first-ever attempt to model a feasible pathway to net zero GHG emissions by 2050 (**NZE2050**), and the implications of the NZE2050 scenario for companies in the industry sectors facing either accelerated decline or rapid growth are momentous. The NZE2050 scenario has formed the basis for a number of shareholder resolutions, court cases, and engagements with government bodies.

However, the UNFCCC has consistently found that the international community is falling far short of the action required to limit temperature rise to 1.5°C and meet the goals of the Paris Agreement.[18] The latest Emissions Gap Report from the UN Environment Programme (**UNEP**) reports that current pledges under the Paris Agreement - the credibility of even these existing policies is uncertain - put the world on track for a 2.5-2.9°C temperature rise above pre-industrial levels this century.[19] Indeed, "*wide-ranging, large-scale, rapid and systemic transformation is now essential to achieve the temperature goal of the Paris Agreement*".[20]

Companies operating in industries facing structural decline can expect heightened pressure from investors to stress-test their businesses against new data, and to demonstrate their ability to remain resilient in the face of uncertainty regarding the pace of change, failing which access to capital will continue to suffer headwinds. For directors, this adds yet another factor they must consider in the boardroom when modelling risk and strategic options.

According to the 2017 recommendations of the Task Force on Climate-related Financial Disclosures (**TCFD**), climate change is one of the most significant and complex risks facing organisations.[21] The TCFD recommendations have attracted the support of nearly 5,000 organisations, which reflects the growing consensus among the business, financial and regulatory communities of the financial and systemic risks presented by climate change and of the necessity of embedding climate change in financial risk management, disclosure and supervisory practices.[22]

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20 UNFCCC, The Closing Window Climate crisis calls for rapid transformation of societies Emissions Gap Report 2022 (October 2022) <https://www.unep.org/resources/emissions-gap-report-2022>.

21 TCFD, 'Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures' (June 2017), ii.<https://www.fsb-tcfd.org/publications/final-recommendations-report/>.

22 Ibid, 5-6; Mercer, 'Investing in a time of climate change' (2015): <https://www.mercer.com.au/content/dam/mercer/attachments/asia-pacific/australia/investment/sustainable-growth/mercer-climate-change-study-2015.pdf>; TCFD, Supporters around the world <https://www.fsb-tcfd.org/#:~:text=Download%20the%20report-,Supporting%20the%20TCFD%20recommendations,support%20for%20the%20TCFD's%20recommendations.>

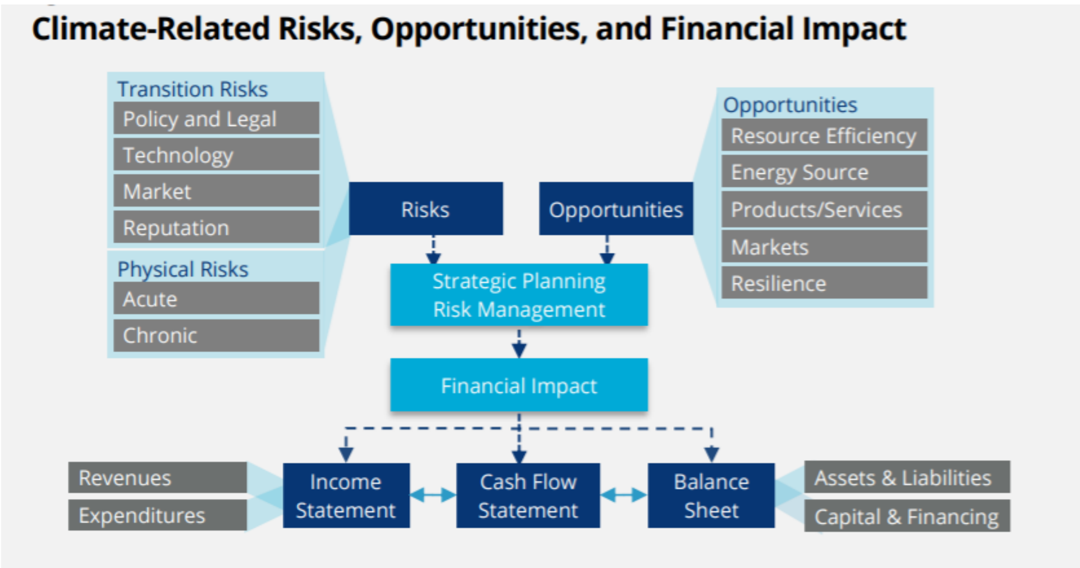

Figure 1: Climate-related financial risks to entities.
(*Source: TCFD Final Recommendations (2017) p. 8*)

The Bank of England Prudential Regulation Authority has explained that these climate-related financial risks have distinctive elements[23] and the unique characteristics of climate risks require a more forward-looking approach than used for many other risks to ensure their capture by capital frameworks.[24] The risks are far-reaching in breadth and magnitude across the economy, involve uncertain and extended time horizons, are foreseeable, and – crucially – the magnitude of future financial risks depends in large part on decisions taken today.[25]

Moving beyond company-specific financial risks, climate change is now recognised as a systemic risk. This was made clear in 2019 by The Network of Central Banks and Supervisors for Greening the Financial System (**NGFS**), a global coalition of over 110 central banks and supervisors, in its first comprehensive report, *A Call to Action*, which stated:

> *Climate-related risks are a source of financial risk. It is therefore within the mandates of central banks and supervisors to ensure the financial system is resilient to these risks.*[26]

According to the Banque de France and the Bank for International Settlements, known as the 'central bank of central banks', the radical uncertainty of climate change and society's responses to it mean that climate change poses 'green swan' systemic risks that could lead to a financial crisis.[27] Stress tests which cover climate-related risks are planned or have already been conducted by central banks around the world, including the European Central Bank, the Reserve Bank of New Zealand, De Nederlandsche Bank and the Bank of England, which published the findings of its Climate Biennial Exploratory Scenario in May 2022.[28]

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23 Bank of England Prudential Regulation Authority, Transition in Thinking: The impact of climate change on the U.K. banking sector (September 2018) <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/transition-in-thinking-the-impact-of-climate-change-on-the-uk-banking-sector>.

24 Bank of England Prudential Regulation Authority, Bank of England report on climate-related risks and the regulatory capital frameworks (March 2023) <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/report-on-climate-related-risks-and-the-regulatory-capital-frameworks>

25 Bank of England Prudential Regulation Authority, Transition in Thinking: The impact of climate change on the U.K. banking sector (September 2018) <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/transition-in-thinking-the-impact-of-climate-change-on-the-uk-banking-sector>.

26 NGFS, 'A Call for Action: Climate Change as a Source of Financial Risk' (April 2019), 4 <https://www.banque-france.fr/sites/default/files/media/2019/04/17/ngfs_first_comprehensive_report_-_17042019_0.pdf>.

27 Bank of International Settlements and Banque du France, The green swan - Central banking and financial stability in the age of climate change (January 2020) <https://www.bis.org/publ/othp31.pdf>.

28 Reserve Bank of New Zealand, Climate Stress Test (10 August 2023) https://www.rbnz.govt.nz/financial-stability/stress-testing-regulated-entities/climate-stress-test; European Banking Authority, Climate risk stress testing on EU banks <https://www.eba.europa.eu/risk-and-data-analysis/risk-analysis/risk-monitoring/climate-risk-stress-testing-eu-banks>; De Nederlandsche Bank, 'Stress test model',

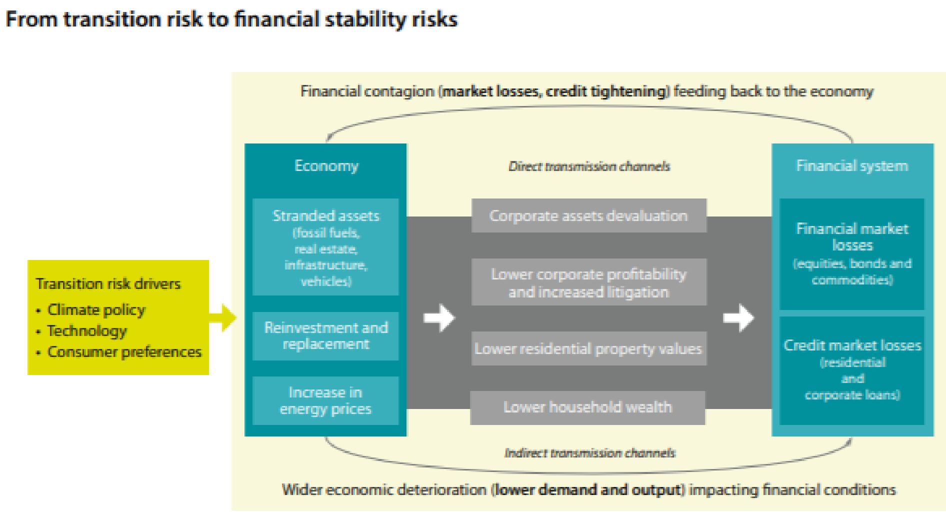

Figure 2: Climate-related systemic risks arising from transition risks.
(Source: NGFS Guide for Supervisors: Integrating climate-related and environmental risks into prudential supervision (2020) p. 13)

As a now widely-recognised financial and systemic risk, as well as a factor that is integral to value creation, climate change squarely engages directors' duties and disclosure obligations. In line with these developments, financial regulators have increasingly insisted on effective climate risk disclosure and governance.[29]

So, too, investors have set normative expectations of director conduct.[30] A coalition of financial institutions, the Glasgow Financial Alliance for Net Zero (**GFANZ**), has published guidance for its members on expectations for real-economy transition plans, portfolio alignment with achieving a net-zero by 2050 goal, and managing a phaseout of high-emission assets.[31] The Institutional Investors Group on Climate Change (**IIGCC**), a membership body with over EUR 65tn asset under management (**AUM**), has published policies and guidance for members on engaging with investee companies on climate matters;[32] and the Net Zero Asset Managers initiative, a group of asset managers with more than USD 57tn AUM has published its initial targets for managing its assets in line with achieving net-zero by 2050 or sooner.[33]

Investors are also becoming increasingly vocal in communicating these expectations in their voting and stewardship activities. In 2021, shareholders at large oil and gas companies brought resolutions requesting that these companies set and report on climate targets,[34] and notably, investors voted to

<www.dnb.nl/en/research/dnb-s-econometric-models/stress-test-model/>. See also Environmental Finance, 'Denmark's central bank to conduct climate stress test in 2020', <www.environmental-finance.com/content/news/denmarks-central-bank-to-conduct-climate-stress-test-in-2020.html>; Bank of England, Results of the 2021 Climate Biennial Exploratory Scenario (CBES) (24 May 2022) <https://www.bankofengland.co.uk/stress-testing/2022/results-of-the-2021-climate-biennial-exploratory-scenario>.

29 See TCFD, 'Final Report: Recommendations of the Task Force on Climate-Related Financial Disclosures' (2017) 5-6: <https://www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-2017-TCFD-Report-11052018.pdf>; Mercer, 'Investing in a time of climate change' (2015): ,https://www.mercer.com.au/content/dam/mercer/attachments/asia-pacific/australia/investment/sustainable-growth/mercer-climate-change-study-2015.pdf>;

30 See, e.g., BlackRock, Larry Fink's 2021 Letter to CEOs (January 2021) <https://www.blackrock.com/corporate/investor-relations/2021-larry-fink-ceo-letter>; BlackRock, Larry Fink's 2022 Letter to CEOs (January 2022) <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

31 GFANZ, Publications <https://www.gfanzero.com/publications/>.

32 IIGCC, Our Members<https://www.iigcc.org/our-members >.

33 Net Zero Asset Managers initiative, Signatories https://www.netzeroassetmanagers.org/signatories/; Net Zero Asset Managers initiative, Net Zero Asset Managers initiative publishes initial targets for 43 signatories as the number of asset managers committing to net-zero grows to 273 (31 May 2022) <https://www.netzeroassetmanagers.org/net-zero-asset-managers-initiative-publishes-initial-targets-for-43-signatories-as-the-number-of-asset-managers-committing-to-net-zero-grows-to-273/>.

34 Among shareholder resolutions proceeding to vote in the U.S. were resolutions proposing that:
ConocoPhillips and Chevron set and report on emission reduction targets covering the greenhouse gas emissions of the company's operations as well as their energy products (Scope 1, 2 and 3) (with 59.3% and 60.7% of the vote, respectively);
Chevron report on the implications of the International Energy Agency's October 2020 Net Zero 2050 scenario (failed with 47.8% of the vote);

replace three of ExxonMobil's board members with alternative candidates with experience in the transition of oil and gas companies.[35] In 2022, over 215 resolutions relating to climate change were filed by shareholders.[36] This increased to 257 environmental and social shareholder filed resolutions in 2023.[37] Climate Action 100+ expects companies to align their political engagement with climate goals, and for the 2024 proxy season has called on companies to report on climate lobbying practices.[38] More than 700 investors – responsible for around USD 68 trillion in AUM – are represented in Climate Action 100+.[39] In addition, of the two proxy advisory firms controlling 97% of voting advice to institutional investors,[40] ISS will generally recommend to vote against directors in cases where the company is not taking the minimum steps needed to be aligned with a Net Zero by 2050 trajectory,[41] and Glass Lewis will vote against relevant directors when a company has not provided disclosures of the environmental and social risks facing the company and what steps the company is taking to mitigate those risks.[42]

Investors, regulators and governments are also increasingly asking companies to produce net zero transition plans, setting out items including the company's ambition, the activities covered by the plan, targets and dates for achieving targets, proposed use of offsets, financial impacts, and plans to engage through their value chain.[43] First-mover companies have already begun to produce climate transition plans, and investor groups including GFANZ have published guidance on what they expect investee companies to include in their business plans.[44] The UK Government established the Transition Plan Taskforce (**TPT**) which has developed internationally applicable guidance and standards for transition plans.[45] Climate transition plans are required in the UK for certain companies but are expected to become mandatory in the future. In the EU, the Corporate Sustainability Due Diligence Directive will require companies to adopt a transition plan to ensure that the business model and strategy of the company are compatible with the goal of limiting global warming to 1.5°C.[46]

Investors are also encouraging companies to increase the ambition of their net zero targets, which is leading towards increased standardisation between companies' targets. Race to Zero, a global campaign with support from businesses, cities, regions, and investors, has published criteria for its

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Phillips 66 set and report on GHG reductions targets as well as the alignment of its lobbying activities with the objectives of the Paris Agreement (passed with 80.28% of the vote);

General Electric evaluate and disclose if and how the company has met the criteria of the 'Net Zero Indicator' produced by the Climate Action 100+ (passed with 97.97% of the vote);

Exxon Mobil evaluates and reports on the alignment of its lobbying activities with the objectives of the Paris Agreement, on the basis that "corporate lobbying that is inconsistent with the goals of the Paris Agreement presents regulatory, reputational and legal risks to investors" (passed with 63.8 % of the vote).

35 ExxonMobil, ExxonMobil updates preliminary results on election of directors (2 June 2021) <https://corporate.exxonmobil.com/News/Newsroom/News-releases/2021/0602_ExxonMobil-updates-preliminary-results-on-election-of-directors>.

36 Amena Saiyid, 'ExxonMobil board recommends "no vote" on reducing Scope 3 GHG emissions', Clean Energy News (11 April 2022) <https://cleanenergynews.ihsmarkit.com/research-analysis/exxonmobil-board-recommends-no-vote-on-reducing-scope-3-ghg-em.html>; Climate Action 100+, 'As 2022 Proxy Season Begins, Record Numbers of Climate Resolutions and Agreements Bode Well for Action' (27 April 2022) <www.climateaction100.org/news/as-2022-proxy-season-begins-record-numbers-of-climate-resolutions-and-agreements-bode-well-for-action>.

37 ShareAction, Voting Matters 2023: Are asset managers using their proxy votes for action on environmental and social issues? (January 2024) <https://shareaction.org/reports/voting-matters-2023>

38 Climate Action 100+, Climate Action 100+ Net Zero Company Benchmark 2.0 (March 2023) <https://www.climateaction100.org/wp-content/uploads/2023/03/Climate-Action-100-Net-Zero-Company-Benchmark-Framework-2.0..pdf>; Commonwealth Climate and Law Initiative, The Green MirageL Climate Lobbying and Corporate Greenwashing (June 2024) <https://commonwealthclimatelaw.org/the-green-mirage-climate-lobbying-and-corporate-greenwashing/>

39 Climate Action 100+, Progress Update 2023 <https://www.climateaction100.org/wp-content/uploads/2024/01/Climate-Action-100-Progress-Update-2023.pdf>

40 Forbes, Proxy Advisory Firm and the ESG Risk (June 2022) <https://www.forbes.com/sites/waynewinegarden/2022/07/25/proxy-advisory-firms-and-the-esg-risk/>

41 ISS, 2024 Climate Proxy Voting Guidelines (January 2024) <https://www.issgovernance.com/file/policy/active/specialty/Climate-International-Voting-Guidelines.pdf>

42 Glass Lewis, 2024 Climate Thematic Voting Policy (2024) <https://www.glasslewis.com/wp-content/uploads/2024/01/2024-Climate-Thematic-Voting-Policy.pdf?hsCtaTracking=0215ce1f-8d2e-4825-955c-fa126d9ae7e0%7C30ddf026-9822-44fc-be4c-a6c1d3cffbe5>

43 Transition Plan Taskforce, Disclosure Framework (October 2023) <https://transitiontaskforce.net/wp-content/uploads/2023/10/TPT_Disclosure-framework-2023.pdf>

44 CDP, 'Are companies being transparent in their transition?': 2021 Climate Transition Plan disclosure (March 2022) <https://www.cdp.net/en/guidance/guidance-for-companies/climate-transition-plans>; GFANZ, Introductory Note on Expectations for Real-economy Transition Plans (June 2022) <https://www.gfanzero.com/publications/>; GFANZ, Recommendations and Guidance on Financial Institution Net-zero Transition Plans (June 2022) <https://www.gfanzero.com/publications/>.

45 Transition Plan Taskforce, Disclosure Framework (October 2023) <https://transitiontaskforce.net/wp-content/uploads/2023/10/TPT_Disclosure-framework-2023.pdf>

46 European Commission, Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>.

members, which include a net-zero pledge, covering scope 1, 2 and material scope 3 emissions, made from the top level of the company.[47]

Sustainability standards requiring disclosure of metrics and targets are steadily converging towards similar requirements. In June 2023, the International Sustainability Standards Board (**ISSB**) published its finalised sustainability reporting standards, which are aimed to bring about a harmonised framework for sustainability disclosures, including those relating to climate. The ISSB climate standard (**IFRS S1 and S2**), if adopted in domestic laws, will require companies to disclose physical and transition climate risks facing their business model, their scope 1, 2 and 3 emissions, their resilience to climate impacts using different scenarios, and information about their transition plans.[48]

47 Race to Zero, Starting Line and Leadership Practices 2.0 (June 2021) <https://racetozero.unfccc.int/wp-content/uploads/2021/04/Race-to-Zero-Criteria-2.0.pdf>.

48 ISSB, IFRS S2 Climate-Related Disclosures (June 2023) <https://www.ifrs.org/content/dam/ifrs/publications/pdf-standards-issb/english/2023/issued/part-a/issb-2023-a-ifrs-s2-climate-related-disclosures.pdf>.

Directors' Duties and Climate Change

Directors act as fiduciaries of the company in discharging their functions: overseeing corporate performance, strategy, and risk management; ensuring robust legal compliance systems are in place in the company; approving significant transactions; and approving corporate reporting and disclosure.

Duty of Loyalty and Duty of Care

As fiduciaries, directors around the world typically owe two core duties to the company: **the duty of loyalty** and **the duty of care and diligence**. The precise nature and contours of these duties vary by jurisdiction. In common law jurisdictions, directors' fiduciary duties are articulated in statutes and in the case law, as developed over time by courts. In civil law jurisdictions, these duties are set out in statutory provisions in corporate laws that govern the conduct of directors.

While subject to variation across jurisdictions, the overarching concepts of loyalty and care in corporate governance are widespread. In general terms, the duty of loyalty requires that directors act honestly and in good faith in the best interests of the company, typically, but not exclusively, defined in financial terms. The duty of care requires that directors exercise reasonable care, skill, and diligence in the discharge of their stewardship functions, including by taking reasonable precautions against reasonably foreseeable harms.

What these duties require as a matter of good governance and prudent risk management is constantly evolving, in line with changes in the factual context in which directors act, knowledge of foreseeable risks, changes in regulations and market practices. A reasonable decision for a director fifty, ten or even 5 years ago might not look so reasonable today. Understanding these duties in the context of a changing external context is particularly relevant in the case of climate change, where the evidence of climate-related risks and opportunities is becoming ever more apparent, and changes in regulation are gathering momentum such that the likelihood of a disorderly and disruptive transition increases.

Around the world, it is increasingly accepted that to discharge their duties of care and loyalty, directors must consider and integrate climate risks and opportunities into their corporate governance. This position has been confirmed by the independent legal opinions commissioned by the CCLI in multiple jurisdictions and additional persuasive authorities in most of the jurisdictions covered in this Navigator. The trend is clear: a failure to appropriately consider, assess, and address climate-related risks may expose directors to significant liability risk, including personal liability for damages arising from a breach of duty, regulatory enforcement (resulting in, for example, fines, sanctions, disqualification from office), and other forms of civil or criminal liability, depending on the circumstances.

The 'business judgment rule'

The courts in many jurisdictions will defer to directors' knowledge and expertise in making business decisions, and directors are unlikely to face liability as a result of simply a bad decision. This is known in some jurisdictions as the 'business judgment rule'. This may not protect directors in cases where they have failed to act in good faith (which could be done, for example, by completely failing to consider climate risks facing the company which the company has disclosed), but may operate to protect directors where they take well-considered actions to ensure the long-term success of the company which may not be the most profitable in the short-term.

Directors' Duties and Sustainability Disclosure Obligations

Introduction to narrative and financial sustainability disclosures

Public companies in most jurisdictions have obligations under national laws to assess, manage, and report on financially-material climate risks. In certain jurisdictions, these mandatory disclosure obligations have also been rolled out to large private companies and financial institutions. At the same time, many companies choose to voluntarily report in accordance with international standards like those produced by the Financial Stability Board's Taskforce on Climate-related Financial Disclosures (**TCFD**),[49] the IFRS Foundation's International Sustainability Standards Board (**ISSB**),[50] the Global Reporting Initiative (**GRI**) Standards, Carbon Disclosure Project (**CDP**), and more.

Currently, most sustainability reporting disclosure obligations for companies are narrative and qualitative in nature. This reflects a general hesitation and lack of knowledge amongst boards on how to quantify and account for climate-related risks and opportunities. Yet an unintended consequence of this is that there are often discrepancies between how climate risks, opportunities and impacts are described in narrative reports and the quantitative data presented in their financial statements. Aside from this discrepancy potentially giving rise to liability for greenwashing, securities lawsuits and/or other national penalties,[51] the non-disclosure of climate-related information in financial statements means that often investors are not presented with a complete picture. As such, there are movements, predominantly driven by UK-based organisations, seeking regulatory guidance on how companies should account for climate risks, and a January 2024 UK legal opinion focussed on directors' duties in this respect.[52] Reflecting these trends, we have included a new section in the 2024 Navigator addressing 'Climate-related disclosures in financial statements' and directors' duties and potential liability arising therefrom.

Finally, while there is also growing momentum behind the need for companies to report on nature-related risks (for example, in line with the Taskforce on Nature-related Financial Disclosures (**TNFD**) recommendations), and a recent acknowledgement of the need to report on social issues (see, for example, the new Taskforce on Inequality and Social-related financial disclosures (**TISFD**))[53] these topics are currently beyond the scope of this Directors' Duties Navigator. See the CGI's Disclosure Navigator for more information on nature-related reporting.

Narrative sustainability disclosure requirements

Mandatory climate-related narrative disclosures have been and continue to be introduced in jurisdictions around the world.[54] In June 2021, the G7 issued a communique announcing its support for moving towards mandatory disclosures aligned with the recommendations of the TCFD,[55] and regulators and governments around the world have begun to introduce rules requiring certain companies to make TCFD-aligned disclosures since then.[56] The scope and applicability of these regulations differ between

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49 TCFD's Status Report for 2023 confirmed that 4,486 companies and 369 organisations (i.e. industry associations and governments) have indicated their support for the TCFD, and 97 of the world's largest companies have declared support for and/or report in line with TCFD recommendations.

50 The ISSB produced its finalised standards IFRS S1 and S2 in June 2023, which are designed to meet investors' information needs in assessing an issuer's enterprise value, enabling efficient allocation of resources through the capital market. These standards require disclosures which are generally aligned with the recommendations of the TCFD, including narrative disclosures on governance, strategy, risk management, and metrics and targets. If the ISSB standards become mandatory, as indicated by the G7 nations, disclosing on these aspects will effectively require reporting entities to put governance systems in place to identify and manage sustainability risks and opportunities generally, and in particular, climate change-related risks and opportunities. See: IFRS - ISSB issues inaugural global sustainability disclosure standards (June 2023); and G7 Finance Ministers and Central Bank Governors' Petersberg Communiqué (20 May 2022).

51 See, for example, the *Ramirez v ExxonMobil* case discussed below in the Climate Litigation section. Although the fact pattern is different, the case represents

52 George Bompas KC, Legal Opinion on the 'True and Fair Requirement' (January 2024).

53 Deloitte, TISFD officially launched (23 September 2024). See also: Taskforce on Inequality & Financial Disclosures | TISFD Global Initiative.

54 For example, at the time of writing, the most recent country to introduce mandatory climate-related reporting was Australia. Australia's *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024* came into force in September 2024. See the Australia section of the Navigator for more information.

55 HM Treasury, G7 Finance Ministers and Central Bank Governors Communiqué (5 June 2021) <https://www.gov.uk/government/publications/g7-finance-ministers-meeting-june-2021-communique/g7-finance-ministers-and-central-bank-governors-communique>.

56 As of October 2023, 16 jurisdictions had already introduced TCFD-aligned reporting (Brazil, Canada, Colombia, Egypt, the EU, Japan, Kenya, Malaysia, Mauritius, New Zealand, Philippines, Singapore, Switzerland, Taiwan, Thailand, and the UK) and four jurisdictions (Australia, Canada, Hong Kong and the US) were in the process of developing TCFD-aligned guidelines or laws. These 19 jurisdictions account for close to 60% of global 2022 GDP. See, for a general overview, TCFD, 2023 Status Report (October 2023) < https://assets.bbhub.io/company/sites/60/2023/09/2023-Status-Report.pdf >. For example, in the UK, large companies and limited liability partnerships are required to disclose climate-related risks under the *Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022* and the *Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022*'; in New Zealand, financial institutions are required to make climate-related disclosures under the *Financial Sector (Climate-related Disclosures and Other Matters)*

jurisdictions, but most are intended to capture listed and large private corporations and financial institutions. The specific reporting requirements also differ, but, since many are based on the TCFD recommendations, common themes include reporting on climate-related risks and opportunities, the mechanisms for identifying and managing these risks and opportunities, and metrics and targets for GHG emissions. For example, the Hong Kong and Singapore stock exchanges have introduced requirements in the listing rules for issuers to disclose climate-related financial risks on a 'comply or explain' basis;[57] the UK and New Zealand governments have passed regulations requiring financial institutions (and, in the case of the UK, all large companies) to disclose climate-related risks;[58] in the US, the Securities and Exchange Commission (**SEC's**) March 2024 climate disclosure rules aim to enhance and standardise climate-related disclosures (although these have currently been stayed pending ongoing legal challenges – see the US section for more information).[59]

In January 2023, the EU's Corporate Sustainability Reporting Directive (**CSRD**) entered into force[60] and in July 2023, the European Financial Reporting Advisory Group (**EFRAG**) published a set of European sustainability reporting standards (**ESRS**)[61] to support its implementation. Unlike traditional financial reporting and climate-related reporting under TCFD and ISSB standards, the CSRD and ESRS require companies to report on the basis of double materiality. 'Double materiality' requires companies to assess and report not only on how external environmental and social factors affect their financial performance (known as 'financial materiality') but also how their activities impact the environment and society around them (known as 'impact materiality'). In so doing, the CSRD and ESRS require companies to recognise that materiality extends beyond their own financial performance and includes its impact on the wider world. This ambitious approach represents a new global gold standard, but efforts calling on ISSB and TCFD to adopt double materiality have so far been unsuccessful.

Investors are calling for climate-related risk disclosures

Investors are increasingly calling for specific climate-related financial disclosures in the financial filings, in line with the TCFD, and increasingly, ISSB, recommendations.

In 2021, BlackRock, an investor with USD 8.67 trillion assets under management,[62] called on investee companies to disclose a plan for how their business model will be compatible with a net-zero economy, to state how this plan is incorporated into the company's long-term strategy, and to confirm that it has been reviewed by the board of directors.[63] These disclosure requests are in addition to BlackRock's 2020 policies that ask its investee companies to report in alignment with the TCFD recommendations and the Sustainability Accounting Standards Board (**SASB**).[64] In January 2022, Larry Fink, BlackRock's CEO, restated the importance of climate risk to its investments and its request for investee companies to issue TCFD-aligned reports.[65]

Investors are also requesting that their investee companies produce financial statements which show how the climate risks and impacts which the company has identified will affect its finances, including by making adjustments to critical assumptions, including sensitivity analysis, and the implications on the

Amendment Act 2021; in Brazil, the Securities and Exchange Commission of Brazil has introduced rules requiring publicly-listed companies to disclose certain climate-related information; in Malaysia, financial institutions will be required to make climate-related disclosures in line with the principles set out in the Bank Negara Malaysia (BNM) Exposure Draft on Climate Risk Management and Scenario Analysis; in Australia, the most recent country to introduce mandatory climate-related disclosures, the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*, which came into force in September 2024, requires large (listed and unlisted) companies and financial institutions to report on climate risks.

57 HKEX, 'Amendments to the Main Board Listing Rules: Update No.128' (2019) <https://en-rules.hkex.com.hk/rulebook/update-no-128>; SGX, Climate and Diversity: The Way Forward (15 December 2021) <https://api2.sgx.com/sites/default/files/2021-12/Response%20Paper%20on%20Climate%20and%20Diversity%20-%20The%20Way%20Forward_0.pdf>.

58 *The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022; Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021.*

59 SEC, Final rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (6 March 2024).

60 The EU Corporate Sustainability Reporting Directive (**CSRD**), Directive 2022/2464, December 2022.

61 The ESRS were published on 31 July 2023. See: EFRAG, The European Sustainability Reporting Standards.

62 As at January, 2021.

63 BlackRock, Larry Fink's 2021 Letter to CEOs (January 2021) <https://www.blackrock.com/corporate/investor-relations/2021-larry-fink-ceo-letter>.

64 *Ibid.*

65 BlackRock, Larry Fink's 2022 Letter to CEOs (January 2022) < https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

company's dividend-paying capacity.[66] The extent to which companies' CAPEX is aligned with their stated transition plans and net-zero goals is also under scrutiny from investors.[67]

Disclosure of climate-risks in financial statements

As mentioned above, there is momentum growing behind the disclosure of climate-related risks in financial statements. While jurisdictional specificities exist, corporate reporting and securities law frameworks generally require listed companies to disclose information that is materially relevant to their financial performance and prospects in narrative reports and financial statements.

A materiality requirement also covers disclosures in the financial statements. In November 2019, IASB member Nick Anderson explained how climate risks fall within the existing principles-based requirements under IFRS:

> *Climate-related risks and other emerging risks are predominantly discussed outside the financial statements. However, as set out in [IFRS Practice Statement 2] Making Materiality Judgements, qualitative external factors, such as the industry in which the company operates, and investor expectations may make some risks 'material' and may warrant disclosures in financial statements, regardless of their numerical impact.*[68]

In November 2020, the IFRS Foundation published guidance titled the *Effects of climate-related matters on financial statements*, which states that material climate-related financial information should be reported under IAS 1 Presentation of Financial Statements, IAS 2 Inventories, IAS 12 Income Taxes, IAS 16 Property, Plant and Equipment, IAS 38 Intangible Assets, IAS 36 Impairment of Assets, IAS 37 Provisions, Contingent Liabilities and Contingent Assets, IFRS 7 Financial Instruments: Disclosures, IFRS 9 Financial Instruments, and IFRS 13 Fair Value Measurement; and, in addition to this specific disclosure, that companies whose financial position or financial performance is particularly affected by climate-related matters must provide overarching disclosure.[69]

In June 2023, the ISSB issued the finalised versions of its international sustainability standards IFRS S1 and S2.[70] IFRS S1 addresses sustainability-related financial disclosures and IFRS S2 addresses narrative climate-related disclosures, although the two are designed to be applied together.[71] The objective of IFRS S1 is to require entities to disclose investor-useful information about sustainability-related risks and opportunities that could influence the entity's cash flows, access to finance or cost of capital over the short, medium or long-term in general purpose financial reports. IFRS S1 prescribes how entities should prepare and report sustainability-related information in financial disclosures, setting out general requirements for the content and presentation of those disclosures, including:

a. the governance processes, controls and procedures the entity uses to monitor, manage and oversee sustainability-related risks and opportunities;

b. the entity's strategy for managing sustainability-related risks and opportunities;

c. the processes the entity uses to identify, assess, prioritise and monitor sustainability-related risks and opportunities; and

d. the entity's performance in relation to sustainability-related risks and opportunities, including progress towards any targets the entity has set or is required to meet by law or regulation.

The G7 and leading financial centres like the UK have indicated their intention to adopt ISSB-aligned reporting requirements.[72]

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66 IIGCC, Investor Expectations for Paris-aligned Accounts (16 November 2020) <https://www.iigcc.org/resource/investor-expectations-for-paris-aligned-accounts/>; Sarasin & Partnership, Investor Expectations for Paris-Aligned Accounting (16 November 2020) <https://sarasinandpartners.com/stewardship-post/investor-expectations-for-paris-aligned-accounting/>.

67 See CA100+, Net Zero Company Benchmark: Structure and Methodologies <https://www.climateaction100.org/net-zero-company-benchmark/methodology/>

68 Nick Anderson, 'IFRS Standards and climate-related disclosures, In Brief' (November 2019), 3 <https://www.ifrs.org/news-and-events/2019/11/nick-anderson-ifrs-standards-and-climate-related-disclosures/>.

69 IFRS, 'Effects of climate-related matters on financial statements', (20 November 2020), 1, <https://cdn.ifrs.org/-/media/feature/supporting-implementation/documents/effects-of-climate-related-matters-on-financial-statements.pdf?la=en>.

70 IFRS, *IFRS - ISSB issues inaugural global sustainability disclosure standards* (26 June 2023).

71 The standards fully integrate the TCFD recommendations, and IFRS S2 requires companies to make narrative disclosures on governance, strategy, risk management, metrics and targets.

72 G7 Finance Ministers and Central Bank Governors' Petersberg Communiqué (20 May 2022); UK HM Government, UK Sustainability Reporting Standards (19 September 2024).

In March 2024, the US SEC's introduced new climate disclosure rules that required in-scope entities to disclose certain climate-related information in notes to their financial statements (although, as mentioned above, these rules are currently stayed pending legal challenges). In April 2024 the IFRS Interpretation Committee provided (limited) guidance on the circumstances in which companies could reflect emissions reduction and emissions offset targets as a provision in the financial statements under IAS 37,[73] and on 31 July 2024, the IASB published a consultation document outlining eight illustrative examples of how and in what circumstances companies should report on climate-related and other uncertainties in their financial statements.[74]

Therefore, although companies are not yet obliged to disclose climate-related information in their financial statements, the trend toward this is undeniable. Forward-thinking directors would be well advised to familiarise themselves with the resources listed above and in the sections of this Navigator and consider how to start disclosing climate-related information in quantitative form alongside narrative disclosures.

Directors' duties and obligations in relation to sustainability disclosures

All climate-related disclosures – both narrative and financial – have significant consequences for boards, and it is important that directors stay abreast of and oversee compliance with their companies' climate- and sustainability-related disclosure obligations. This is for several reasons.

First, directors in most jurisdictions owe their companies duties of care. Discharging this duty necessarily requires directors to, amongst other things, stay informed of and understand the company's general legal and regulatory obligations, as well as climate-related risks, opportunities and exposures. It also requires directors to ensure that annual reports are prepared with appropriate care, skill and diligence (i.e. that they are not misleading). If directors do not feel competent or comfortable in this regard, they may be required to take expert advice in order to satisfy their duty of care. A failure to do so exposes directors to liability for breach of duty, which carries risk of significant penalties and personal liability (depending on the nature of the breach).

Second, in most jurisdictions, directors have statutory obligations to approve or attest to the accuracy and completeness of disclosures made in financial filings. This often (but not always) involves a statutory duty to ensure that the accounts provide a 'true and fair' and accurate view of the company's financial position. Directors on audit committees will likewise have additional responsibilities to engage in testing and overseeing the robustness of the climate scenario assumptions underpinning key aspects of the audit process.[75] If companies produce inaccurate, false or misleading annual reports with respect to climate-risk, and fail to comply with their statutory requirements, they may be exposed to regulatory sanctions, criminal and/or civil liability.

Third, directors that sign off on misleading and/or untrue sustainability disclosures may be held liable in civil claims by investors (through securities lawsuits claiming, for example, that, by misrepresenting its exposure to climate risk, the company misled by the company and caused the investor to purchase shares at an over-inflated price, causing it financial loss when the risk was exposed), or by consumers (under consumer protection legislation – see Climate Litigation section below). These claims are currently few in number but are expected to grow as companies make more sustainability-related data available for public scrutiny in their sustainability reports.

Prudent directors can take steps to minimise these risks of liability arising from sustainability-related disclosures. For example, directors would be well-advised to: understand the requirements of the sustainability disclosure regimes their organisation is subject to (and take expert advice if necessary); conduct, or oversee the conduct of, thorough materiality assessments to identify their organisations' unique climate-related risks, opportunities and impacts; disclose these findings in a transparent way in narrative reports (and, where possible, reflect them also in financial statements); and avoid making sweeping or unsubstantiated statements in any publications. Disclosing forward-looking risks associated

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[73] IFRS, Climate-related commitments (IAS 37 Provisions, Contingent Liabilities and Contingent Assets) (April 2024).

[74] IFRS, *Exposure Draft: Climate-related and Other Uncertainties in the Financial Statements, Positive Illustrative Examples* (July 2042). The IASB clarifies illustrative examples are non-mandatory guidance whose purpose is to illustrate how the IFRS Accounting Standards apply to particular fact patterns.

[75] For audit committee guidance, see Janis Sarra, Canada Climate Law Initiative, *Audit Committees and Effective Climate Governance, A Guide for Boards of Directors* (December 2020) <https://ccli.ubc.ca/wp-content/uploads/2021/04/Guide-for-Audit-Committees-on-Effective-Climate-Governance.pdf> ; and *A Closer Look*, a Primer for audit committee members produced by Deloitte U.K. for Chapter Zero, the CGI's U.K. Chapter and made available to the global network of Chapters. The Primer is also available in Spanish through the CGI's Latin American Chapters.

with climate change – with adequate specificity and relevance, and with appropriate cautionary language around associated limitations or uncertainties – is a prudent way to minimise liability exposure for misleading disclosure. Whilst appropriate analysis and disclosure will be company-specific, the TCFD recommendations are a helpful resource explaining the processes required to robustly assess climate risks (and opportunities), and to communicate them to the market in a true and fair manner.[76]

76 *Ibid.*, 13.

Climate Litigation

Introduction to climate litigation

More than 2,666 climate change related lawsuits have been filed around the world.[77] Roughly 70% have been filed since the Paris Agreement was signed in 2015, and hundreds of new cases are filed each year. At least 233 new cases were filed in 2023 alone.

Although most of these lawsuits target governments and public authorities, who have an established duty of care towards citizens, an increasing number of claims have been filed against companies and trade associations around the world. Between 2015 and 2023, around 230 strategic climate lawsuits were filed against companies and over two thirds of these were filed in last four years (since 2020). The sector most frequently targeted is, unsurprisingly, the oil and gas sector, but claims against companies in other carbon intensive industries, such as aviation, industry, agriculture, food and beverages, and finance (amongst others) have also been filed.

The most active jurisdictions for climate litigation are the US, Australia, the UK, Brazil and Germany, but climate cases have been identified in 55 jurisdictions around the world and cases are being filed in new jurisdictions each year. For example, in 2023 new cases were identified in Namibia, Hungary and Panama.

Another trend is the increased variety in the types of cases being filed against corporations. Although most claims against corporations seek damages based on the company's alleged contributions to climate change-induced harms ('climate liability' cases)[78] or seek to disincentivise companies from continuing with high-emitting activities by requiring them to change their policies or conduct ('corporate framework' cases), many newer cases advance more 'creative' causes of action, which are testing the boundaries of conventional law and commercial practice. Such cases seek a variety of remedies, including damages (i.e. financial compensation), declaratory relief (i.e. court declarations clarifying that, for example, a company's conduct was unlawful, without ordering any action or damages), and/or injunctive relief (i.e. the court ordering the company to take or refrain from a specific act). However, often the main goal of strategic climate litigation is to set a legal precedent and/or to make an example of the defendant company, so as to influence wider corporate behaviour.

Below we discuss five trends of particular relevance to boards and directors: first, a new class of securities and directors' duties lawsuits targeting companies' directors over the management and/or disclosure of climate risk; second, lawsuits targeting asset managers over their consideration of ESG factors in investment decisionmaking (or lack thereof); third, the rapidly evolving field of 'greenwashing' claims; and fourth, how climate litigation may influence corporate governance and business strategy.

Fiduciary and securities claims against board members

In recent years, cases have been filed in jurisdictions including the US, Australia, the UK and Poland, against companies and/or their directors in relation to their management and/or disclosure of climate- or ESG-related risks. These cases fall broadly into two categories: (1) securities lawsuits; and (2) fiduciary and/or directors' duties claims. Such cases filed to date clearly show the risks to companies and their directors and officers from failing to incorporate climate change into business strategy, oversight, risk management and disclosure.

(1) Fiduciary and/or directors' duties claims against companies.

Claims targeting directors for allegedly mismanaging climate risk have been filed in the UK and Poland. These test the application of directors' duties to climate risk in relation to specific (stranded) assets (in Poland) and more widely in relation to company strategy (in the UK).

[77] Joana Setzer and Catherine Higham, Global trends in climate change litigation: 2024 snapshot (June 2024). We encourage directors to read these annual reports, which identify trends in climate lawsuits around the world in a clear, easy to understand and thorough manner.

[78] For example, the cases of *Lliuya v RWE* and *Asmania v Holcim*, filed in Germany and Switzerland respectively, seek to hold the defendant corporations accountable for their contributions to climate change, seeking damages proportionate to the percentage of total GHG emissions emitted by the company. For example, in *Lliuya*, the Peruvian farmer claimant is seeking 0.42% of the costs of adapting to the melting of a glacier in his home town in Huaraz, Peru; 0.42% being equivalent to RWE's contribution to total GHGs emitted globally to date.

In 2023, UK Courts handed down the world's first court decisions directly addressing directors' duties in relation to managing climate risk in *ClientEarth v Shell*.[79] The lawsuit – a 'derivative action' – was filed by NGO ClientEarth in its capacity as a minority shareholder, arguing that Shell's directors had breached their statutory duties of care and loyalty by failing to put in place a business strategy that adequately addressed material and foreseeable climate risk. The claim was dismissed, but the decision has since been criticised by high profile commentators, including the former Chief Justice of the Supreme Court, potentially leaving the door open for future claims to be filed. See the case study in the UK section of the Navigator for more information.

In December 2023, Polish power generation company Enea SA (**Enea**) filed a lawsuit (with 87% shareholder support) against Enea's former directors and insurers for alleged improper due diligence and consideration of climate transition risk when they decided to invest in a new €1.2bn 1GW Ostrołęka C coal-fired power plant in 2018,[80] despite independent warnings that the plant would be unprofitable in light of rising carbon prices, competition from cheaper renewables, and new EU regulations making it harder to secure financing.[81] The 2018 board resolution authorising the project was annulled after a lawsuit by minority shareholder ClientEarth in 2019 succeeded in demonstrating that construction would harm the economic interests of the company in light of climate transition risk, which had not been adequately considered.[82] As a result of the 2019 lawsuit, Enea abandoned the project mid-construction and decided to write it off, creating a stranded asset, in February 2020. The company is seeking damages of PLN 650 million, equivalent to €152 million, to recoup these losses from its former directors under their D&O insurers.[83] The claim is novel, and the decision will provide useful clarity on directors' duties to consider climate risk on an asset level.

(2) Securities lawsuits against companies.

The *Enea* lawsuit is not the first case to consider whether a decline in company value can be attributed to mismanagement and poor communication of climate risks associated with new fossil fuel investment. In 2016, in the US, an investor in ExxonMobil Corp (**Exxon**) filed a securities class action alleging breach of fiduciary duties and securities fraud against Exxon and three officers, including the Chief Executive Officer at the time, Rex Tillerson (*Ramirez v ExxonMobil*).[84] The claim was filed on behalf of all purchasers of Exxon stock during a certain period, alleging they were misled and purchased shares at an artificially inflated price as a result of Exxon's public statements that misrepresented the company's protection from exposure to climate risk by its misrepresentations about its use of a proxy cost of carbon in evaluating future investments. Later, Exxon's Q3 2016 financial results disclosed that it might have to write down 20% of its oil and gas assets due to the falling price of oil, causing its share price to fall by more than USD 2 per share. The investors are seeking damages for those losses. The claim is proceeding as a class action in federal District Court in the Northern District of Texas on the claims about overstatements of the value of the company's oil and gas assets. Class certification was denied on the proxy cost of carbon claims since the company was able to show there was no price impact when corrections were made to its prior statements about the proxy cost of carbon, and thus no reliance, which is one of the elements of a securities fraud claim.

In addition, there is an ongoing claim from 2019 against Exxon's directors alleging that they have breached their fiduciary duties by allowing misleading disclosures about stranded assets.[85]

More recently, in August 2024, shareholders in publishing company RELX PLC filed a securities class action in Massachusetts alleging that the company engaged in greenwashing by misleading investors about their climate commitments, while continuing business activities that contradicted those pledges,

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79 *ClientEarth v Shell Plc* [2023] EWHC 1897 (Ch). See High Court July 2023 decision; and the Court of Appeal November 2023 decision in *ClientEarth v Shell plc & Ors* [2023] EWCA Civ 1126.

80 See ClientEarth, *Polish energy giant sues former directors and insurer over failed coal power plant investment* (1 February 2024). This claim is covered in detail here because the Polish section of the Navigator has not been substantively updated this year. The Poland section will be updated substantively in 2025.

81 See Carbon Tracker Initiative, Ostrołęka C: Burning More Money Than Coal (29 August 2018).

82 *ClientEarth v Enea*, District Court of Poznań [31 July 2019] http://climatecasechart.com/non-us-case/clientearth-v-enea/>. The Court found in ClientEarth's favour on the first ground (the board resolution approving the power plant was legally invalid under Polish company law) so the judge did not need to formally determine the second ground (climate risk).

83 NB, the Polish section of the Navigator has not been substantively updated this year but will be updated in full in 2025.

84 Pedro Ramirez Jr v. Exxon Mobil Corp. et al., No. 16-03111 (N.D. Tex. Oct. 24, 2016).

85 Climatecasechart.com, *In re Exxon Mobil Corp. Derivative Litigation* (2019) <http://climatecasechart.com/case/von-colditz-v-exxon-mobil-corp/>

such as publishing content that promoted fossil fuel expansion.[86] The complaint argues that the company's alleged greenwashing artificially inflated the stock price.

Similarly, in the UK, in May 2024, institutional investors in Boohoo Group PLC filed a securities class action seeking compensation of around £100 million for financial losses caused by the company's non-disclosure of human rights and modern slavery violations in its suppliers' factories, which, when exposed in the press, caused the share price to fall by more than 40%. The shareholders are seeking to recover these losses, alleging they arose from the company's untrue and/or misleading statements and/or omissions. The lawsuit addresses wider ESG issues, but its findings will be applicable to alleged nondisclosure or misrepresentation of any material risk, including climate risk. This is the first (reported) securities lawsuit of this kind in the UK (see more in the UK section of the Navigator).

These cases demonstrate the need for directors to ensure that public statements align with actual corporate strategy and conduct (i.e. to not greenwash) and touch upon the importance of properly accounting for climate risks. Each of these cases may set important precedents when decided.

Fiduciary claims against asset managers

Investors and asset managers have also faced challenges regarding their fiduciary duties. In Australia, the corporate trustee of A$50 billion AUM pension fund Retail Employees Superannuation Trust (**REST**) was sued for breach of its duty of care for failing to integrate climate change considerations into its investment strategy.[87] The case was settled in November 2020 on favourable terms to the plaintiff. REST issued a press release recognizing climate change as a material financial risk, and undertook to be net-zero by 2050 and to ensure that its investment managers "*take active steps to consider, measure, and manage financial risks posed by climate change and other relevant ESG risks.*"[88]

A case with possible implications for both company and investor fiduciary duties was brought in October 2021. Beneficiaries of the UK University Superannuation Scheme (**USS**) pension fund filed a claim against the directors of the fund management company, claiming that by continuing to invest in fossil fuels, while acknowledging that climate change is a material financial risk to the returns of assets is a breach of fiduciary duties.[89] This case was dismissed on procedural grounds in May 2022, and in July 2023, the Court of Appeal dismissed the claim in full.[90] See the UK section of the Navigator for more information.

Although not currently covered in this Navigator, a related lawsuit was filed in South Korea in 2023 seeking to compel the National Pension Service, one of the largest asset owners in the world that manages over USD 800 billion, to disclose a coal divestment plan announced in 2021.[91]

However, the picture is not one sided, and there have been strong movements in the US *against* fiduciaries considering climate risks, motivated by political and socio-economic reasons. This anti-ESG fiduciary backlash includes amendments to fiduciary legislation seeking to prevent asset managers from considering ESG factors in investment decision making, as well as fiduciary lawsuits alleging that asset managers have breached their fiduciary duties for doing so. These developments are numerous and are discussed in detail in the US section of the Navigator, along with commentary on the wider 'anti-ESG backlash' in the US. However, notable examples include a claim by New York workers against the New York City Employees' Retirement System and two other pension funds, alleging that the funds breached their fiduciary duties by divesting from fossil fuel assets (which failed because the plaintiffs could not demonstrate loss);[92] and a claim by American Airlines pilots accusing the airline of breaching its fiduciary duties under US pensions law by prioritising ESG goals over financial returns (which is pending).[93]

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86 Kip Lyall & Ors v. Elsevier Inc., RELX PLC, and Cell Press Inc., No. 1:24-cv-12022 (D. Mass. Aug. 6, 2024).

87 *McVeigh v REST* NSD1333/2018, Federal Court of Australia, <http://climatecasechart.com/non-us-case/mcveigh-v-retail-employees-superannuation-trust/>.

88 See *Statement of REST,* available at <https://equitygenerationlawyers.com/cases/mcveigh-v-rest/>.

89 As the company had not suffered a financial loss as a result of the investments, the claimants were unable to bring a common law claim: *McGaughey v Universities Superannuation Scheme Limited* [2022] EWHC 1233 (Ch). See the May 2022 High Court decision here.

90 *McGaughey & Anor v Universities Superannuation Scheme Limited & Ors* [2023] EWCA Civ 873. See the Court of Appeal July 2023 decision here.

91 *Solutions for Our Climate et al v Minister of Health and Welfare* (2023). See 20230711_Sejong-Youn-Plan-1.5_press-release.pdf (climatecasechart.com)

92 *Wong & Ors. v New York City Employees' Retirement System & Ors.*, docket number 652297/2023.

93 *Spence v American Airlines Inc,* No 4:23-cv-00552 (N.D. Tex. 2023).

These developments demonstrate the critical role that fiduciaries will play in the energy transition, as well as the growing divergence between the US and other jurisdictions regarding ESG measures.

Greenwashing liability

'Greenwashing' claims, which can lead to personal liability for directors, have rapidly increased in scope, ambition and number in recent years. 'Greenwashing' arises when companies[94] make false or misleading statements about the sustainability or environmental impact of their operations, products, services, strategy, targets, and plans. 'Greenwashing' is extremely broad, and greenwashing liability can generally arise from (1) consumer protection regulations;[95] (2) advertising standards; [96] and (3) measures to prevent financial greenwashing. Businesses are increasingly at risk of greenwashing lawsuits or regulatory enforcement. At the end of 2023, more than 140 greenwashing lawsuits had been filed since 2016, with 47 new cases filed in 2023 alone.[97] Most of these cases (around 70%) have been successful.[98] Notable (non-exhaustive) examples of the three greenwashing categories are set out below.

(1) *Consumer protection claims*

In August 2021, shareholder activist group, the Australasian Centre for Corporate Responsibility (**ACCR**) sued Australian oil and gas company Santos alleging misrepresentations under consumer protection and corporation laws. Claims by Santos include that their natural gas is "*clean fuel*" that provides "*clean energy*" and that it has a "*credible and clear plan*" towards achieving "*net-zero*" emissions by 2040.[99] This was the first case in the world to challenge the veracity of a company's net zero plan. The claim is still proceeding in the Australian courts.

In March 2024, a Dutch Court found that the Dutch airline KLM had engaged in misleading advertising (i.e. greenwashing) and breached EU consumer law in its 'Fly Responsibly' campaign. The Court found that its campaign misrepresented the positive effects of sustainable aviation fuels (**SAFs**), carbon offsetting, and emerging technologies, and that its claims about how it was tackling climate change were inconsistent with KLM's wider business strategy of increasing aviation travel.[100] This was the first greenwashing decision against an airline in the world, and has had significant implications in the wider sector.[101] Aside from numerous regulatory actions being taken against the industry for greenwashing, in July 2024, environmental NGOs wrote to 71 European airlines warning that, following the KLM judgment, the use of claims about SAFs, offsetting and net zero are likely to be unlawful.

In the US, a class action was filed in May 2023 against Delta Airlines alleging that the airline's advertisements claiming to be the "*world's first carbon neutral airline*" are misleading.[102]The class action alleges that the airline's carbon neutrality claim relies on unverified carbon offsets and misleads consumers, in breach of California consumer protection laws. The plaintiffs are seeking over USD 1 billion in damages. The claim is pending.

However, it is worth noting that not all greenwashing lawsuits are successful, and in August 2024, a US court dismissed a class action lawsuit filed against United Airlines alleging that the airline misrepresented its use of SAFs and made customers believe that its flights were climate-friendly.[103]

(2) Advertising greenwashing

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94 Greenwashing claims can and have also been filed against governments and public bodies.

95 Consumer protection laws focus on protecting consumers from unfair, deceptive, misleading practices and ensuring consumers have enough accurate information to make informed choices.

96 There is a lot of overlap between greenwashing liability under advertising standards and consumer protection law. However, advertising greenwashing liability is focussed purely on companies' advertising and marketing, whereas consumer protection greenwashing liability is broader and can arise from any statements made to the public, for example, statements on a company's website.

97 Joana Setzer and Catherine Higham, *Global trends in climate change litigation: 2024 snapshot* (June 2024).

98 Ibid.

99 See ACCR, Australasian Centre for Corporate Responsibility files landmark case against Santos in Federal Court (26 August 2021) <https://www.accr.org.au/news/australasian-centre-for-corporate-responsibility-files-landmark-case-against-santos-in-federal-court/>.

100 *FossielVrij NL v. KLM* C/13/719848/HA ZA 22-524 (2024) see the Judgment here.

101 Greenwashing claims have since been filed against United Airlines in the US (this was dismissed in August 2024),

102 *Zajac & Ors v United Airlines*, Reuters, Delta Air Lines faces proposed U.S. class action over carbon neutral claims (30 May 2023) <https://www.reuters.com/legal/delta-air-lines-faces-proposed-us-class-action-over-carbon-neutral-claims-2023-05-30/>.

103 Zajac v United Airlines, No. 8:23-cv-03145-PX (Maryland, 2024).

Advertising standards agencies in many jurisdictions, including the UK and Netherlands, have banned hundreds of adverts on the basis that they mislead consumers as to the company, product or service's environmental impact.[104] Although such enforcement actions impact a company's reputation, and directors have a duty to oversee the company's marketing, advertising liability is beyond the scope of this Navigator.

(3) Financial greenwashing

As concerned directors and fiduciaries, financial greenwashing generally (but not exclusively) involves two types of misleading activity. The first involves asset managers using misleading sustainability-related names (such as 'ESG', 'green', 'sustainable', and 'impact') for funds and financial products which, in practice, do not align with the product's investment strategy or screening policies. The second involves directors making material misstatements or omissions of climate-related information in financial statements, annual narrative reports, listing prospectuses, and other representations to the market. Although the details of each type of financial greenwashing vary depending on jurisdiction, in practice, both operate to misrepresent investors about the company or fund's approach to ESG-factors and climate risk. Claims arise when an investor's decision to invest in a fund purporting to be 'sustainable' or 'ESG'-focussed, or to buy shares in a company, has been influenced by the material misstatement or omission, and the investor suffers financial loss as a result.

Regulators around the world are implementing measures to crack down on the use of misleading fund names, and asset managers may face regulatory penalties under new names and labelling rules if they fall foul of these stringent requirements (see in particular in the Australia, UK and US sections of the Navigator). However, in addition to regulatory liability, liability for asset managers may also arise from financial greenwashing in court. Such litigation has evolved most rapidly in Australia. For example, in March 2024, Australia's Federal Court rule that Vanguard Investment Australia's claims about an "*ethically conscious*" fund were false and misleading; in June 2024, the Federal Court found that a trustee of Mercer Superannuation Fund had made misleading representations over ESG credentials; and in August 2024, the Australian Federal Court ordered Mercer Superannuation Fund to pay AUD 11.3 million (equivalent to USD 7.3 million) for making misleading claims about the sustainability of its investment options, in breach of Australian securities law.

Directors and officers may also be held liable for financial greenwashing by misrepresenting climate-related information in representations to the market. Although criminal liability is possible in severe cases (e.g. where directors intentionally engage in false accounting or fraud), directors and officers are more likely to face regulatory liability (e.g. penalties and sanctions from the financial regulator arising from the director or officer's breach of national listing rules or requirements for preparing accounts) or civil liability (e.g. arising from investors pursuing claims against the company and/or director personally for losses suffered as a result of the company and/or directors' misrepresentation or omission of climate-related information in financial statements or other public statements). The few claims of this nature to date have been brought as securities class actions by investors who allegedly purchased shares at an inflated price and suffered loss when particular non-disclosed information was exposed (see for example *Ramirez v ExxonMobil* or the recent UK lawsuit against Boohoo). However, it is also possible that such claims could take the form of a claim for breach of the director's duties of care, oversight and loyalty, although (with the exception of the *ClientEarth v Shell* case) these arguments have not been tested in court.

The impact of climate litigation on business

Climate litigation against corporations can have a significant impact on companies' business models. For example, in May 2021, in a landmark decision, a Dutch Court ordered Shell to cut its CO_2 emissions by 45% by the end of 2030, compared to 2019 levels.[105] In reaching this decision, the court considered the impacts of Shell's actions as a major fossil fuel company on the human rights of the Dutch citizens bringing the claim and ordered Shell to reduce emissions across its entire group. Shell would be required to fundamentally change its business model to fully comply with the decision. The claim built on an earlier a successful claim against the Dutch government in 2020, and established for the first time

[104] For example, in July 2024, the UK Advertising Standards Authority (ASA) banned an advert by Luton Airport, and August 2024, the ASA banned an advert by Virgin Atlantic which misrepresented the impact of SAFs.

[105] The decision in English is available at: *Milieudefensie et al. v. Royal Dutch Shell PLC* C/09/571932 / HA ZA 19-379 (engelse versie), <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339>.

that corporations owe citizens a duty of care.[106] Although Shell has appealed[107] and a decision is expected shortly, the claimant, Milieudefensie, has since informed 30 other multinational companies that it is willing to take them to court, using the same type of claim as used against Shell, if they do not produce transition plans.[108]

Furthermore, lawsuits are increasingly being filed targeting companies' inadequate climate risk strategy and plans, which, if successful, will require the defendant companies to align their business model with the Paris Agreement goals.

As climate litigation evolves, and with claims increasingly targeting directors and officers directly, forward-thinking boards would be well-advised prioritise implementing governance mechanisms and measures, including educational and training programs, to mitigate the risks of liability.[109] This Navigator is being published in order to help guide thinking about those governance mechanisms. **However, the Navigator is not and should not be relied on as legal advice.**

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106 *Urgenda v Netherlands* 19/00135 (20 December 2019).

107 Shell, Shell confirms decision to appeal court ruling in Netherlands climate case (20 July 2021) <https://www.shell.com/media/news-and-media-releases/2021/shell-confirms-decision-to-appeal-court-ruling-in-netherlands-climate-case.html>.

108 Reuters, Activists behind Shell climate verdict target 30 multinationals (13 January 2022) <https://www.reuters.com/markets/commodities/activists-behind-shell-climate-verdict-target-30-multinationals-2022-01-13/>.

109 Comprehensive databases discussing climate litigation to date are available from the Sabin Centre at Columbia University, Climate Change Litigation Database, <http://climatecasechart.com/>, and from the Grantham Centre at the London School of Economics, <https://climate-laws.org/>.

Questions to Assist Directors

The actions required to fulfil directors' duties and disclosure obligations will depend on the laws of the jurisdiction and unique circumstances of the company and situation.

To assist directors, we offer some high-level questions:

- **Climate risks and corporate strategy**: Does my board actively consider the foreseeable and material financial risks to the company associated with climate change (including those risks arising across our value chain and in relation to specific projects or acquisitions) and the potential impacts on corporate risk management and strategy?
- **Board engagement and oversight**: Do I meaningfully engage with and scrutinise information and advice concerning climate-related risks presented to the board? Do I need to seek independent advice? If climate change is never on the board agenda or in management reports, do I ask why not?
- **Climate risk management and reporting**: Has my company embedded robust procedures to ensure that foreseeable and financially material climate risks are identified, managed, and reported to the board? Are these risks appropriately disclosed in external reports and financial statements?
- **Net zero targets and transition planning**: Has the board considered whether to set a net zero target by 2050 or sooner? If so, how will we ensure the target based on robust and credible plan to navigate the financial risks and opportunities as my company and the global economy transition to net zero emissions? How is this information communicated to investors?
- **Capital expenditure and emissions targets**: Is my company's capital expenditure aligned with our emissions reduction targets and/or a Paris-aligned 1.5℃ scenario? If not, does management have a plan to do so?
- **Peer activity and external pressure**: Have any of my company's peers faced climate-related shareholder proposals, criticism from influential investors or the proxy advisors, or lower than expected votes on director or auditor appointment attributed to dissatisfaction on climate issues? Have any of my company's peers been subject to regulatory investigations or climate litigation?
- **Knowledge and expertise**: Do I have a sufficient level of knowledge on the physical, transition, liability, and systemic risks associated with climate change to fulfil my duties to govern the management of these risks? Does my board identify potential knowledge gaps among board members and organise appropriate training, and/or seek expert advice to address them?

In each country section, experts offer their views about corporate governance practices and actions that boards can adopt to mitigate climate change risks and to better identify opportunities.

European Union

The content in this section was updated in September 2024. Further updates will take place in 2025, reflecting relevant developments in the EU.

1. Legal and Regulatory Landscape Regarding Climate Change

1.1. The EU's approach to climate change

1.1.1. *Climate change legislation*

The European Union is an economic and political union of 27 Member States. The European Commission is made up of 27 Commissioners - one per Member State (the **Commission**). Together with the President of the European Commission, the Commissioners are the EU's executive branch, responsible for the daily running of the EU.[1] The European Parliament is the EU's only directly elected institution. The Council of the European Union represents the Governments of the individual member states. It is one of the two main legislative bodies of the EU, along with the European Parliament. The Council works with the European Parliament to adopt laws and coordinate policies.

The European Parliament may adopt Regulations and Directives addressing Member States. While Regulations directly apply in all Members States, Directives need to be implemented by each Member State. However, generally, Directives contain specific provisions and therefore Member States do not have much discretion in the implementation; sometimes a certain degree of discretion may occur. Therefore, if a Regulation is adopted, provisions are alike in all Member States with no difference. If Directives are adopted, slight differences may be found among Member States further to implementation; generally, differences refer to sanctions.

In June 2021, *European Regulation (EU) 2021/1119* (the **European Climate Law**) entered into force, which includes the EU's legally binding emission reduction objectives.[2]

1.1.2. *Transition plans and targets*

The European Climate Law includes a legally binding objective for the EU to reach climate neutrality by 2050, a commitment to negative emissions after 2050, and a target of at least a 55% reduction of net emissions of GHGs by 2030 compared to 1990.[3]

In 2018, the Commission adopted an Action Plan on Sustainable Growth to identify future legislative steps on climate change.[4] The Commission drew renewed attention to the concept of the 'carbon bubble', stating that: "*Between 60 and 80 percent of the coal, oil and gas reserves of publicly-listed companies are 'unburnable' if the world is to have a chance of keeping global warming well below 2°C and as closely as possible to 1.5°C, as agreed at the COP21 in Paris. [...] a very substantial source of global systemic risk [...] is currently embedded within EU and global financial markets*".[5]

1.1.3. *The EU's wider approach to climate change*

The EU has made substantial progress in preparing and implementing climate change-related policy and legislation. The

1 The European Parliament, How does the EU work? <https://op.europa.eu/webpub/com/eu-and-me/en/HOW_DOES_THE_EU_WORK.html#:~:text=The%20European%20Commission%20is%20made,daily%20running%20of%20the%20EU.>

2 *Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999*, L 243/1.

3 *Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999*, L 243/1.

4 *Regulation (EU) 2018/1999 of the European Parliament and of the Council on the Governance of the Energy Union and Climate Action planning 2030 targets and a transition to a climate neutral economy of 11 December 2018*, L 328/1.

5 Committee on Economic and Monetary Affairs of the European Parliament Draft Report, 2 February 2018.

EU has also a set of policies and legislation designed to meet these goals, including more stringent emissions standards for vehicles, a carbon border adjustment tax (which will enter into force in a transitional phase from October 2023, and will be fully in force from 1 January 2026), and adjustments to the EU emissions trading scheme (pursuant to which the emissions allowances will reduce at a faster rate).[6] These are likely to have significant impacts on the legal and commercial contexts in which companies operate – as developments which are likely to take effect in the short and medium-term, they affect directors' governance of their companies and disclosure of material risks (on which see below).

1.2. Regulatory approaches to climate change

1.2.1. *Climate change as a systemic financial risk*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

1.2.2. *Financial regulation and guidance*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

1.2.3. *Liability risk: enforcement action by regulators*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

2. Directors' Duties and Climate Change

2.1. Legal framework for directors' duties

The *European Directive (EU) 2014/95*, also known as the Non-Financial Reporting Directive (the **NFRD**) was replaced by *Directive (EU) 2022/2464*, more commonly known as the Corporate Sustainability Reporting Directive (**CSRD**). Both do not expressly refer to directors' duty of skill and care in relation to climate change. However, in all European jurisdictions, directors are obliged to oversee the company in compliance with the duty of care and loyalty. The apparent silence of the NFRD and CSRD in respect of directors' duties is in fact deceptive: by requiring disclosure on, among other factors, climate-related risks and opportunities, the NFRD and CSRD effectively set a clear and robust standard for how the board must govern climate change. Both presume an understanding of, and assessment by, the board of the impact of climate change on the company and likewise of the company on the climate.

It is therefore through the backdoor of disclosure that climate change has penetrated the management of European corporations across all industries. The NFRD is indeed much more explicit as duties for companies (that imply directors' duties) to adopt energy transition plans and GHG reduction targets have been expressly provided (see below).

A further significant development is the *Directive (EU) 2024/1760* on Corporate Sustainability Due Diligence (the **CSDDD**), which introduces a duty for certain companies to adopt due diligence plans also on supply chain in order to avoid any possible negative impact on human rights and the environment.[7]

2.2. Guidance on interpretation of directors' duties

[6] European Commission, European Green Deal: Commission proposes transformation of EU economy and society to meet climate ambitions (14 July 2021) <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3541>; European Commission, Delivering the European Green Deal <https://climate.ec.europa.eu/eu-action/european-green-deal/delivering-european-green-deal_en>.

[7] The original Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 was finally approved on 13th June 2024.

2.2.1. *Legal guidance*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

2.2.2. *Regulatory guidance*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

2.3. Directors' liability and litigation risk

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3. Directors' Duties and Sustainability Disclosure Obligations

3.1. Narrative sustainability disclosure

3.1.1. *Sustainability disclosure frameworks*

The Non-Financial Reporting Directive: At present, the disclosure of sustainability-related information in the EU is the subject of the CSRD, which replaced the NFRD and is in force for those companies already required to comply with the NFRD, since January 2024. It is therefore already in force for large listed companies (non-financial corporations) with over 500 employees) and banks and insurance companies of any size.

The Corporate Sustainability Reporting Directive: In January 2024, the CSRD entered into force. Other large entities (with over 250 employees) will be required to comply from 1 January 2025; SMEs from 1 January 2026, and third-country undertakings with one qualifying subsidiary or branch in the EU from 1 January 2027. The NFRD will continue to apply while the CSRD comes into effect.

The CSRD shall be read in conjunction with the *Sustainable Finance Disclosure Regulation* and the *Taxonomy Regulation*[8] and *Regulation (EU) 2023/2772* issued upon mandate of the European Commission by The European Financial Reporting Advisory Group (**EFRAG**).

The CSRD:

- requires full assurance of sustainability information by external auditors;
- specifies in more detail the information that companies should report, and requires them to report in line with mandatory EFRAG reporting standards (on which, see below); and
- requires all information to be published as part of companies' management reports, and disclosed in digital, machine-readable format.

Reporting under the CSRD must address:

- the resilience of the business model and strategy to sustainability-related factors;
- opportunities related to sustainability;
- plans to align the business model and strategy with the transition to a sustainable economy, defined as limiting the rise in global average temperature to 1.5°C above pre-industrial levels, in line with the Paris Agreement;
- stakeholder engagement practices and their implications for the business model and strategy;
- implementation of the strategy as it relates to sustainability;
- sustainability-related targets, including absolute greenhouse gas reduction targets for at least 2030 and 2050, a statement of whether such targets are based on conclusive scientific evidence, and progress achieved against them;

[8] *Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector; Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.*

- the role of functional areas and business units, as well as of the board, whether one-tier or two-tier as per local practice in different Member States, with regard to sustainability;
- principal actual or potential impacts related to the company's broader value chain, and any action taken and results achieved to prevent, mitigate or remediate negative impacts
- the principal sustainability-related risks facing the company, including a description of the company's dependencies on sustainability factors; and
- indicators to measure and report on the above.

The *Regulation (EU) 2023/2772* refers to: climate change mitigation and adaptation, water and marine resources, resource use and the circular economy, pollution, and biodiversity and ecosystems. It includes a set of European Sustainability Reporting Standards on climate change (**ESRS**). The climate change ESRS contain provisions for entities to disclose their: transition plans; the material impacts, risks and opportunities related to climate change mitigation and adaptation facing them; the financial effects of these risks and opportunities; their policies for managing these risks, impacts and opportunities; their climate-related targets; and their scope 1, 2 and 3 GHG emissions.

The Regulation also contains provisions on general disclosure requirements stating that sustainability disclosures should be made on a 'double materiality' basis, which requires companies to disclose both: matters which have a financially material impact on the company, and the company's impacts on stakeholders. The materiality of the latter is to be assessed by a sustainability due diligence process, and with reference to the relative severity and likelihood of the impact.

Member States are required to ensure that administrative, management and supervisory bodies of the company are held responsible for ensuring that the company's annual financial reporting, management report and corporate governance statement are produced in accordance with these standards.

Statutory audit boards and audit firms provide an additional lever to drive the effectiveness of climate-related disclosure, insofar as they are required to check whether the non-financial statement or separate report have been provided, although as of yet, their oversight does not extend to its actual contents (limited assurance). However, Member States also have the option of requiring that the information contained in the sustainability reporting required by the CSRD be verified by an independent assurance services provider.

The Corporate Sustainability Due Diligence Directive: European companies with over 1,000 employees and a minimum turnover of €450 million and non-EU companies with a turnover of more than €450 million[9] will be required to integrate due diligence into their policies, identify actual or potential adverse environmental and human rights impacts, and prevent, mitigate or minimize these, as well as publicly communicate how they are fulfilling these obligations.[10]

Green Claims Directive: The Commission brought forward a proposal for a Green Claims Directive on 22 March 2023 aimed at the practice of greenwashing (the **GCD**).[11] As part of the European Green Deal, the GCD on substantiation and

9 *Directive (EU) 2024/1760* on Corporate Sustainability Due Diligence (the **CSDDD**),

10 European Commission, Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains (23 February 2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145>.

11 Proposal for a Directive on substantiation and communication of explicit environmental claims <https://environment.ec.europa.eu/document/download/0514afe4-6b0e-43f0-9154-86972db19495_en>

communication of explicit environmental claims seeks to regulate which green claims companies are allowed to make and enhance transparency in this area. Companies will have to prove transparently and comprehensibly that they actually comply with their "green claims" and an evaluation system will be used to measure the ecological footprint of products or companies as objectively as possible. Additionally, companies will no longer be allowed to create their own environmental labels. Instead, independent third-party authorities will become responsible for awarding such labels in the future. The GCD provides severe penalties for violations of these rules. Against the backdrop of this intended strict enforcement, the GCD puts another ESR aspect into focus which directors are advised to keep in mind particularly regarding operations of their companies.

3.1.2. *Specific sustainability disclosure requirements for listed entities*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.1.3. *Specific sustainability disclosure requirements for financial institutions*

Directors of European banks (regardless of size) shall consider the [Guide on climate-related and environmental risks]() issued by the European Central Bank in November 2020, which sets out thirteen supervisory expectations relating to risk management and disclosure of climate risks. These all fall within the board's duty of oversight, and consist of:

- understanding the impact of climate-related risk on the business over the short, medium and long term, in order to make informed strategic and business decisions;
- integrating climate risk when developing and implementing the bank's strategy;
- considering climate risk in the context of the overall business strategy and objectives, and embedding it within the risk management framework;
- ensuring the bank's setting of risk appetite framework properly accounts for climate risk;
- ensuring responsibility for climate risk is properly allocated to management within the organizational structure;
- incorporating aggregate climate risk data within internal reporting process so as properly as to reflect the bank's exposure;
- identifying, quantifying and integrating climate risk within the overall capital adequacy framework;
- embedding climate risk assessment within the bank's credit risk management process at all relevant stages (from credit-granting to portfolio-monitoring);
- integrating climate risk in the assessment of business continuity, reputation and liability;
- ongoing monitoring of the effect of climate risk on the bank's market positions and future investments, and incorporating climate risk into stress-testing methodology;
- evaluating, and where appropriate revisiting, the bank's stress testing methodology to ensure that climate risk is included in baseline and adverse scenarios;
- assessing whether climate risk could cause net cash outflows or depletion of liquidity buffers; and
- publishing meaningful and material information and key metrics in accordance with the above-referenced European Commission Guidelines of 2019 and therefore aligning with TCFD Recommendations.

In 2022, the ECB carried out a full supervisory review of banks' climate practices under the SREP (Supervisory Review and Evaluation Process), with a view to taking concrete remedial measures where needed. The ECB concluded that banks do not fully meet the ECB's expectations on disclosure of climate and environmental risks, with significant gaps remaining in disclosures.[12] The ECB published a report on good practices for climate stress testing following this, in December 2022.[13]

3.1.4. *Directors' duties regarding sustainability disclosures*

With respect to the CSRD, boards of directors of all affected EU-based corporations must, in the first instance, analyse whether the short, medium and long-term implications of climate change could have any impacts on their corporate strategies and activities, and if so, evaluate such impacts. If it is determined that there is no impact, this must be disclosed in the non-financial statement, clarifying the precise reasoning underpinning this conclusion. If impacts have been identified and evaluated, they must be disclosed together with the measures adopted by directors to manage such impacts, unless they elect not to pursue any policy with reference to climate change – in which case a clear and reasoned explanation of such a decision must be reported as well. The board is expected to identify and fully disclose material risks and opportunities, in line with the ESRS.

The description of the business model assumes that the board of directors has developed a corporate strategy that takes account of climate change, among other factors, in the short, medium and long term. This is a time horizon that is notably longer than the one boards usually consider in strategic planning, and to the extent it takes full account of all risks and opportunities, it has significant implications for financial planning, in terms of both capital expenditures and revenues. The core issue is whether the company's business is resilient in different climate change scenarios (ranging from 1.5°C average increase over pre-industrial temperatures to business-as-usual, given the high degree of uncertainty surrounding regulatory policy, technology and physical impacts). It falls to the board of directors to make these determinations.

In addition, the disclosure requirement on policies and due diligence processes calls for the board of directors, within its duty of oversight, to institute effective internal controls as regards climate factors. The same duty of oversight likewise applies with respect to the disclosure of the metrics and targets that underpin the climate strategy, which the board must define and the delivery of which it must oversee.

The reporting frameworks also require the disclosure and management of material impacts. The board of directors is ultimately responsible for the company's risk management processes, and in order to properly consider climate-related risks is expected to assess them over the short, medium and long-term. Under the ESRS, this includes specific reference to different climate scenarios.

The requirements under the ESRS closely follow and extend upon the TCFD recommendations. In particular, the requirement to disclose strategies, policies, risks, impacts and opportunities relating to climate change bring these issues within the purview of directors' duties.

It follows, therefore, that, in order to fulfil their duty of skill and care – which, in all Member States, includes the duty to be fully informed – directors must properly understand and consider climate-related risks and the processes to manage them.

Due to its very nature, climate-related information forces directors to reason in terms of medium and long-term horizons, because the impacts of climate change

[12] European Central Bank, Supervisory assessment of institutions' climate related and environmental risks disclosures (14 March 2022) <https://www.bankingsupervision.europa.eu/press/pr/date/2022/html/ssm.pr220314~37303fd463.en.html>.

[13] European Central Bank, ECB report on good practices for climate stress testing (December 2022) <https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202212_ECBreport_on_good_practices_for_CST~539227e0c1.en.pdf>.

extend over long periods and cannot be fully understood and assessed by focusing on the typical three- to four-year business planning cycle. This holds even when a jurisdiction does not explicitly contemplate the long term in the provisions addressing directors' duties. Because of the disclosure requirements under the CSRD, effective climate governance means boards are naturally compelled to adopt a long-term perspective in managing the company.

Therefore, although billed as disclosure legislation, the CSRD effectively has and will have an enormous impact on the manner in which the duty of skill and care are to be interpreted and acted upon: disclosure on climate implies a robust process for identifying and managing risks and opportunities, and thus carries with it the implied directors' duty properly to manage these risks and embed these opportunities when defining the medium and long-term strategy of the company.

3.1.5. *Liability risk arising from narrative sustainability disclosures*

As for enforcement, under the CSRD, Member States hold responsibility for determining and enforcing sanctions for non-compliance with disclosure requirements, and regulations vary from one Member State to another. For example, in Germany, it is a criminal offence for directors not to prepare or publish a statement of non-financial information, and not to disclose the actions taken in relation to each area (i.e. including climate change) without giving a justification. In Italy, the sanction is an administrative monetary penalty applied to those who verify the non-financial statement. In France, the only consequence for non-compliance is that any interested party may send a request to a judge for summary proceedings asking for the information to be provided; if the application is granted, the directors are liable to pay the penalty and procedural costs.

Obviously, under general principles of law and procedures of each Member State, in addition to the specified sanctions, directors' civil liability for damages applies in cases of material misstatements or breach of the duty of skill and care. As yet, there is no case law under the CSRD (or the former NFRD) to gauge the practical application of these Directives.

3.2. Climate-related disclosures in financial statements

3.2.1. *Climate-related disclosures in financial statements*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.2.2. *Directors' duties regarding climate-related disclosures in financial statements*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.2.3. *Liability risk arising from financial statements*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

4. Practical Implications for Directors

Given the European Commission's adoption of world-leading climate disclosure regulations for non-financial companies, and additional very detailed and advanced regulations governing the management of climate risk by banks, well-counselled boards will:

a) allocate identification of climate risks and opportunities and their evaluation to a clearly-identified team in management that reports directly to the board;

b) considering in particular the legal and policy developments in relation to EU climate goals, and the potential direction of travel of these developments, put on the agenda for the board to review, within 3 or 6 months, a process to initiate the development of a climate transition roadmap to 2050, with transparent carbon neutrality targets, clear interim targets to 2040, 2030 and near-term within the current rolling multi-medium and long-term targets, and at least annually thereafter report back to the board;

c) ensure that all relevant departments, such as legal and compliance, risk management, scenario-planning, strategy, audit, procurement, human resources, government relations, investor relations, stakeholder relations, reach a clear understanding of their functional contribution to the design and delivery of the company's climate transition plan, coordinate their efforts under the leadership of the CEO, and are jointly accountable to the board;

d) allocate to the appropriate committee(s) of the board, such as risk, audit, governance, scenarios/strategy, nominations/remuneration, or sustainability/corporate responsibility, the task of translating the long-term strategy into a clear decision-making process for each aspect that is relevant to each committee before its final approval by the board as a whole; and

e) discuss with disclosure counsel, in order to develop an external engagement and communications plan.

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Chapter Zero Italy
The Nedcommunity Climate Forum

Greece

The content in this section was last updated in August 2023. Further updates will take place in 2025, reflecting relevant developments in this jurisdiction.

This section is to be read in conjunction with the EU section and focuses specifically on rules under Greek law regarding directors' duties and obligations as they pertain to climate risk and sustainability disclosures.

1. Legal and Regulatory Landscape Regarding Climate Change

1.1. Government approach to climate change

1.1.1. *Climate change legislation*

At the Government level, Greece has made substantial progress and has established specific policies and targets to foster climate resilience to climate change.

In May 2022, Greece adopted a national climate law which aims at creating a coherent framework for the improvement of the adaptability and climate-resilience of Greece and the gradual transition of the country to climate neutrality by 2050 in the most environmentally sustainable, socially fair and cost-efficient way (the **Climate Law**).[1]

1.1.2. *Transition plans and targets*

In December 2019, the Greek Government adopted the National Energy and Climate Plan (**NECP**).[2] The NECP is a strategic plan which sets out a detailed roadmap for the attainment of specific energy and climate targets by 2030 and describes specific priorities and policy measures in respect of a wide range of economic activities for the achievement of the targets, and therefore operates as a reference text for the forthcoming decade. There is a specific target for reduction of GHG emissions by 42% by 2030, compared to 1990 levels. In addition, the target for 2030 for the share of renewable energy in gross final energy consumption is 35%.

For the achievement of the target of climate neutrality by 2050, the Climate Law sets as intermediary targets for the years 2030 and 2040 the reduction of GHG emissions caused by human activity by at least 55% and 80% respectively, compared to 1990 levels, taking also into account the targets of the NECP. For the achievement of the above goals, the Climate Law provides for the adoption of climate adaptation strategy at a national and regional level for a period of ten and 7 years respectively, as well as for specific measures and policies, including: the phase-out of lignite's share in power generation by 2028; the promotion of the use of zero carbon and electric vehicles in the public and private sector; and the reduction of CO2 emissions from residential and public buildings and companies. The NECP is currently under revision so as to comply (as the Climate Law does) with the ambitious EU climate targets of reduction of CO2 emissions by 55% compared to 1990 levels by 2030 (as per the European Green Deal, European Climate Law, Fit for 55 package) and the phase-out of EU's dependency on fossil fuels well before 2030 set out in the Repower EU plan. The Ministry of Environment and Energy is in process of consulting with the European Commission before presenting the revised version of the NECP for public consultation.

1.1.3. *Wider government approach to climate change*

This information will be included in the next

[1] Law 4936/2022 National Climate Law - Transition to climate neutrality and adaptation to climate change, urgent provisions to address the energy crisis and protect the environment (Government Gazette 105 / A / 27-05-2022).

[2] Ministry of the Environment and Energy, National Energy and Climate Plan (December 2019) <https://energy.ec.europa.eu/system/files/2020-03/el_final_necp_main_en_0.pdf>.

edition of the Directors' Duties Navigator, which will be published in 2025.

1.2. Regulatory approaches to climate change

1.2.1. *Climate change as a systemic financial risk*

Greek regulators, especially in the financial sector, are also becoming increasingly focused on the importance and necessity for companies to apply climate resilience policies and measures in the interest of their sustainability and competitiveness.

1.2.2. *Financial regulation and guidance*

In 2019, the Athens Stock Exchange (**ATHEX**) produced the ESG Reporting Guide (updated in 2022) (the **ESG Reporting Guide**).[3] The ESG Reporting Guide offers voluntary guidance on incorporating ESG information, including climate risks. The ESG Reporting Guide is aligned with leading reporting frameworks – including the Sustainability Accounting Standards Board (**SASB**), the 2021 Global Reporting Initiative (**GRI**), and the Task Force on Climate-related Financial Disclosures (**TCFD**) recommendations – and applicable legislation, including the Non-Financial Reporting Directive (**NFRD**) and the Corporate Sustainability Reporting Directive (amending the NFRD), the Sustainable Finance Disclosure Regulation (**SFDR**), the EU Taxonomy, Greek *corporate law 4548/2018* (**Corporate Law**), as well as the Hellenic Corporate Governance Code (**HCGC**). While voluntary, compliance with the ESG Reporting Guide is likely to help companies meet ESG regulatory requirements under the Climate Law and other relevant legislation, and increase access to capital.

The HCGC recommends that listed companies rely on the ATHEX guidance in relation to their non-financial disclosures.

In addition, in November 2021, the Bank of Greece announced its eight-point plan for climate change. The Bank committed to following a climate change action plan, applying sustainable and responsible investment principles to its portfolios, assessing climate risk in the financial system, and using the recommendations of the Network for Greening the Financial System (**NGFS**).

1.2.3. *Liability risk: enforcement action by regulators*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

2. Directors' Duties and Climate Change

2.1. Legal framework for directors' duties

Directors' duties are set out in the Corporate Law.[4] Pursuant to Articles 96 and 97 of the Corporate Law, all board members have a duty of care, loyalty, diligence and confidentiality towards the company and must exercise their duties for the benefit of the company. Interpreting the duty of care of board members under the standards and requirements of the EU and national climate change strategy, management board directors are expected to be skilled in understanding and assessing the impact of climate risks on the company's business (and vice versa of the company's business to the climate) and to implement policies and measures to foster company's resilience against climate-related risks.

Climate change, which falls within the bounds of sustainability issues, is explicitly associated with the governance of listed companies in the Greek *corporate governance law 4706/2020* (**Corporate Governance Law**),[5] although not in the form of an obligation. Article 14 of the Corporate Governance Law provides that listed companies shall include in their internal regulation the company's

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[3] ATHEX, ESG Reporting Guide 2019 (2019) <https://www.athexgroup.gr/documents/10180/5665122/ENG-ESG+REPORTING+GUIDE/28a9a0e5-f72c-4084-9047-503717f2f3ff>.

[4] *Law 4548/2018 Reformation of the legal framework of the societes anonymes companies* (Government Gazette A 104/13.6.2018).

[5] *Law 4706/2020* (Government Gazette A' 136/17.07.2020).

sustainable development policy, where required.

The proposed Corporate Sustainability Due Diligence Directive (on which, please see the EU section) may influence the governance culture of an organization, even before being adopted, including the duty of care of directors. This is because Greek companies (in particular large ones) may wish to take measures to meet its requirements as pro-active governance in order to be competitive against other EU companies established in member states that have already introduced due diligence laws, such as France and Germany.

2.2. Guidance on interpretation of directors' duties

2.2.1. *Legal guidance*

At the corporate level, Greek law has introduced the concept of sustainability, which includes climate-related risks, in the governance of listed companies. This has not yet taken the form of an obligation for the management boards, but rather as an issue left at the discretion of the boards to decide whether the adoption of a policy addressing climate change risks is appropriate for the business activity of the company. However, the fact that Greece has adopted an ambitious strategy towards climate neutrality with the adoption of binding climate targets (see the national climate law) presumes an understanding by the boards of climate-related risks and assessment of their impact on the business of the company (and vice versa of the company's business to the climate) and is expected to increasingly affect the governance culture of directors.

2.2.2. *Regulatory guidance*

According to the HCGC, sustainability is determined by reference to the impact of the company's activities on the environment and the wider community and is measured on the basis of non-financial factors related to, among others, the environment, which are economically essential for the company and the collective interests of key stakeholders (employees, customers, suppliers, local communities and other important stakeholders). Pursuant to the best practices of HCGC, board directors must: determine in the annual report the non-financial issues concerning the long-term sustainability of the company that are essential for the company, the shareholders and the stakeholders and how the company must apply them; bind and monitor the executive administration on matters relating to new technologies and environmental issues; ensure that mechanisms are in place for the knowledge and understanding of the interests of the stakeholders and monitor their effectiveness; and disclose to shareholders information on the management and performance of the company on sustainability issues. HCGC recommends that listed companies should use indicators of the ESG Reporting Guide or internationally recognized initiatives, such as the GRI, the SASB organization, the CDP or the UNGC.

Another area where climate-related risks, as part of the concept of sustainability, are considered, is the remuneration policy of the executive members of listed companies. HCGC recommends that the board directors shall examine and link the remuneration of executive members with indicators on ESG issues and sustainable development that could give long-term value to the company.

2.3. Directors' liability and litigation risk

Directors are liable to the company for any damage of the company due to an act or omission which constitutes breach of their duties.[6] The standard for the assessment of directors' liability is the diligence of the "*prudent businessman*". Based on the business judgement rule, no liability exists for acts or omissions which are based on a lawful resolution of the general meeting, or which concern a reasonable business

[6] Article 102 of *Law 4548/2018*.

decision which was adopted in good faith, based on adequate information and exclusively for the promotion of the corporate interest. The court may also rule that no liability exists for acts of board members which are based on the opinion of an independent body or commission which operates in the company. Although the duty of care of directors is owed to the company, if the company fails to proceed with an action against the board members, the shareholders could proceed to seek compensation in tort for the indirect damage they have suffered. Furthermore, shareholders may be entitled to file an action in tort against the board members for any direct damage they have suffered. In addition, the legal representatives of a company are jointly and severally liable with the company to compensate any person that suffers damage because of such action.

3. Directors' Duties and Sustainability Disclosure Obligations

3.1. Narrative sustainability disclosure

3.1.1. *Sustainability disclosure frameworks*

Greece has implemented the NFRD in the Corporate Law. According to Article 151 of the Corporate Law, listed companies, banks and insurance companies[7] with over 500 employees includes in their management report a non-financial statement, in relation at least, to environmental, social and employment issues, human rights, anti-corruption and anti-bribery, to the extent required for the understanding of the development, the performance, the status and impact of their activities (the **Statement**). The Statement must include a brief description of the business model, a description of policies, the results of those policies, the main climate-related risks and the company's activities, including, where to the extent appropriate, business relations, products or services that may have negative results and mitigating actions, as well as non-financial performance indicators. If the company does not adopt any policies to address the above issues, the Statement must include a clear and justified explanation for the lack of any such policies (on a comply or explain basis). The Statement must also include, where appropriate, references and additional explanations regarding the amounts stated in the annual financial statements. As an exception, the company may omit to include in the Statement any information about upcoming developments or issues under negotiation if, subject to the reasoned opinion of the board members, such information would cause significant damage to the company and provided that such omission does not impede the correct and balanced understanding of the impacts of the company's activities. In relation to the non-financial disclosures, companies may use national or EU or international standards and, in this case, must clarify the standards they relied upon. The non-financial disclosure obligation is subject to external auditors' control.

In January 2023, the European Commission adopted the *Corporate Sustainability Reporting Directive (EU) 2022/2464* (**CSRD**). The CSRD amends the NFRD by expanding the scope of companies which are required to make sustainability disclosures to all large companies and all companies listed on regulated markets (except listed micro-enterprises). It requires sustainability information to be disclosed as part of the management report and audit (assurance) of reported information, introducing more detailed reporting requirements and a requirement to report according to mandatory European Sustainability Reporting Standards (**ESRS**). Companies already subject to the NFRD will be required first to make CSRD disclosures in 2025, in respect of financial year 2024. The

[7] Defined as large public interest corporations in Appendix A of *Law 4308/2014 Greek Accounting Standards* (Government Gazette A' 251/24.11.2014).

CSRD has not yet been transposed into national law.

Pursuant to Article 150 of the Corporate Law, non-financial indicators related to the company's business activity, including information about climate-related issues, may also be included in the management report to the extent required for the understanding of the development, the performance or the position of the company. Again, the use of non-financial indicators about climate change issues is left at the discretion of the management board. Very small joint-stock companies (other than listed companies, insurance companies and banks in relation to which please see below) are exempted from the obligation to include non-financial information in their management report.

Pursuant to Article 152 of Corporate Law, companies must also include in their management report a corporate governance statement. Pursuant to HCGC's recommendation, this statement shall include, among others: information on the sustainable development policy (including climate change issues) followed by the company, such as a description of key elements of the policy adopted and implemented to promote the corporate interest and competitiveness of the company; reference to the essential non-financial issues relating to the long-term sustainability of the company; and reference to the standards used by the company for the disclosure of such non-financial information.

3.1.2. *Specific sustainability disclosure requirements for listed entities*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.1.3. *Specific sustainability disclosure requirements for financial institutions*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.1.4. *Directors' duties regarding sustainability disclosures*

Although the NFRD and CSRD make no reference to directors' duties, the reporting obligations indirectly oblige the management board members to develop a governance culture which takes into account and assesses the impact of climate-related issues on the business of the company and adopts appropriate measures and policies to address climate risks in the short-, medium- and long-term interest of the company's interest and competitiveness.

3.1.5. *Liability risk arising from narrative sustainability disclosures*

In case of incompleteness or errors in the Statement the Hellenic Capital Market Commission (**HCMC**) may issue a reprimand or impose a fine up to €3.000.000 to the board members.

Breach of the provisions of Articles 150 and 152 of the Greek Corporate Law may entail imprisonment of the board member for up to three years or imposition of fine from €5.000 - €50.000.

3.2. Climate-related disclosures in financial statements

3.2.1. *Climate-related disclosures in financial statements*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.2.2. *Directors' duties regarding climate-related disclosures in financial statements*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

3.2.3. *Liability risk arising from financial statements*

This information will be included in the next edition of the Directors' Duties Navigator, which will be published in 2025.

4. Practical Implications for Directors

Despite the absence of specific commitments and obligations of directors at corporate level in relation to climate change and environmental issues, the existing EU and national legal framework on climate change and non-financial disclosures as well as the adoption of the CSRD and the proposal of a Directive on Corporate Sustainability Due Diligence visibly indicate that board directors of Greek companies must contribute to the company's resilience to climate change. Our practical recommendations are as follows:

a) Ensure that management board is skilled, and, where required, train the management board to understand climate-related risks and how they may affect the business of the company across the company's operations, subsidiaries and value chain, including products, clients and in general stakeholders;

b) allocate identification of climate risks and opportunities and their evaluation to a specific management team that reports directly to the board;

c) designate to a department the monitoring of the legal and policy developments in relation to EU climate goals, and the potential direction of these developments and put on the agenda for the board to review, within 3 or 6 months, a process to initiate the development of a climate transition roadmap to 2050, with transparent carbon neutrality targets, clear interim targets to 2040, 2030 and near-term within the current rolling multi-medium and long-term targets, and at least annually thereafter report back to the board;

d) delegate to the appropriate committee(s) of the board, such as risk, audit, legal and governance, scenarios/strategy, nominations/remuneration, or sustainability/corporate responsibility, the task of translating the long-term climate change strategy into a clear decision-making process for each aspect that is relevant to each committee;

e) Review and, where required, adopt and create a governance policy to ensure appropriate management and handling of climate-related risks and associated defamation risks;

f) Ensure compliance with the Corporate Law and the Corporate Governance Law on climate related issues; and

g) Discuss with disclosure counsel, to develop an external engagement and communications plan and to oversee rigorous disclosure and accounting.

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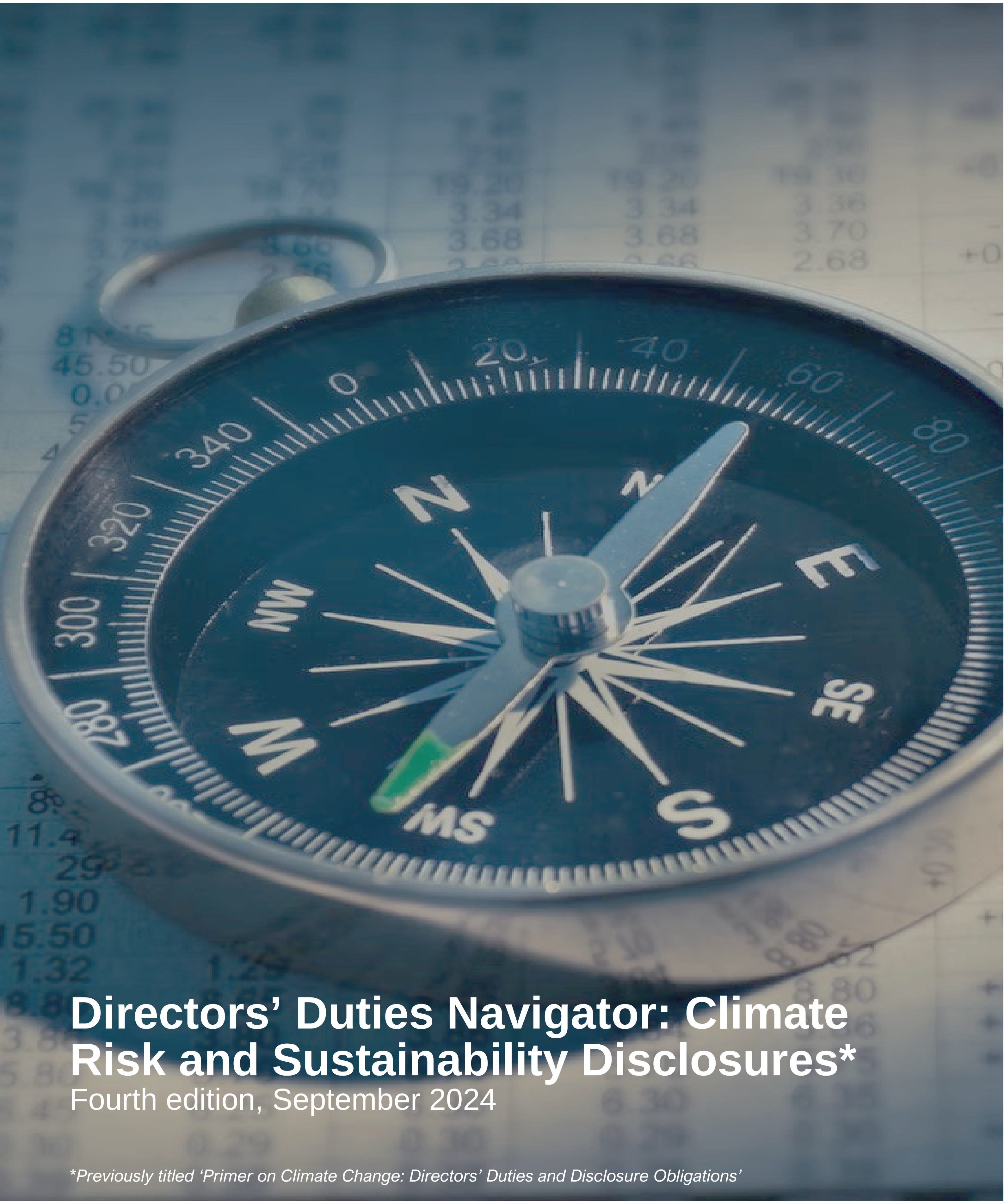

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Commonwealth Climate and Law Initiative

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